OHIO STATUTES OF LIMITATION ON CLAIMS AGAINST ESTATES

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From a practical point of view this subject involves a close study of the various sections of the Probate Code dealing with claims against estates. Even though the Bureau of Code Revision re-codified the sections under one chapter of the Revised Code entitled, "Presentment of Claims Against Estate" and bearing chapter number 2117, yet these sections do not contain all the provisions of law with reference to claims against estates. It is, therefore, quite appropriate at this time to review the statutes dealing with such claims and become familiar again with their place in our statutory law. No attempt will be made at any exhaustive review of the authorities bearing on the various questions raised in connection with this subject, and only the special statutes of limitation dealing with claims against an estate will be considered.

TIME WITHIN WHICH CLAIMS MUST BE PRESENTED

The primary statute of limitation as to the time within which a claim against an estate must be presented is Ohio Revised Code Section 2117.06 (10509-112). This statute provides that all claimants "shall present their claims to the executor or administrator in writing," and that "all claims shall be presented within four months after the date of the appointment of the executor or administrator." Since the case of *Beach* v. *Mizner*,[1] the rule has been firmly established that this section, read in connection with Ohio Revised Code Section 2117.07 (10509-134), is a statute of limitation or a non-claim statute. Section 2117.07 is the section, which we will refer to later, under which a claimant may be authorized, under certain conditions, to present his claim after four months but not later than nine months after the date of the appointment of the executor or administrator.

It should be noted that all claims must be presented to the executor or administrator in writing. It is not necessary that the regular sworn proof of claim be presented unless the executor or administrator requires it; but if the claim arises out of tort, or if a preference in payment is claimed, the facts, in connection with the alleged tort, or showing the right to such preference, must be briefly set forth.[2] An oral presentation of a claim does not comply with the statute and, therefore, the executor or administrator must disregard such a claim. However, if a claimant attempts to present an oral claim, good faith requires the executor or administrator to advise the claimant that he cannot recognize the claim unless the claim is presented in writing.

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[1] 131 Ohio St. 481, 3 N.E. 2d 641 (1936).

[2] OHIO REV. CODE §2117.08 (10509-114).

The statute[3] provides that all claims must be presented, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated. If a claim is contingent at the time of the decedent's death and a cause of action subsequently accrues thereon, such claim must likewise be presented within the four months' period or before the expiration of two months after the cause of action accrues, whichever is later.[4]

There is a statute[5] modifying to some extent the harsh rule that claims must be presented to the executor or administrator within four months. Under certain conditions claims may be presented after four months but not later than nine months. These conditions are as follows: The claimant did not have actual notice of the decedent's death or of the appointment of the executor, or administrator; or the claimants failure to present his claim was due to the absence of the executor or administrator from his usual place of residence or business during a substantial part of such period; or the failure was due to any wrongful act or statement on the part of the executor or administrator or his attorney; or the claimant was subject to any legal disability during such period or any part thereof.

Claims Barred as Against Heirs

Anyone having a claim against an estate who fails to present his claim to the executor or administrator within nine months from the appointment of the executor or administrator shall be forever barred as to all persons, including devisees, legatees, and distributees.[6] There is, however, one exception to this rule: If a cause of action on a contingent claim accrues after the settlement of an estate, then each of the heirs, devisees, and legatees shall be liable for the payment of such claim,[7] but only to extent of the value of his distributive share.[8] There is no provision, of course, for the presentation of such a claim to the heirs, devisees, or legatees, like there is for the executor or administrator, and it is not necessary that the estate be re-opened for the purpose of presenting such a claim. Suit may be brought in a court of common pleas against the heirs, devisees or legatees without prior demand for payment. The limitation of the time within which a suit may be brought against the heirs, devisees, or legatees, on a contingent claim is six months after the cause of action first accrues, except if there is a balance due on the claim after the assets remaining in the estate shall have been exhausted by the executor or administrator in partial payment of the claim, then a suit for the balance of the claim must be brought against the heirs, devisees, or legatees within

[3] OHIO REV. CODE §2117.06 (10509-112).
[4] OHIO REV. CODE §2117.37 (10509-216).
[5] OHIO REV. CODE §2117.07 (10509-134).
[6] OHIO REV. CODE §2117.07 (10509-134).
[7] OHIO REV. CODE §2117.40 (10509-216c).
[8] OHIO REV. CODE §2117.41 (10509-217, 10509-218, 10509-219).

two months after the final payment by the executor or administrator.[9] It should be observed here, that it is the date of the final payment by the executor or administrator, and not the date of the filing or of the approval of his final account, that commences the tolling of the two months' statute of limitation.

Anyone having a claim that may be presented after four months but within nine months under the statute,[10] should waste no time in filing his petition in the probate court, because the executor or administrator may, after six months[11] distribute the estate to the heirs, and if this is done, the statute further provides that neither the executor or administrator or the legatees or distributees will be accountable to any claimant who files his petition after such distribution has been made, even though the petition is filed within the nine months.

Persons Under Legal Disability

Ohio Revised Code Section 2117.06 (10509-112) provides that all claimants must present their claims to the executor or administrator. This applies to all claimants, including persons under legal disability. It was held in the case of *Breen* v. *Conn*,[12] that the provisions of this section apply to a minor, and that a petition by or for the benefit of a minor on a tort claim which does not allege that the claim has been presented in accordance with the requirements of the statute, does not state facts sufficient to constitute a cause of action. It was claimed on behalf of the minor that her rights were saved by Ohio Revised Code Section 2305.16 (11229).[13] The court, however, pointed out that that section operates only as a saving clause as to the time within which an action may be brought by a person under legal disability, and held that it had no application to such a situation where the statute required the presentation of the claim within a certain time as a prerequisite to the accrual of a cause of action. The court also observed that the general rule as to such statutes is that all persons, whether under disability or not, are bound thereby unless excepted from their operation by a saving clause.[14]

While we are discussing the status of persons under legal disability in connection with the presentation of claims against an estate, it would be well to point out here that the rule just discussed does not apply where one under legal disability has a right to bring a suit against the heirs, devisees, or legatees on a contingent claim under the provisions of Ohio

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[9] OHIO REV. CODE §2117.41 (10509-217, 10509-218, 10509-219).

[10] OHIO REV. CODE §2117.07 (10509-134).

[11] OHIO REV. CODE §2113.53 (10509-181).

[12] 64 Ohio App. 325, 28 N.E. 2d 684 (1940). See also Conrad v. Sarver, 97 Ohio App. 199 (1955) which involved a person under legal disability.

[13] This section provides that if a person entitled to bring an action is, at the time the cause of action accrues, within the age of minority, of unsound mind, or imprisoned, such person may bring it within the respective times limited after such disability is removed.

[14] Favorite v. Booher's Adm'r., 17 Ohio St. 548 (1867).

Revised Code Section 2117.41 (10509-217, 218, 219). That section has a specific saving clause which provides that if the person entitled to bring such suit is under legal disability, he may bring such action within one year after his disability is removed.

The reason for the two different rules as applied to persons under legal disability is obvious. The speedy administration of estates requires that there be a definite time within which all claims must be presented to the executor or administrator.[15] If there were a saving clause for the benefit of claimants under legal disability, estates could not be closed safely for many years. On the other hand, after the assets of an estate have been distributed to the heirs, devisees or legatees, the assets are no longer subject to administration, but become the property of individuals, and as against such individuals, a saving clause for claimants under legal disability is quite proper where a contingent claim is involved.

Limitation as Against an Administrator De Bonis Non

After a claim or suit against an executor or administrator is once barred by the lapse of time, it cannot be revived against an administrator de bonis non.[16] Extreme caution, however, should be observed by an attorney representing a claimant when the executor or administrator dies, resigns, or is removed, or the office becomes vacant for any reason, before the time for presenting claims against the estate has expired and his client's claim has not yet been presented. In such event the statute[17] provides that the time between the occurrence of such vacancy and the appointment of a successor shall be excluded in computing the period of such time limitation. There is no other statutory provision extending the time within which claims may be presented to the successor administrator in such a situation. This means that if a vacancy should occur within a few days of the expiration date for presenting claims, the attorney for the claimant would be forced to check the probate court records daily for the appointment of a successor administrator, to make sure that the time within which he could present the claim to the successor administrator would not run out on him. The statute which creates this situation should receive the attention of the General Assembly as it imposes a hardship upon a claimant who had not presented his claim before the vacancy occurs. Besides, this section is misplaced in the Revised Code and should be placed in the chapter on "Presentation of Claims Against Estate," among the sections dealing with claims, from whence it was lifted by the Bureau of Code Revision.

LIMITATION ON CLAIMS OF EXECUTOR OR ADMINISTRATOR

For the purpose of protecting estates from unjust claims being asserted against them by the executor or administrator, the statute[18] provides

[15] Pierce v. Johnson, 136 Ohio St. 95, 23 N.E. 2d 993 (1939).

[16] OHIO REV. CODE §2117.33 (10509-156).

[17] OHIO REV. CODE §2113.24 (10509-122a).

[18] OHIO REV. CODE §2117.01 (10509-105).

that such claims must be filed with the probate court, and a hearing had thereon before they may be allowed as debts of the estate. Such claims must be presented to the probate court within three months after the date of the appointment of the executor or administrator.[19] Notice of the hearing on such claims must be given to interested parties at least twenty days before the time for hearing, which must be set not less than four weeks and not more than six weeks from the day the claim is presented to the probate court.

The provision that the claim of the executor or administrator must be presented to the probate court within three months often proves very embarrassing to his attorney. It is so easy for the attorney to let the three months' limitation slip his mind while thinking of the four months statute of limitation and the time for filing the schedule of debts. Again, the attorney might not know that the executor or administrator has a claim against the estate and does not learn of it until the executor or administrator, just about at the end of the period for presentation of claims, submits to him a list of the claims to be included in the schedule of debts. To the attorney's great surprise, the list includes a claim of the executor or administrator, and he then remembers that he had neglected to warn his client that if he had a claim against the estate it must be presented to the probate court within three months of the date of his appointment. There is no good reason why this limitation of the time for presenting a claim of the executor or administrator to the probate court should not coincide with the time for presenting other claims. An estate could be settled just as quickly were the time so extended, because the hearing on such a claim would have to be held within six weeks from the day the claim is presented to the probate court, which time, at the latest, would be two weeks before a distribution of the estate could be made under the law.[20] The Probate and Trust Law Committee of the Ohio State Bar Association has this statute under consideration. If the claim of the executor or administrator is not presented to the probate court within three months, his claim is barred, and there is no other provision of law under which the time could be extended.

A claim of the executor or administrator is the only kind of a claim which the probate court has jurisdiction to hear and determine upon its merits.[21] If there is any objection to the payment of the claim, the statute[22] authorizes the probate court on the motion of any interested party or on its own motion to appoint an attorney to represent the estate.

Limitation on Revivor of Action

Even though an action for the recovery of money is pending against a defendant at the time of his death, the action cannot be revived against

[19] Ohio Rev. Code §2117.02 (10509-106).
[20] Ohio Rev. Code §2113.53 (10509-181).
[21] Ohio Rev. Code §2117.01 (10509-105), §2117.04 (10509-108).
[22] Ohio Rev. Code §2117.03 (10509-107).

his executor or administrator, according to the statute on revivor,[23] unless written notice of the application or proceedings for such revivor is given to the executor or administrator within four months after the date of his appointment. This procedure under the statute on revivor obviates the necessity of a formal presentation of the claim involved in the action to the executor or administrator, as prescribed in Ohio Revised Code Section 2117.06 (10509-112). While the statute requires the notice of revivor to be given to the executor or administrator within four months of his appointment, yet the notice may be given after four months but not later than nine months after the appointment, if any one of the conditions exist as outlined in the statute which permits claims to be presented after four months.[24]

LIMITATION ON CLAIMS AGAINST NEW ASSETS

Hidden in chapter 2113 of the Revised Code, entitled "Executors and Administrators—Appointment; Powers; Duties," is still another section dealing with the limitation of the time within which a claim may be presented to the executor or administrator. This section appears all by itself under the subheading "New Administrator" and also carries the head note "New Administrator," whereas, the former section carried the headnote "New Assets." This section is Ohio Revised Code Section 2113.29 (10509-157) and reads as follows:

> When assets come to the hands of a new administrator, after any of the periods limited for the commencement of suits against him, he shall account for them and be liable to suits and proceedings on account thereof, as is provided with respect to an original administrator.

In order to get the true purport of this section it is necessary to review a little of its history. We need go back only as far as the 1932 Probate Code[25] to learn the significance of the last part of the section, namely: "He shall . . . be liable to suits and proceedings on account thereof, as is provided with respect to an original administrator." Under the present law there is no other special provision with respect to the liability of an original administrator for assets received after the statutes of limitation have run against a claimant. This language of the statute referred to former Section 10509-147 of the 1932 Probate Code which provided that an action or proceeding could be commenced by a claimant within two months after the executor or administrator filed an inventory of newly discovered assets, as was required by former Section 10509-73 of the 1932 Probate Code. In the year 1941, however, former Section 10509-73 of the 1932 Probate Code was repealed and part of its provisions were included in an amendment to former Section 10509-147 of the 1932 Probate Code.[26] This amendment to former Section 10509-147, how-

[23] OHIO REV. CODE §2311.31 (11408).

[24] OHIO REV. CODE §2117.07 (10509-134).

[25] 114 Ohio Laws 320.

[26] 119 Ohio Laws 394, now OHIO REV. CODE §2113.69.

ever, omitted any mention of the liability of the executor or administrator to any creditor on account of such assets, but at the time this statute was amended former Section 10509-157, now Ohio Revised Code Section 2113.29, was not changed. The only logical conclusion to be reached, therefore, is that the statute means that when newly discovered assets come to the hands of a new administrator, after any of the periods limited for the commencement of suits against him, he shall be liable to be proceeded against by a claimant on account of such assets in the same manner as if the new administrator had just been appointed the original executor or administrator. In other words, a claimant, even though he had failed to present his claim in time to the original executor or administrator, may present his claim to the new administrator within four months of the time the new administrator received the new assets. The term "assets" as used in the statute could not refer to assets received from a former executor or administrator because claims against such assets would have been barred by Ohio Revised Code Section 2117.33 (10509-156).[27]

While such a situation seldom occurs in the administration of an estate, yet it is well for attorneys to keep this section in mind if their client shall have failed to present his claim in time and such a situation develops. Such a situation, for instance, can easily develop where the estate as originally inventoried proves insufficient to satisfy a claim and the owner of the claim feels that it is not worth while to present it, but later on new assets are discovered and a new administrator is appointed to administer those assets. The owner of the claim could then present it to the new administrator and, under the statute,[28] expect those assets to be applied toward the satisfaction of his claim.

No Time Limitation for Presentation of Certain Claims

It must be remembered, however, that some important exceptions to the statutes which we have been discussing, limiting the time within which claims must be presented to the executor or administrator, are contained in the statute prescribing the order in which debts are to be paid.[29] These exceptions apply to debts entitled to preference under the laws of the United States, and to personal property taxes and obligations for which the decedent was personally liable to the state or any subdivision thereof. It is not necessary that claims of this nature be presented to the executor or administrator. These obligations of which the executor or administrator has knowledge are to be paid by him, regardless of presentation. As to

[27] Ohio Revised Code Section 2117.33 (10509-156) as originally codified in the General Code and the Revised Statutes immediately preceded Ohio Revised Code Section 2113.29 (10509-157) and reads as follows: "No law relating to limitations of actions against a new administrator shall revive a claim which is barred, during the continuance in office of the original executor or administrator, or of a former administrator de bonis non." See RACKELL, PROBATE PRACTICE 616 (4th ed.); Gemin v. Salisbury, 22 Ohio N.P. (N.S.) 321 (1918).

[28] OHIO REV. CODE §2113.29 (10509-157).

[29] OHIO REV. CODE §2117.25 (10509-121, 10509-122).

such claims of which the executor or administrator has knowledge, there is, therefore, no statute limiting the time within which they may be presented to the executor or administrator.

Claims of Division of Aid

However, these exceptions do not hold true as to claims of the Division of Aid which may be made under Ohio Revised Code Section 5105.13 (1359-7, 1359-7a), although such claims are in the same category as claims of the State of Ohio, based upon obligations for which the decedent was personally liable to the state. This is brought about by the insertion in the statute which prescribes the order in which debts are to be paid the following sentence: "This section does not repeal or modify section 5105.13 of the Revised Code."[30] If none of the provisions of this section modifies Section 5105.13 of the Revised Code, then none of them can be considered as having any effect on section 5105.13 of the Revised Code. Section 5105.13 of the Revised Code (1359-7, 1359-7a) contains no requirement that the executor or administrator shall pay claims of the Division of Aid of which he has knowledge, regardless of presentation; nor is there any other provision of law requiring it. Therefore, claims of the Division of Aid against an estate must be presented to the executor or administrator the same as other claims, even though he has knowledge of the Division of Aid's claim. No doubt this result is displeasing to the Division of Aid but, to the writer, this conclusion is inescapable. Evidently, it was not the intention of the General Assembly to bring about this result when it amended the statute in the year 1941, but only intended to provide for a preference for claims of the Division of Aid different from that provided for in Ohio Revised Code Section 2117.25 (10509-121, 10509-122). However, as to real estate left by a deceased recipient of aid, by virtue of the provisions of Ohio Revised Code Section 5105.24 (1359-4),[31] the Division of Aid would still have its lien for the amount due it, even though it did not present a claim.

Claims of the Department of Mental Hygiene and Correction

The exact opposite result maintains, however, with reference to claims of the Department of Mental Hygiene and Correction. Under Section 5121.10 of the Ohio Revised Code (1815-10), when an inmate, or former inmate, of a benevolent institution under the jurisdiction of the department dies, his executor or administrator is required to ascertain from the department whether the deceased person was supported while an inmate, and if not, the department may present a claim for such support. Since there is a duty devolving upon the executor or administrator to as-

[30] This insertion in the statute was placed there in the year 1941.

[31] This section provides that when aid is granted to any person he must sign a certificate containing a description of the real estate owned by him and his spouse, which certificate must be filed for recording in the real estate mortgage records in the office of the recorder in every county in which real property of the recipient or spouse in situated. From the time of filing such certificate, the lien attaches to such real estate.

certain whether the state was paid for the support of the decedent while an inmate of such a benevolent institution, the executor or administrator is bound to obtain knowledge of any claim the state would have against the estate of the decedent. Being charged with knowledge of the claim, he is therefore required under Section 2117.25 (10509-121, 10509-122) to ascertain whether the Department of Mental Hygiene and Correction wishes to be reimbursed for the cost of maintaining the decedent while an inmate of such benevolent institution, and if so, he is required to pay the claim, regardless of presentation.

Limitation on Claims Against Real Estate

Up to this point we have been considering statutes of limitation as applying to claims presented to an executor or administrator of an estate. There is another statute of limitation[32] defining the time within which a claim may be asserted against the real estate of a decedent, when no executor or administrator of his estate has been appointed. This statute in part provides that no real estate of a deceased person, which has been aliened or encumbered by the decedent's heirs prior to the appointment of an executor or administrator, shall be liable while in the hands of a bona fide purchaser for value for debts of the deceased person, unless an executor or administrator is appointed within four years from the date of death of such deceased person.

The sole purpose of this statute is to clear the title to such real estate "in the hands of a bona fide purchaser for value." However, the meaning of the words "bona fide purchaser for value," as used in this section, has puzzled the legal profession ever since the statute was enacted in 1925.[33] There are two schools of thought on this question: One, holding that a purchaser for value from the heirs can be a bona fide purchaser, and the other, holding that only a purchaser subsequent to the one who purchased from the heirs can be a bona fide purchaser for value. The latter rule is the safest one to follow. Title experts and title companies generally refuse to certify title in a purchaser from the heirs, being of the opinion that such a purchaser cannot bona fide since he is charged with the knowledge that the real estate was owned by a decedent at the time of his death and that no administration was had of his estate so that creditors might have the opportunity to present their claims to his executor or administrator. Accordingly, they have restricted their certification of title to purchasers from the first purchaser.

The same statute further provides that even where an executor or administrator is appointed and the real estate comes into the hands of a bona fide purchaser for value after having been aliened by the heirs, such real estate shall not be liable for the debts of a deceased person unless suit is brought to subject such real estate to the payment of such debts prior to

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[32] Ohio Rev. Code §2117.36 (10509-159).

[33] Ohio Gen. Code §10774-1 (111 Ohio Laws 266).

the settlement of the executor's or administrator's final account.[34] And the same thing is true if an executor or administrator is appointed and the administration of the estate continues for four years and no action was pending during that time[35] to establish or collect a claim against the estate. If no suit is brought within such four year period such real estate would not be liable for the debts of the deceased person while in the hands of a bona fide purchaser for value.

This statute, however, does not permit the heirs who aliened the real estate to escape liability for the payment of a claim that had been presented in time to the executor or administrator, or could be presented were an executor or administrator appointed. In order to collect a claim from the heirs who aliened the real estate of the deceased person, it would, of course, be necessary to have an executor or administrator appointed so that the claim could be presented to him, and then the executor or administrator would be forced to proceed against such heirs to recover from them a sufficient amount to pay the claim. Such heirs would be liable for such claim only to the extent of the value of the real estate aliened with interest from the time of alienation.

Limitation of Actions on Rejected Claims

When and How Claims are Rejected

Since the time within which an action may be brought on a rejected claim begins to run from the time of its rejection, it is important to know when and how a claim is rejected.

The statute[36] says that the executor or administrator shall allow or reject all claims within thirty days after their presentation, in the absence of any prior demand for allowance, but that his failure to reject the claim within that time shall not prevent him from doing so thereafter nor shall it prejudice the rights of any claimant. Even after a claim has been allowed it may be rejected at any time thereafter,[37] and must be rejected if an interested party files in the probate court a written requisition on the executor or administrator to reject the claim.[38] While the statute says that the executor or administrator shall allow or reject a claim within thirty days after its presentation, nevertheless, this is not mandatory and a claimant cannot consider his claim rejected if he has not within that time received notice from the executor or administrator in writing that his

[34] This part of the statute merely conforms to the well established rule in Ohio, as reflected in the last paragraph of Ohio Revised Code Section 2109.35 (10506-40), that where a purchaser for value in good faith acquired title to real estate formerly owned by a decedent, and the decedent's estate has been administered in the probate court and the final and distributive account of the executor or administrator has been approved, such real estate is no longer liable for the debts of such decedent.

[35] Kohn v. Kohn, 67 Ohio App. 404, 36 N.E. 2d 1009 (1941).

[36] Ohio Rev. Code §2117.06 (10509-112).

[37] Ohio Rev. Code §2117.11 (10509-113).

[38] Ohio Rev. Code §2117.13 (10509-135).

claim has been rejected. If a claimant wishes to force the hand of an executor or administrator so as to enable him to proceed to litigate his claim in case it might be rejected, he may make a demand of the executor or administrator in writing for an allowance of his claim within five days. If the executor or administrator fails to give to the claimant, within such period, a written statement of the allowance of such claim, the claim is considered, under the statute,[39] as rejected at the expiration of such five day period, and the claimant is free to file suit thereon. The statute just referred to is a little lame for there could be times when the claimant might wish, or be required, to bring suit immediately and not be forced to wait the five days, which delay the executor or administrator under this statute might easily effect by dilatory tactics. Under the statute [40] before the 1941 amendment, this situation did not exist, for a claim was deemed rejected if, on demand made, the executor or administrator refused to indorse on the claim his allowance of it as a valid claim against the estate.

In all other cases, a rejection of a claim is effected by the executor or administrator giving the claimant written notice of the disallowance of the claim. Such notice must be given to the claimant personally or by registered mail with return receipt requested, addressed to the claimant at the address given on the claim.[41] When the notice is given by mail the rejection dates from the time of the delivery of the mail at the address given on the claim.[42] This shows the importance of the statutory provision that every claim must set forth the claimant's address.

Before leaving this subject of when and how claims are rejected, something should be said concerning the effect of the court's order in confirming the action of the executor or administrator in allowing a claim, upon a hearing on the schedule of debts, if a hearing is requested. It should be pointed out that while the statute[43] provides that an order of the court confirming the allowance of a claim on a hearing on the schedule of debts shall constitute a final order and shall have the same effect as a judgment at law or decree in equity, and shall be final as to all persons having notice of the hearing, nevertheless, such confirmation shall not preclude the executor or administrator from thereafter rejecting such claim if he finds that he had made a mistake in allowing it, or if any interested party later files a requisition to have the claim rejected. This affords added protection against hasty action in the allowance of a claim, not only to the executor or administrator, but also to any person interested in the estate.

Time Within Which Suit Must be Brought

The statute[44] limiting the time within which an action must be

[39] OHIO REV. CODE §2117.11 (10509-113).

[40] OHIO GEN. CODE 10509-113 (114 Ohio Laws 320).

[41] OHIO REV. CODE §2117.06 (10509-112). Every claim presented must set forth the claimant's address.

[42] OHIO REV. CODE §2117.11 (10509-113).

[43] OHIO REV. CODE §2117.17 (10509-119).

[44] OHIO REV. CODE §2117.12 (10509-133).

commenced on a rejected claim is simple, direct, and drastic. If the claimant fails to bring his action within the time prescribed, he is forever barred from maintaining an action thereon. When a claim against an estate has been rejected, the claimant must commence an action on the claim within two months after such rejection or be forever barred from maintaining an action thereon. If the debt is not due the action must be commenced within two months after the same becomes due. However, if the executor or administrator dies, resigns, or is removed within such two months' period and before action is commenced thereon, the action may be commenced within two months after the appointment of a successor. It will be noted that the latter rule extends the time for bringing the action against a successor administrator, whereas, in the matter of the presentation of claims to the executor or administrator, no additional time is given to present a claim to a successor administrator.[45]

The statute also specifies the time when the action is considered as commenced. The action is commenced when the petition and praecipe for service of summons on the executor or administrator have been filed. It will be observed that this differs from the statute defining when an action is commenced in the court of common pleas.[46] The probate court has no jurisdiction to entertain such an action and, therefore, it must be brought in a court of general jurisdiction.[47]

Waiver of Statutes of Limitation

This article would not be complete without some mention being made of the question as to whether or not an executor or administrator may waive these statutes of limitation as to the time within which a claim must be presented or sued upon.

The language of the statutes limiting the time within which a claim may be presented and the time within which a suit may be brought on a rejected claim is quite definite as far as the rights of a claimant are concerned. One[48] provides that "a claim which is not presented within nine months from the appointment of an executor or administrator shall be forever barred as to all parties . . . and no payment shall be made nor any action maintained thereon . . .," and the other[49] provides that "when a claim has been rejected . . . the claimant must commence an action on the claim . . . within two months after such rejection . . . or be forever barred from maintaining an action thereon." These are mandatory non-claim statutes and must be as binding on the executor or administrator as they are on the claimant.

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45 Ohio Rev. Code §2113.24 (10509-122a).

46 Ohio Rev. Code §2305.17 (11230, 11231) provides that an action is commenced in the court of common pleas ". . . at the date of the summons which is served on . . ." the defendant.

47 Lacotosh v. Brothers, 52 Ohio App. 158, 3 N.E. 2d 556 (1935); In re estate of Buchanan, 82 Ohio App. 240, 81 N.E. 2d 409 (1948).

48 Ohio Rev. Code §2117.07 (10509-134).

49 Ohio Rev. Code §2117.12 (10509-133).

The opinion of Judge Nelson Brewer of the Probate Court of Cuyahoga County in the case of *In re Estate of Anna Lamberton*,[50] has an excellent review of the case law of Ohio on this question. He comes to the conclusion that an administrator is without authority to waive any statute of limitation set forth in the probate code affecting the administration of estates and that it is mandatory that the statute be pleaded. This case was reversed by the Supreme Court of Ohio,[51] but on another ground.

The Supreme Court of Ohio has now clearly ruled on this question in the case of *Prudential Ins. Co. v. Joyce Bldg. Realty Co.*,[52] the syllabus by the court reading as follows:

> 1. Section 10509-112 and 10509-134, General Code[53] (114 Ohio Laws, p. 320), must be construed together and are statutes of limitation (or non-claim statutes) which bar creditors claims unless presented to an executor or administrator within four months after the date of the appointment. Paragraphs one and two of the syllabus in the case of Beach, Rec'r. v. Mizner, Ex'r., 131 Ohio St. 481, 3 N.E. 2d 417, approved and followed.
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> 2. The requirements of Section 10509-112, General Code, that "creditors shall present their claims, whether due or not due, to the executor or administrator within four months after the date of his appointment" are mandatory and may not be waived by him.

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[50] 25 Ohio Op. 14 (1942).

[51] In re Estate of Lamberton, 142 Ohio St. 417, 53 N.E. 2d 855 (1944).

[52] 143 Ohio St. 564, 56 N.E. 2d 168 (1944).

[53] OHIO REV. CODE §§2117.06 and 2117.07.