

PROBATE COURT: Refusal of administration as provided
in Section 2, R. S. Mo. 1929.

8-24
August 5, 1936.



Honorable E. L. Colton
Probate Judge of Wright County
Hartville, Missouri

Dear Sir:

We acknowledge your request for an opinion dated
July 22, 1936, which reads as follows:

"I have a proposition confronting me
about which I am unable to find a
Court decision directly in point,
and will appreciate it very greatly
if you can assist me.

"It involves a Refusal of Letters as
authorized by Section 2 of R. S. for
1929. The widow of a decedent, with
four children, three of whom are above
18 years of age and one of the age
of 15 years, has made application for
an order refusing administration
under that section. There is con-
siderable personal property belong-
ing to the estate, livestock, etc.,
but upon her affidavit she lists the
value of the personalty at \$810.00.
There are two separate tracts of real
estate belonging to the estate, one
being the homestead and the other an
undivided one third interest in a
farm recently heired by decedent,
each of the probable value of \$1,000.00.
There are debts against the estate
probably aggregating four or five
hundred dollars. I realize that to
a certain extent, the matter of mak-
ing such an order is within my dis-
cretion. I am not however, clear on
the proposition of whether or not the
value of all of the estate should be
considered in making a decision, or
whether the real estate should be

excluded from consideration. I also realize that if such order is made, creditors would have a remedy out of the real estate heired by decedent, and for that reason am at a loss to know whether such order would be proper."

Section 2, R. S. Mo. 1929, provides:

"The probate court, or the judge thereof in vacation, in its or his discretion, may refuse to grant letters of administration on estates of deceased persons not greater in amount than is allowed by law as the absolute property of the widower, widow or minor children under the age of eighteen years. Proof may be allowed by or on behalf of such widower, widow or minor children before the probate court or judge thereof of the value and nature of such estate, and if such court or judge shall be satisfied that no estate will be left after allowing the widower, widow or minor children their absolute property, he or it shall order that no letters of administration shall be issued on such estate, unless on the application of creditors or other parties interested, the existence of other or further property be shown. And after the making of such order, and until such time as the same may be revoked, such widower, widow or minor children shall be authorized to collect, sue for and retain all the property belonging to such estate; if a widower or widow, in the same manner and with the same effect as if he or she had been appointed and qualified as executor or executrix of such estate; if minor children under the age of eighteen years, in the same manner and with the same effect as now provided by law for proceedings in court by infants in bringing suits."

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A similar provision of statutory law in Missouri was construed by the Supreme Court to have no application to real estate, and in the case of *Pidcock, v. Buffam*, 61 Mo. 370, l. c. 372, the Court said:

"The whole difficulty, or rather the monstrous injustice of this case as it stands, grows out of a mistake of the probate court, who supposed that the 15th section of the 8th article, of our administration law, applied to real estate as well as personal."

Since the probate court in *Pidcock v. Buffam* and under the statute then in force had no power to consider real estate as a condition precedent to orders denying administration on the real estate of deceased, we see no reason for the probate court in the instant case, under the statute above quoted, taking into consideration the real estate of deceased when determining that the estate of deceased does not exceed in value the legal sum allowed the widow by law preceding an order that no administration be granted.

The fact that the probate court makes an order refusing administration as provided in Section 2, supra, does not preclude a creditor from later going before the court, and on a proper showing having letters granted. In the case of *Woolfolk v. Kemper*, 31 Mo. App. 421, l. c. 424, the Court said:

"Although the widow has proceeded under section two, Revised Statutes, an order of the probate court, setting the property left by the deceased purchaser over to her and doing away with administration, yet this proceeding is not binding on this plaintiff and does not prevent him from going before the probate court and on a proper showing, as a creditor, have letters granted on the estate. This he should do, and then proceed to have his claim allowed."

Respectfully submitted

APPROVED:

WM. ORR SAWYERS
Assistant Attorney General.

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.