
Greely Burnham Grocery Co. v. Graves, ad.

GREELY BURNHAM GROCERY CO. v. GRAVES, AD.

1. ADMINISTRATION: *Settlements of administrators, how corrected.*
Chancery has no power to correct the mere errors in an administrator's settlement; it must be done by appeal to the Circuit Court.
2. SAME: *Fraudulent settlements. Notice of the settlement.*
It is a very great irregularity for the Probate Court to confirm an administrator's account before the notice of filing the account has been given as required by law; but the omission of the clerk to give the notice can not make the account fraudulent.

APPEAL from *Chicot* Circuit Court in Chancery.
Hon. J. M. BRADLEY, Circuit Judge.

John G. B. Simms for appellant.

No notice was given as required by *Sec. 129, Gantt's Dig.*, and appellant had no day in court. See 30 *Ark.*, 66; 20 *Ark.*, 526. The charging illegal commissions, and expenditures by the administrator was a fraud, and a Court of Chancery should set aside the settlement, as appellant had no notice and could not appeal. He was without remedy at law.

C. H. Carlton for appellee.

Appellants remedy was by appeal. Courts of Chancery will not set aside settlements in the Probate Court for mere irregularities or errors. The failure on the part of the clerk to give notices as required by law, will not vitiate the settlement.

SMITH, J. This was a bill in chancery to open an administrator's account, which had been confirmed by the Probate Court, for alleged frauds in obtaining credits for traveling expenses while on business of the estate and for

excessive commissions. It was stated that the clerk had omitted to give notice of the filing of said account. The bill was dismissed on demurrer.

It is the settled doctrine of this court that mere errors of the Probate Courts in making allowances to administrators can be corrected only on appeal, and that they afford no ground for impeaching the settlements in a Court of Chancery. *Ragsdale v. Stuart*, 8 Ark., 268; *Ringgold v. Stone*, 20 Id., 527; *Mock v. Pleasants*, 34 Id., 64; *Jones v. Graham*, 36 Id., 383.

There is no pretence that these allowances were obtained by misrepresentation, deception or imposition upon the court, but only that they were illegal.

It is a very great irregularity for the Probate Court to confirm an administrator's account before the notice prescribed by law has been given. But the clerk's omission of his duty does not render the account fraudulent.

Decree affirmed.
