

CARR *v.* CARR, ADMR.

5-2554

352 S. W. 2d 825

Opinion delivered January 15, 1962.

EXECUTORS AND ADMINISTRATORS—REFUSAL TO DISTRIBUTE SHARE TO DEVISEE ALREADY INDEBTED TO ESTATE.—Chancellor's finding that plaintiff was indebted to the estates of his father and mother to a greater extent than would be his share as an heir and devisee was not against a preponderance of the evidence.

Appeal from Union Probate Court; *Claude E. Love*, Judge; affirmed.

*Shackleford & Shackleford*, for appellant.

*J. G. Ragsdale*, for appellee.

SAM ROBINSON, Associate Justice. R. A. Carr died on April 23, 1959. His widow, Sarah Ellen Carr, died January 14, 1960. William Carr is administrator of the R. A. Carr estate, and Bob Wallace is administrator of the Sarah Ellen Carr estate. Appellant Leon Carr is an heir of R. A. Carr and one of the devisees under R. A. Carr's will.

The administrators of both estates jointly petitioned the probate court to authorize the distribution of about \$6,000 in cash in the two estates. The court authorized such distribution but the administrators paid nothing to appellant Leon Carr because they contend that he is indebted to the estates in a greater sum than he had coming to him as an heir or devisee under the will.

Leon Carr petitioned the probate court for an order requiring the administrators to distribute to him a por-

tion of the cash an an heir and devisee. The administrators answered, alleging the indebtedness of Leon Carr to the estates. There was a hearing, the issue being whether Leon owed the estates more than he had coming to him as an heir and devisee. It was shown that R. A. Carr and Sarah Ellen Carr had as an accommodation endorsed Leon's promissory note in the sum of \$1,155 and of this sum Leon had repaid only \$200 and the endorsers had paid the balance.

It was further shown that Leon had given to R. A. and Sarah Ellen Carr his note in the sum of \$2,500; that only \$400 had been paid on this note and the balance was long past due. Leon contended that \$1,500 had been paid in addition to the \$400; that he had paid his father \$1,500 in cash and that this amount was accepted by R. A. Carr as payment in full. The probate court heard the evidence and saw the witnesses, and we cannot say the court's finding that the \$1,500 in cash had not been paid is against the preponderance of the evidence.

Affirmed.

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