

CASES ARGUED AND DETERMINED  
IN THE  
SUPREME COURT OF ARKANSAS

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DURING THE JANUARY TERM, A. D. 1852.

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ALLEN vs. BYERS AS AD'M.

The period of two years, within which a claim against a deceased debtor must be presented to his representative, commences to run from the accrual of the cause of action: so that, a security paying the debt of the deceased, has two years from the time of payment to present his claim.

*Appeal from the Circuit Court of Independence County.*

This cause was determined before the Hon. WILLIAM C. SCOTT, at the September Term, 1850, on appeal from the Probate Court of Independence county.

The bill of exceptions states that the appellee's intestate, as principal, and the appellant as security, executed their note on

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ers, 14 Ark. 30. See 12  
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the 6th February, 1843; that judgment was rendered on the note against the appellant on the 10th of March, 1849; that the appellant paid the judgment on the 24th day of August, 1849; and presented the demand to the appellee for allowance on the 17th June, 1850; that the administrator rejected the claim; and the appellant filed his claim for allowance in the Probate Court on the 18th June, 1850; that letters of administration on the estate of the intestate was granted to the appellee on the 29th June, 1846, and the estate is still unsettled. On the trial in the Probate Court, the appellee pleaded the statute of *non-claim*, which was sustained by the Court, and the motion for allowance refused. The appellant appealed to the Circuit Court; and the judgment of the Probate Court being affirmed, he appealed to this Court.

JOHN H. BYERS for the appellant. The statute of non-claim (*sec. 85; ch. 4, Dig.*) operates upon the remedy only and not upon the right of action. *Burton's ad'm. v. Lockhart's Ex'r.*, 4 Eng. 416. *Miller v. Woodward et al.*, 8 Mo. R. 176. *Helm v. Smith*, 2 Sm. & Mar. 403.

Allen's cause of action did not accrue until the payment by him to Chapman; and the record shows that he presented his claim and pursued his remedy in apt time after the accrual of his cause of action. *Pogue, use, &c., v. Joyner*, 1 Eng. 241. *Frost v. Carter*, 1 John. Cases 73. *McDonald v. Bovington*, 4 Term Rep. 825. 6 John. Rep. 126; 15 J. R. 467; 20 J. R. 153.

BYERS & PATTERSON, contra, contended that public policy required a strict construction of the act of *non claim*; and that all debts, when due or not, should be presented within the time prescribed.

Mr. Justice SCOTT delivered the opinion of the Court.

This case is within the principle enforced in the case of *Burton's ad'm. v. Lockhart's Ex'r.*, (4 Eng. Rep. 416.) The statute of non-claim, like the statute of limitations, does not operate to extinguish the claim but simply to bar the remedy. Indeed the two

statutes differ in language more than in substance. In one instance the bar arises on a failure to sue, in the other on a failure to present.

In the case at bar, the right to recover from the principal arose from the payment of the debt, and is not unpaid by the omission of the creditor to make due presentment to the representative of the deceased principal debtor. This point was expressly ruled in Alabama in the case of *Cawthorn v. Weisinger*, (6 Ala. Rep. 716.) See also *Hook & Wright v. Branch Bank at Mobile*, 8 Ala. 580; and in Missouri, in the case of *Miller v. Woodward et al. ad'm.*, (8 Mo. Rep. 169.) And the same is intimated by SHARKEY, C. J., in the case of *Cohea et al. v. Cosa, &c.*, (7 Sm. & Mar. R. at p. 442,) upon statutes of non-claim full as strong as our own.

The appellant having presented his claim within two years after a cause of action accrued in his favor as between him and the representative of the estate, it ought to have been allowed.

Let the judgment be reversed, and the cause be remanded.

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