

ROSS, EXR., v. HINE.

CLAIMS AGAINST ESTATES: *Action on, without affidavit.*

Unless the affidavit required by the statute for authenticating claims against estates be made before the commencement of an action upon a claim, the action should be dismissed.

APPEAL from *Clark* Circuit Court.

Hon. H. B. STUART, Judge.

*Crawford & Crawford*, for appellant.

The motion for a non-suit under *secs.* 102, 107, *Mansf. Dig.*, should have been granted. Neither prior to the suit nor afterwards was the legal authenticating affidavit made. Such an affidavit is a prerequisite to a right of action which the executor cannot waive. The affidavit to the complaint does not comply with the statute. 16 *Ark.*, 647; 25 *ib.*, 318; 30 *ib.*, 756; 45 *ib.*, 299.

COCKRILL, C. J. The appellee sued an executor without first making the affidavit authenticating his claim against the estate as required by the statute. The executor moved to dismiss the action upon this ground. No affidavit was produced except the ordinary form of certification to the complaint, but neither this nor the allegations of the complaint conformed with any degree of

---

substantiality to the statute authenticating claims against estates. *Mansf. Dig., sec. 102.* The statute is peremptory in its terms directing a non-suit if the authentication is not made (*Ib., sec. 107*), and this court has universally given effect to it. *Alter v. Kinsworthy, 30 Ark., 756, and cases cited.*

The appellee has not undertaken to favor us with any reason for taking his case out of the rule, and we have failed to see that any exists.

The judgment will be reversed, and the cause remanded for further proceedings.

---