12/632. Explnd. in Brown v. Merritt, 16/612-615. Criti. in State Bank v. Walker, 14/235-6, & Ovrld. in Walker v. Byers, 14/247-259.

ETTER *vs.* FINN AS AD.

The statute, allowing claims against the estate of a deceased debtor to be presented to the executor or administrator within two years, does not extend the period of limitation, where the claim would be barred before the two years had expired.

When the statute of limitations commences running, it continues to run; except that the time intervening between the death of the debtor and grant of letters of administration, is not counted.

Error to Hempstead Circuit Court.

This was an action of debt, instituted on the 25th December, 1849, on a writing obligatory, executed by George Dooley, the defendant's intestate, on the 19th December, 1843. The defendant filed several pleas; among them, the plea of limitation, to which the plaintiff replied, that *five years,* the statute bar, had not elapsed when the intestate died, and that the claim was duly presented to the administrator within *two years* after letters of administration were granted to him; the defendant demurred to the replication, and the court sustained the demurrer.

WATKINS & CURRAN, for the plaintiff, admitted that the general principle, that the statute of limitations does not stop when it once commences running, is well sustained by authority, but contended that the principle has nothing to do with the question here presented; that the 85th section of the statute under the title "Administration," (*Chap.* 4, *Dig.*,) prescribing the time within which claims must be presented against the estates of deceased debtors, creates a new rule which applies to all claims not barred at the death of the debtor, whether the claim had one or five years to run. The cases of *Erwin, use Shelby v. Turner ad'x.,* (1 *Eng.* 14,) and *Burton's ad. v. Lockhart,* (4 *Eng.* 411,) are based upon this principle. If the creditor must present his claim within

two years, the converse of the rule must hold good, by a fair legal construction of the statute, and he has the whole two years within which to present his claim, if it is not barred at the commencement of the term. So, in Mississippi, under a similar statute, limitation in such cases does not commence running until after publication made by the administrator requiring creditors to present their claims. *Wren's ad. v. Spon's ad.*, 1 *How.* 115. *Helm v. Smith's ex'r.*, 2 *S. & M.* 427. *Pearl v. Conley et al.*, 7 *ib.* 356.

S. H. HEMPSTEAD, contra. contended that the replication setting up that the claim was exhibited to the administrator within two years after the date of the letters granted to him, is no answer to the plea, and does not avoid the statute: that where there is a complete cause of action, and a party capable of suing, and one capable of being sued, the statute commences running and is not suspended by the death of the debtor, nor prolonged by the appointment of an administrator; that as such case does not form one of the exceptions in the statute, the court cannot make it an exception so as to avoid the limitation: that the act requiring the presentation of claims within two years, has nothing to do with this question, and cited *Prideaux v. Webber*, 1 *Lev.* 31. *Jackson v. Horton*, 3 *Caine's Rep.* 200. *Angell* 205. 1 *Eng.* 17. 4 *Bac. Abr. Limitation, E.* 5. 13 *Wend.* 268. *Beauchamp v. Mudd*, 2 *Bibb* 539. 1 *John R.* 176. 5 *Barb.* 396. *Angell Lim.* 57. *Troup v. Smith*, 20 *J. R.* 47. *Johnson v. Wren*, 3 *Stew.* 172. *Harper's R.* 135. 1 *McMullan* 333. *Doe v. Jones*, 4 *T. R.* 310. *Hickman v. Walker*, *Willes Rep.* 27. *Langford's ad. v. Gentry*, 4 *Bibb* 468. *McCoy v. Nichols*, 4 *How Miss. R.* 38. *Bal. on Lim.* 166. *Aiken v. Bailey*, 5 *Eng.* 583.

Mr. Justice WALKER delivered the opinion of the court.

In this case, the statute bar had commenced running before the death of the defendant, who died before the bar had matured by the efflux of time, but after his death, and before the claim

was presented to the administrator for allowance or suit brought upon it, the statute bar of limitation had matured.

To the plea of limitations it was replied, that on the blank day of blank, and before the claim was barred by limitation, the intestate departed this life, and that within two years after the grant of administration on his estate, the plaintiff presented his claim and commenced his action. If two years are allowed by the statute after the grant of administration on the estate of the debtor, in which to commence an action against his representative, the effect of which is to suspend the operation of the statute for that length of time, then the replication (if formal) is good. The provisions of the 99th chapter, Digest, will, upon examination, be found to relate to the disabilities of parties plaintiff having a right of action; and the two years given by statute in which to present claims against the estates of deceased persons, was evidently intended to limit the time for the presentation of claims against estates without reference to the general provisions of the statute of limitations, and does not affect the operation of the statute or extend the time for two years, irrespective of the time which the statute bar has run at the death of the testator or intestate.

As a general rule, where a statute commences running, it continues to run on until the bar becomes complete. This general rule has been qualified by this court upon the authority of the decisions of the courts of Maryland, Tennessee, North Carolina, Mississippi and Alabama, as will be seen by reference to the case of *Aiken v. Bailey,* 5 *Eng.* 584, where the death of a party has been held to produce a temporary suspension of the operation of the statute, for then there are no parties competent to sue or be sued. As for instance, if the payor of a note should die after the statute commenced running, but before the statute bar had matured, the time between the death of such party and the substitution of a new party, executor or administrator, would not be estimated in computing the time of the statute bar, but the statute would be held to re-commence running from the date of the substitution of such new party, and continue to run until the

time before the death of the testator or intestate, and that after the substitution of such new party taken together, should form a complete statute bar.

In this view of the case, the replication was clearly defective. It is not shown when the intestate died, nor when letters were granted to the administrator. It is, therefore, impossible to tell from the replication, whether the action was commenced in time to save it from the operation of the statute or not, for in order to estimate the time which the statute had run before the death of the intestate, it was necessary to show when the death took place; and so, also, to show the time which elapsed after the substitution of the new party, it was necessary to show when he was substituted. There was, therefore, no error in the judgment of the Circuit Court in deciding the replication insufficient in law.

Let the judgment of the Circuit Court be in all things affirmed, with costs.