ERWIN, USE OF SHELBY *vs.* TURNER, SURV. ADM'X OF TURNER.

ERROR *to the circuit court of Phillips county.*

The statute barring demands against the estate of a deceased person, which may not be exhibited for allowance to the executor or administrator of such person, within two years from the time of the granting of letters on the estate, applies to, and runs against, non-residents, as well as resident claimants.

THIS was an action of debt, to the circuit court of Phillips county, April Term, 1843, by James Erwin, suing for the use of James Shelby, against Eliza Turner *as* surviving administratrix of Hatch Turner, deceased. And was founded, as shown by the declaration, upon three promissory notes, executed by the defendant's intes-

tate (and one A. W. Turner, not sued) to the plaintiff, on the 4th day of April, 1836, for the aggregate sum of $5,376.00, payable at one, two and three years.

At the return term the cause was continued by consent, with leave to amend a defective writ; and at the following term the defendant pleaded the statute of non-claim.

THE PLEA averred, in bar of the action, that more than two years had elapsed from the time that she (and he whose survivor she was) took out letters of administration upon the estate of her intestate, until the commencement of the suit. And that the notes sued upon, nor either of them, had been exhibited against the estate, prior to the commencement of the action, according to the statute, &c.

The plaintiff replied, that the notes sued upon, were executed, on the 4th day of April, 1836, in the State of Maryland, at which time the defendant's intestate was a resident of that State; and that subsequent to the making of the notes, and before they fell due, on the — day of 1836, he removed from Maryland, and settled in the State of Arkansas, where he continued to reside until his death. And that the plaintiff, and Shelby for whose use he was suing, at the time of the making of the notes, were citizens of the State of Kentucky, and had continued ever since so to be.

To this replication, the defendant demurred, and assigned as cause of demurrer, that the non-residence of the plaintiff was no sufficient answer to, or avoidance of the matters set up in the plea.

The court sustained the demurrer, and gave judgment for the defendant; which the plaintiff's counsel assigned as error.

PRESTON & RINGO, and PIKE & BALDWIN, for the plaintiffs.

WATKINS & CURRAN, contra. The exception in favor of non-residents given by our general statute of limitations does not apply to this case. This is evident, not only from the inconvenience and delay which would otherwise be produced in settling estates of deceased persons, but also from the 28th sec. tit. "*Limitations,*"

that "The provisions of this act shall not extend to any which is or shall be otherwise limited by any statute," &c.

It is an established rule of law that remedies for the enforcement of contracts, or to obtain compensation for a breach are to be regulated and pursued according to the *lex fori,* and not the law of the place where they are made, or to be executed. This rule rests upon clear and intelligible reasoning. Every nation institutes its own courts, prescribes their jurisdiction, time and manner of proceeding, with reference to its own views of justice and propriety; its wants and usages, and the convenience of its citizens. All that international comity can claim under such circumstances is, that foreigners or non-residents shall be entitled to the same judicial remedies as are afforded to citizens of the country. *Leroy et al. vs. Crowningshield,* 2 *Mason,* 151. *Pearsall et al. vs. Wright et al.,* 2 *Mass. R.* 84. *Mulbury vs. Hopkins,* 3 *Conn. R.* 472. *Ruggles vs. Keeler,* 3 *John. R.* 263. 4 *Cowen's R.* 528, *note* —and cases there cited. *Story's Conf. Laws,* 484. *Deconche vs. Lavalier,* 3 *John. Ch. R.* 190, 217.

The precise question involved in this case was decided in *Ridley's adm'r vs. Trope,* 2 *Hayw.* 343, and *Rayner vs. Watford et al.* 2 *Dev.* 338.

JOHNSON, C. J., delivered the opinion of the court.

The only question raised by the record in this case, for the consideration and decision of the court, is, whether the saving in the common act of limitations can be so far extended as to embrace the claims of non-resident creditors against the estates of deceased persons. The decision of this question will depend entirely upon the construction which the court may place upon the act of limitations taken in connection with the provision of the administration law relating to the same subject. By the one all persons are permitted to institute their suit upon promissory notes within three years from the time they become due, with an express saving in favor of non-residents, and other classes of persons therein specified, each of whom are entitled to the same space of time after their respective disabilities are removed; and the other sets up a bar to

the demands of all without distinction who do not exhibit them within two years from the date of letters of administration. At the first blush there would seem to be a palpable contradiction between the two acts, and such a manifest discrepancy that they could never be reconciled. The act of limitations was designed to operate upon, and to affect the rights of persons while living, whilst the other was only intended to protect and quiet the estates of those that are deceased. The plaintiff contends that he was a non-resident at the time of the execution of the promissory notes sued upon, and that he has so continued ever since. This is his replication to the plea of the statute bar as contained in the law of administration, to which the defendant interposed his demurrer, thereby admitting the facts to be true, but denying their sufficiency in point of law to enable him to recover in the action. The act of the legislature concerning the administration of estates, requiring creditors of any person deceased to make their claim within two years from the date of letters of administration, otherwise such creditor shall be forever barred, makes no saving whatever for any person under any circumstances: and my Lord Coke says, where the legislature have made no exceptions, the judge can make none, and that infants and feme coverts would have been barred by the common act of limitations had they not been excepted therein. To give the law the construction contended for by the plaintiff, would be to place non-resident creditors on a better footing than the citizens of the State. This we cannot consent to do without the express and positive sanction and requisition of the law itself. It is presumed that no one will seriously insist that infants and married women would not have been barred by the common act of limitations, had they not been excepted therein; and *a fortiori,* would non-residents have shared a similar fate. The law which requires an administrator to give public notice of his having taken out letters and requiring all persons having claims against the estate to exhibit the same within a certain specified time, is designed for the security and protection of the rights of foreign creditors, and if they elect to sleep upon their rights, after having been duly notified of the necessity of presenting their claims, it is their own

fault, and every principle of reason and justice, as well as the law itself, would forever bar them from a recovery. The law of the place where the contract is made is to govern as to the nature, validity and construction of the contract; but the remedy on such contract is to be pursued according to the law of the place where the suit is brought. A plea of the statute of limitations of the State where a contract is made, is no bar to a suit brought in a foreign tribunal to enforce that contract. But a plea of the statute of limitations of the State where the suit is brought, is a good bar. This is the settled doctrine as recognized by all the courts. We are, therefore, clearly of the opinion that the facts set up in the plaintiff's replication are insufficient in law to entitle him to a judgment in this case, and that the defendant's demurrer was rightly sustained. It is therefore ordered and adjudged that the judgment of the circuit court be affirmed with costs.