

Chapter 116

Accounting, Distribution and Closing

116.013

NOTES OF DECISIONS

1. Under former similar statute

The power of the administrator to take possession of real property was limited by the statute. *Hanner v. Silver*, (1868) 2 Or 336.

Where the administrator took actual possession of the realty, the running of the statute of limitations was suspended during such possession. *Clark v. Bundy*, (1896) 29 Or 190, 44 P 282.

Advancements by an administrator to an adult legatee who was the only heir or legatee interested in the estate was to be credited to the administrator against the share of the legatee, and where made from the representative's own funds, he was entitled to a credit therefor as against such legatee. *Stewart v. Baxter*, (1934) 145 Or 460, 28 P2d 642, 91 ALR 818.

The executor's allegedly premature distribution of certain personal property did not justify his removal. In re *Johnson's Estate*, (1946) 178 Or 214, 164 P2d 886.

FURTHER CITATIONS: *United States Nat. Bank v. Krautwashi*, (1960) 221 Or 609, 351 P2d 947.

LAW REVIEW CITATIONS: 37 OLR 72.

116.063

NOTES OF DECISIONS

1. Under former similar statute

The inventory was properly included in the transcript on appeal without having been offered in evidence. In re *Osburn's Estate*, (1899) 36 Or 8, 58 P 521.

An administratrix was not charged with more than the amount received where it appeared that she had really accounted for all the property of the estate and had received substantially its appraised value. *Id.*

Where a note and mortgage were disposed of for a reasonable value, the executor was not charged with the loss. In re *Conser's Estate*, (1901) 40 Or 138, 66 P 607.

Escheat proceedings were not intended by the legislature to interfere with or disturb pending administration proceedings. *State v. O'Day*, (1902) 41 Or 495, 69 P 542.

Executor's debt to testator became money in his hands and ceased to be property of the estate under the statute so that he was bound to fully account therefor. In re *Mason's Estate*, (1902) 42 Or 177, 70 P 507, 95 Am St Rep 734.

Where an executor, who was also appointed trustee under the will, loaned money on inadequate security, he was charged with the loss. In re *Roach's Estate*, (1907) 50 Or 179, 92 P 118.

Executor was entitled to possession of the real estate until the filing of the final account. Re *Estate of McDermid*, (1924) 109 Or 633, 222 P 295.

LAW REVIEW CITATIONS: 49 OLR 364.

116.073

NOTES OF DECISIONS

1. Under former similar statute

The burden was on the representative to show that loss in value of assets as shown by the inventory occurred without loss on his part. In re *Conser's Estate*, (1901) 40 Or 138, 66 P 607.

Where a note and mortgage were disposed of for a reasonable value, the representative was not to be charged with the loss. *Id.*

Debts due from the executor were transmuted into money in his hands and could not be classed with property of the estate coming into his hands or with uncollected or uncollectible debts. In re *Mason's Estate*, (1902) 42 Or 177, 70 P 507, 95 Am St Rep 734.

The representative was not charged with maladministration where business of decedent sold at less than appraised value because of economic depression. *Steeby v. Norcott*, (1933) 143 Or 501, 20 P2d 1080.

116.083

NOTES OF DECISIONS

1. Under former similar statute

(1) In general

(2) Accounting by representative

(3) Credits and allowances for expenses

(4) Liability of representative to estate

1. Under former similar statute

(1) In general. The allowance of a claim by the administrator did not make out a prima facie case in favor of its validity if objected to on final accounting, but claimant was required to substantiate his claim by proof. Re *Chambers' Estate*, (1900) 38 Or 131, 62 P 1013; *Irvine v. Beck*, (1912) 62 Or 593, 125 P 832.

Claimant on objections to the administrator's account was required to support his claim by proof of its validity. Re *Chambers' Estate*, (1900) 38 Or 131, 62 P 1013; In re *Mills' Estate*, (1901) 40 Or 424, 67 P 107.

For the purpose of an accounting, the probate court could assume the correctness of the last report on file and charge the administrator and his sureties with the money there stated to be on hand. *Rutenic v. Hamakar*, (1902) 40 Or 444, 67 P 196.

A decree settling the final account of an administrator was such a final order as could be set aside in equity for fraud, though the property or fund had not been distributed nor the administrator discharged. *Froeblich v. Lane*, (1904) 45 Or 13, 76 P 351, 106 Am St Rep 634.

Suit by heirs to charge administrator on his final account, filed before limitations had run and about a month after discovery of all facts, was not barred by laches. *Fitchard v. Hirschberg's Estate*, (1929) 128 Or 317, 272 P 906, 274 P 505.

The removal of an executor was unwarranted where it appeared merely that he was dilatory in reporting the per-

formance of his duties and did not strictly comply with statutory requirements. *Hofer v. Gofner*, (1930) 134 Or 33, 292 P 1029, 72 ALR 949.

The administrator was charged in his account with a liability in favor of a client of the decedent for a sum of money which was finally adjudged to be the property of the client where, although at the time of disbursement of such money there was a judgment awarding the money to the administrator, there was pending a motion to vacate it. *Re Mannix Estate*, (1934) 146 Or 187, 29 P2d 364.

The account should reveal not only the assets but also the liabilities. *Id.*

A creditor had a right to insist that the executor or administrator maintain and file accurate accounts. *Id.*

(2) Accounting by representative. The court, after passing on the final account of an executor or an administrator, had no power to allow or consider a further or supplemental report without giving notice to all parties interested and allowing them an opportunity to be heard. *Dray v. Bloch*, (1896) 29 Or 347, 45 P 772.

An administratrix who had filed a final account was estopped to deny her representative capacity or her liability to account. *In re Osburn's Estate*, (1899) 36 Or 8, 58 P 521.

An itemized and detailed report was not required where the property of the estate was disposed of by auction and private sale and the administrator showed that it was impossible to keep an account of each article sold or of the purchasers' names. *Id.*

The burden of showing cause of loss was cast upon the administrator where the amount received was less than appraised value of asset sold. *In re Conser's Estate*, (1901) 40 Or 138, 66 P 607.

The fact that the estate was fully administered or was ready for final settlement had to be shown by the petition. *In re Morrison's Estate*, (1906) 48 Or 612, 87 P 1043.

Reopening of account was proper where acquiescence of heirs in settlement of estate was shown to have been induced by false representations. *Johnson v. Savage*, (1907) 50 Or 294, 91 P 1082.

Executrix could not substitute a report of certified public accountants for her own final account. *In re Stafford's Estate*, (1934) 145 Or 510, 28 P2d 840.

(3) Credits and allowances for expenses. In presenting a claim for extra compensation, an administrator should particularly state the services on which it was based with such explanations as would enable interested persons to fairly understand the situation. *Steel v. Holladay*, (1891) 20 Or 462, 26 P 562; *In re Partridge's Estate*, (1897) 31 Or 297, 51 P 82.

Allowance of \$100 for an attorney's services in settling an estate was not unreasonable. *In re Osburn's Estate*, (1899) 36 Or 8, 58 P 521.

Items of expense in maintaining the property are not chargeable as costs of administration when a husband had possession as tenant by the curtesy. *Johnson v. Savage*, (1907) 50 Or 294, 91 P 1082.

Where the administrator advanced money to heirs for various necessities, this amount was not properly chargeable against the estate but rather to the heirs' distributive share. *Re Estates of Bethel*, (1924) 111 Or 178, 209 P 311, 226 P 427.

Disbursements by a representative from his own funds for the benefit of a legatee entitled the representative to credits against the legatee's share. *Stewart v. Baxter*, (1934) 145 Or 460, 28 P2d 642, 91 ALR 818.

Broker's commissions in negotiating sales of real property of the estate were allowed. *Id.*

A representative was not denied credit for a proper payment because it was made at an improper time or involved an excess of authority. *Id.*

(4) Liability of representative to estate. In an action on an executor's or administrator's bond, a decree of final

settlement was conclusive on both the executor and his bondsmen in the absence of fraud. *Bellinger v. Thompson*, (1894) 26 Or 320, 37 P 714, 40 P 229; *Thompson v. Dekum*, (1898) 32 Or 506, 52 P 517, 755.

Ex parte orders of the probate court directing the administrator to pay bills that on final settlement were disallowed could afford no protection to the administrator. *In re Osburn's Estate*, (1899) 36 Or 8, 58 P 521.

Where it appeared that an administrator had accounted for all the property of the estate and had received substantially its appraised value, he was charged with more than the amount received. *Id.*

FURTHER CITATIONS: *Rostel v. Morat*, (1890) 19 Or 181, 23 P 900; *Dray v. Bloch*, (1896) 29 Or 347, 45 P 772; *Roach's Estate*, (1907) 50 Or 179, 92 P 118; *In re Marks & Co's Estate*, (1913) 66 Or 340, 133 P 777; *Stewart v. Baxter*, (1934) 145 Or 460, 28 P2d 642, 91 ALR 818; *New Amsterdam Cas. Co. v. Terrall*, (1940) 165 Or 390, 107 P2d 843; *In re Feehely's Estate*, (1947) 182 Or 246, 187 P2d 156, 173 ALR 1334; *Taylor v. Rubey*, (1970) 2 Or App 277, 467 P2d 132, Sup Ct review denied.

ATTY. GEN. OPINIONS: Liability of specific bequest for costs of administration and claims of creditors, 1948-50, p 19.

LAW REVIEW CITATIONS: 16 OLR 271; 49 OLR 351-364.

116.093

LAW REVIEW CITATIONS: 49 OLR 351-364.

116.103

NOTES OF DECISIONS

1. Under former similar statute

The court, on hearing objections to the final account, was limited to the particular specifications set forth in the objections interposed. *In re Roach's Estate*, (1907) 50 Or 179, 92 P 118; *Irvine v. Beck*, (1912) 62 Or 593, 125 P 832; *In re Anderson's Estate*, (1937) 157 Or 365, 71 P2d 1013.

Allowance of a claim by the administrator did not establish its validity prima facie if objected to on final account. *Re Chambers' Estate*, (1900) 38 Or 131, 62 P 1013.

The practice in the settlement of final accounts in probate was to consider the issues as made by the account and the objections thereto, without requiring a reply by the executor. *In re Conser's Estate*, (1901) 40 Or 138, 66 P 607.

Amended and supplemental objections could be filed at any time to conform to the testimony. *In re Roach's Estate*, (1907) 50 Or 179, 92 P 118.

The burden of proof was cast upon the executor where his final account was properly challenged. *Id.*

Where persons claiming to be heirs file objections to a final account, they could not be summarily dismissed on the unsupported assumption that they were not heirs. *In re Ollschlager's Estate*, (1907) 50 Or 55, 89 P 1049.

In determining whether the objectors were heirs, it was error to receive the record of a previous guardianship proceeding which was not properly offered into evidence. *Id.*

A creditor had a right to insist that the executor or administrator maintain and file accurate accounts. *Re Mannix Estate*, (1934) 146 Or 187, 29 P2d 364.

FURTHER CITATIONS: *Re Prince Estate*, (1926) 118 Or 210, 221 P 554, 246 P 713; *Chalaby v. Driskell*, (1964) 237 Or 245, 390 P2d 632, 391 P2d 624.

LAW REVIEW CITATIONS: 49 OLR 351-364.

116.113

NOTES OF DECISIONS

1. Under former similar statute

An order refusing to compel a final settlement was appealable. *Bellinger v. Ingalls*, (1891) 21 Or 191, 27 P 1038.

On appeal the evidence had to accompany the transcript and the case be tried anew upon such evidence. *Re Plunkett's Estate*, (1898) 33 Or 414, 54 P 152.

On objections filed by persons claiming as heirs, the issue of heirship had to be considered and determined upon evidence regularly offered and submitted. *In re Ollschlager's Estate*, (1907) 50 Or 55, 89 P 1049.

FURTHER CITATIONS: *Chalaby v. Driskell*, (1964) 237 Or 245, 390 P2d 632, 391 P2d 624.

LAW REVIEW CITATIONS: 49 OLR 351.

116.123

NOTES OF DECISIONS

1. Under former similar statute

Decree of final settlement concluded both administrator and his sureties in action on bond in the absence of fraud. *Bellinger v. Thompson*, (1894) 26 Or 320, 37 P 714, 40 P 229; *Thompson v. Dekum*, (1898) 32 Or 506, 52 P 517, 755; *United Brethren v. Akin*, (1904) 45 Or 247, 77 P 748, 2 Ann Cas 353, 66 LRA 654.

Where escheat was in question, the state could appear in the probate court; the notices published in obedience to the orders of the probate court upon filing of a final account were sufficient notice to the state and the decree was conclusive against collateral attack. *State v. O'Day*, (1902) 41 Or 495, 69 P 542; *In re Anderson's Estate*, (1937) 157 Or 365, 71 P2d 1013.

The decree of a probate court allowing or disallowing an administrator's final account, under authority of the statute was a final decree from which an appeal would lie. *Re Prince Estate*, (1926) 118 Or 210, 221 P 554, 246 P 713; *Lothstein v. Fitzpatrick*, (1943) 171 Or 648, 138 P2d 919.

Allowance of a claim by the administrator did not, under the statutes, prima facie establish its validity as against objection on final accounting. *Re Chambers' Estate*, (1900) 38 Or 131, 62 P 1013.

Suit by heirs to charge administrator on his final account, filed before limitations had run and about a month after discovery of all facts, was not barred by laches. *Fitchard v. Hirschberg's Estate*, (1929) 128 Or 317, 272 P 906, 274 P 505.

In a proceeding by a legatee of an adeemed legacy, the rule as to the prima facie effect of the allowance of a final account and the order naming the heirs and legatees availed the plaintiff nothing where the only evidence before the court affecting the plaintiff's right to recover was the proceedings of the county court, including such decree and order, and this evidence was introduced by the plaintiff. *Woodburn Lodge v. Wilson*, (1934) 148 Or 150, 34 P2d 611.

FURTHER CITATIONS: *Cross v. Baskett*, (1888) 17 Or 84, 21 P 47; *Charlton v. Patton*, (1942) 170 Or 186, 132 P2d 402; *Knapp v. Josephine County*, (1951) 192 Or 327, 235 P2d 564; *Chalaby v. Driskell*, (1964) 237 Or 245, 390 P2d 632, 391 P2d 624.

LAW REVIEW CITATIONS: 49 OLR 351, 364.

116.133

NOTES OF DECISIONS

1. Under former similar statute

Real property could be sold by the executor or adminis-

trator to pay those enumerated charges only in accordance with the requirements of all statutes dealing with the matter. *Smith v. Whiting*, (1910) 55 Or 393, 106 P 791; *Stadelman v. Miner*, (1917) 83 Or 348, 155 P 708, 163 P 585, 983, writ of error dismissed, (1918) 246 US 311, 544, 38 S Ct 189, 359, 62 L Ed 737, 875.

Property specifically devised was liable for debts when other property was exhausted. *Howe v. Kern*, (1912) 63 Or 487, 125 P 834, 128 P 818; *Banfield v. Schulderman*, (1931) 137 Or 256, 299 P 323, 3 P2d 116, 89 ALR 504; *Putnam v. Jenkins*, (1955) 204 Or 691, 285 P2d 532.

All personalty except that specifically bequeathed had to be exhausted before a sale of realty was made. *Wright v. Edwards*, (1882) 10 Or 298; *Noon's Estate*, (1907) 49 Or 286, 88 P 673, 90 P 673.

A description of corporate stock bequeathed was sufficiently definite to make the bequest specific where referred to as "my stock." *In re Noon's Estate*, (1907) 49 Or 286, 88 P 673, 90 P 673.

Specific legacies were exonerated from primary liability for debts of a decedent's estate. *Putnam v. Jenkins*, (1955) 204 Or 691, 285 P2d 532.

FURTHER CITATIONS: *Stadelman v. Miner*, (1917) 83 Or 348, 144 P 708, 163 P 585, 983; *Stanley v. United States Nat. Bank*, (1924) 110 Or 648, 224 P 835; *Ladd & Bush Trust Co. v. Kurtz*, (1942) 169 Or 225, 127 P2d 732.

ATTY. GEN. OPINIONS: Liability of specific bequest for costs of administration and claims of creditors, 1948-50, p 19.

116.173

NOTES OF DECISIONS

1. In general
2. Amount of compensation
3. Extra compensation

1. In general

This section, construed with related sections, does not give expenses of administration a lien which is superior to the lien of mortgage which was executed by testator. *Shepard v. Saltzman*, (1898) 34 Or 40, 54 P 882.

An executor, to whom is bequeathed the real estate in trust, is entitled to possession thereof as executor until final accounting or a court order vesting possession in him as trustee. *Re Estate of McDermid*, (1924) 109 Or 633, 222 P 295.

2. Amount of compensation

No commission can be allowed an executor on property which never came into his possession or on property which, although it belonged to the estate, has not been administered on and is not under the control of the probate court. *Steel v. Holladay*, (1891) 20 Or 462, 26 P 562.

Compensation of a personal representative may be fixed by agreement with persons beneficially interested. *Stewart v. Baxter*, (1934) 145 P 460, 28 P2d 642, 91 ALR 818.

Where an executor is removed before complete administration, the amount of compensation is generally a question of judicial discretion. *In re Elder's Estate*, (1940) 164 Or 347, 101 P2d 412.

Prior to the 1969 amendment "the whole estate accounted for" did not mean the appraised value as set in the inventory but the estate value at the time of settlement, including accretions. *In re Feehely's Estate*, (1947) 182 Or 246, 187 P2d 156, 173 ALR 1334.

Where the executrix agreed to pay an attorney for acting as her agent in all estate matters a sum equal to her fee, the amount the attorney received was measured by the final

account of executrix when she was removed at her own request. *Osborn v. Graves*, (1884) 11 Or 526, 6 P 227.

Under a former similar statute, where the administrator charged more for compensation than had been agreed upon, there was such fraud in procuring a decree settling the account as to authorize the court of equity to set it aside. *Froebrich v. Lane*, (1904) 45 Or 13, 76 P 351, 106 Am St Rep 634.

Under a former similar statute, an improperly removed executor, who faithfully administered the estate, although unavoidable losses occurred in sale of some assets, was entitled to compensation. *Hofer v. Gofner*, (1930) 134 Or 46, 292 P 1027.

The Supreme Court allowed the full amount of compensation and extra compensation in accordance with this section where the administrator had substantially performed the entire administration. *Stewart v. Baxter*, (1934) 145 Or 160, 28 P2d 642, 91 ALR 818.

3. Extra compensation

In presenting a claim for extra compensation, an administrator should particularly state the services on which it is based with its particular value; no allowance should be made until such an account is presented. *Steel v. Holladay*, (1891) 20 Or 462, 26 P 562; *Re Partridge's Estate*, (1897) 31 Or 297, 51 P 82.

A determination as to whether extra compensation should be allowed and amount thereof rests largely within the discretion of probate court. In *re Estate of Neil*, (1926) 117 Or 76, 242 P 820; In *re Lappy's Estate*, (1958) 213 Or 368, 322 P2d 908.

The amount awarded will not be disturbed on appeal unless there has been a manifest abuse of discretion or the amount so allowed is disproportionate or not equivalent to the services performed. *Re McCullough's Estate*, (1897) 31 Or 86, 49 P 886.

Extra compensation was denied the executor where he failed to apply to the probate court for advice or directions in lending money and made no report thereof for more than eight years. In *re Roach's Estate*, (1907) 50 Or 179, 92 P 118.

Services for management of business property of an estate for a period of five and one-half years were "extraordinary and unusual," justifying the payment of additional compensation. In *re Feehely's Estate*, (1947) 182 Or 246, 187 P2d 156, 173 ALR 1334.

The probate court had discretion to fix the compensation of an executor for the management of business property, amounting to unusual services, at a percentage of rents which when added to the statutory commission equalled the rates commonly charged for such services. *Id.*

Allowance of additional compensation was authorized for making reports which exceeded the usual number. In *re Lappy's Estate*, (1958) 213 Or 368, 322 P2d 908.

Extra compensation granted by probate court was excessive. *Id.*

FURTHER CITATIONS: *States v. Eggleston*, (1877) 4 Sawy 199, Fed Cas No. 15,027; In *re Osburn's Estate*, (1899) 36 Or 8, 58 P 521; *Kirchoff v. Bernstein*, (1919) 92 Or 378, 181 P 746; In *re Shepherd's Estate*, (1935) 152 Or 15, 41 P2d 444, 49 P2d 448; In *re Hattrem's Estate*, (1943) 170 Or 613, 135 P2d 777; *Felber v. Felber*, (1951) 193 Or 231, 238 P2d 203.

ATTY. GEN. OPINIONS: Whether a lawyer who becomes executor is entitled to attorney fees in addition to executor's fees, 1944-46, p 114.

NOTES OF DECISIONS

1. Under former similar statute

The right of an attorney to compensation was not a direct charge against the estate; the contract bound the executor personally. *Waite v. Willis*, (1902) 42 Or 288, 70 P 1034; In *re Lachmund's Estate*, (1946) 179 Or 420, 170 P2d 748, 166 ALR 479.

The claim for attorney's fees should ordinarily have been presented in an itemized form and not for an aggregate amount by the year. *Steel v. Holladay*, (1891) 20 Or 462, 26 P 562.

An attorney was allowed his expenses necessarily incurred in travel for the estate which he represented and a gross sum for all his services. *Re McCullough's Estate*, (1897) 31 Or 86, 49 P 886.

An item in an administrator's final account of money paid to his attorney for making an inventory, was rejected when such attorney was allowed a gross sum for his services in the management and settlement of the estate. *Id.*

An administrator could contract with an attorney to undertake litigation for a liberal fee contingent on success. *Id.*

The representative was not given a lien for necessary expenses prior to a mortgage on testator's lands, though the other property was not sufficient to pay such expenses. *Shepard v. Saltzman*, (1898) 34 Or 40, 54 P 882.

The statute did not prevent the allowance to attorneys of fees earned during the course of administration and before final settlement. In *re Mills' Estate*, (1901) 40 Or 424, 67 P 107.

The attorney employed by the representative had no lien on the property for his services. *Waite v. Willis*, (1902) 42 Or 288, 70 P 1034.

Attorneys' fees for service rendered in partial administration of estate by administrator acting under erroneous or voidable appointment were chargeable against estate as a necessary expense. In *re Estate of MacMullen*, (1926) 117 Or 505, 243 P 89, 244 P 664.

Where the executor administered assets in a foreign state as well as here and employed an attorney who rendered services in both states, the attorney fees were fixed by the court after the size of the entire estate administered was considered. *Re Prince Estate*, (1926) 118 Or 210, 221 P 554, 246 P 713.

Disbursements constituted a charge in favor of an executor or administrator against the estate, although their allowance left no surplus to pay creditors of the deceased, and such expenditures could be retained from the funds of the estate by the administrator or executor. *Stewart v. Baxter*, (1934) 145 Or 460, 28 P2d 642, 91 ALR 818.

Where an executor employed an attorney for an agreed amount of compensation, the executor was entitled on his accounting to the reasonable value of the services rendered by the attorney; if the contract obligated the executor to pay more, he was personally liable for the excess. In *re Lachmund's Estate*, (1946) 179 Or 420, 170 P2d 748, 166 ALR 479.

The appeal by an executor from a probate court order not to sell realty but to use accrued rents to pay charges and expenses was proper where the probate court had already ruled twice for the executor and the question was novel. In *re Feehely's Estate*, (1947) 182 Or 246, 187 P2d 156, 173 ALR 1334.

Employment of counsel by one of several heirs would not create a liability on the part of others even though his services were beneficial to all. *McCormick v. Rand*, (1967) 246 Or 606, 425 P2d 488.

116.203

NOTES OF DECISIONS

1. Under former similar statute

The probate court had authority to direct the distribution of the estate among the heirs or other persons entitled thereto, and the filing of an escheat proceeding did not divest the court of its jurisdiction. *State v. O'Day*, (1902) 41 Or 495, 69 P 542.

The personal representative was required to settle the estate within a reasonable time after assuming charge thereof; when an executor could not reasonably carry out the directions of the testator within the time implied from the statute, a trust was imposed. *In re Roach's Estate*, (1907) 50 Or 179, 92 P 118.

Where an executor had been appointed testamentary trustee, he did not assume to act in the latter capacity until he had settled his accounts as executor and been discharged. *Id.*

A probate court which admitted a nonresident's will to probate in Oregon could distribute the Oregon property according to the terms of the will or direct it be transferred to the foreign personal representative. *Thomas Kay Woolen Mills Co. v. Sprague*, (1919) 259 Fed 338.

Probate decrees were binding upon every person, including the state and its governmental agencies, unless the decree was attacked directly. *In re Anderson's Estate*, (1937) 157 Or 365, 71 P2d 1013.

Executor's account should have been surcharged for a payment to a devisee made as a compromise settlement of objections to executor's final account, since appellant was a joint objector and continued to urge objections. *Lelek v. Hemshorn*, (1948) 184 Or 364, 198 P2d 597.

Decree of distribution upon final settlement of estate should have designated the amount or specific thing due to each distributee and should have determined the amount to which the executor was entitled for services as executor and manager of testator's business and whether payable in money or with machinery purchased with funds of the estate. *Id.*

The legal representative was entitled to apply the distributive share of a debtor to the estate in satisfaction of a debt barred by the statute of limitations, as against the assignee or attaching creditor of the debtor with or without notice of the indebtedness to the estate. *Security Inv. Co. v. Miller*, (1950) 189 Or 246, 218 P2d 966.

FURTHER CITATIONS: *In re John's Will*, (1896) 30 Or 494, 47 P 341, 50 P 226, 36 LRA 242; *State v. McDonald*, (1910) 55 Or 419, 103 P 512, 104 P 967, 106 P 444; *In re McGinnis Estate*, (1919) 91 Or 407, 179 P 254; *Woodburn Lodge v. Wilson*, (1934) 148 Or 150, 34 P2d 611; *In re Swanson Estate*, (1962) 231 Or 405, 373 P2d 422; *Ross v. State Land Bd.*, (1965) 241 Or 442, 406 P2d 549.

ATTY. GEN. OPINIONS: Procedure to recover distributive share or legacy, 1922-24, p 85, 1928-30, p 407, 1932-34, p 371, 1934-36, p 558, 1938-40, p 715, 1940-42, p 122; duty enjoined

upon county treasurer to deposit the money with proper state agency, 1936-38, p 76; disposition of money held for a claimant, 1938-40, p 749; when funds deposited with county treasurer escheat, 1940-42, p 399.

116.213

LAW REVIEW CITATIONS: 49 OLR 351-364.

116.253

NOTES OF DECISIONS

The remedy outlined in this section is legal in nature. *Fenstermacher v. State*, (1890) 19 Or 504, 25 P 142; *Young v. State*, (1900) 36 Or 417, 59 P 812, 60 P 711, 47 LRA 548.

This section does not permit the recovery of escheated property from the state when the escheat proceedings were held in a foreign court. *Wood v. Sprague*, (1940) 165 Or 122, 106 P2d 287.

Several parties may unite in a single petition. *Haley v. Sprague*, (1941) 166 Or 320, 111 P2d 1031.

This statute is a consent statute and does not create a new right or a new cause of action. *Peters v. McKay*, (1951) 195 Or 412, 238 P2d 225, 246 P2d 535.

The Federal Trading with the Enemy Act does not confer on the custodian special rights and preferences overriding the provisions given the state by this section. *Rogers v. Holmes*, (1958) 214 Or 687, 332 P2d 608.

The privilege granted to a particular class, heirs, could only be exercised by them and could not be exercised by the Alien Property Custodian. *Id.*

Petitioners did not fall within the class of persons given the right of action. *Ross v. State Land Bd.*, (1965) 241 Or 442, 406 P2d 549.

The recovery statute must be strictly construed. *Rogers v. Holmes*, (1958) 214 Or 687, 332 P2d 608; *Stairs v. Price*, (1967) 247 Or 190, 428 P2d 182.

FURTHER CITATIONS: *Engle v. State Land Bd.*, (1940) 164 Or 109, 99 P2d 1018; *Realty Associates v. Women's Club*, (1962) 230 Or 481, 369 P2d 747.

ATTY. GEN. OPINIONS: Persons entitled to recover escheated property, 1924-26, p 481, 1934-36, pp 106, 641, 1936-38, p 420, 1940-42, pp 122, 332; proof needed to establish heirship, 1934-36, pp 604, 655, 1938-40, p 461, 1940-42, p 122.

Procedure to be followed by claimants and public officials, 1920-22, pp 186, 381, 1922-24, pp 86, 285, 546, 1924-26, p 254, 1928-30, p 22, 1930-32, p 452, 1932-34, p 329, 1934-36, pp 420, 664.

Effect of elapse of the statutory period, 1922-24, p 686, 1934-36, p 376; extension of period for disability, 1928-30, p 407, 1934-36, p 106; the amount of recovery, 1926-28, p 15, 1930-32, p 439; taxability of escheated land, 1930-32, p 694, 1936-38, p 77; rights of a devisee when land escheats, 1934-36, p 558; recovery of personality, 1942-44, p 241.

LAW REVIEW CITATIONS: 13 OLR 187; 20 OLR 390.