

CARNEAL vs. THOMPSON & HANLY.

The exception in the 13th section of the limitation act of the Revised Statutes, in favor of non-residents, being repealed by act of 14th January, 1843, the statute commenced running from that date against the causes of action of non-residents then existing; but by act of 14th December, 1844, (*Digest*, 698) non-residents were allowed two years from that time to sue upon causes of action barred by that or previous acts.

On a promissory note due a non-resident 15th May, 1838, the statute commenced running 14th January, 1843, and three years being the bar, it was not barred on the 14th December, 1844, when the time was extended two years, and plaintiff having brought his suit on the 18th September, 1846, the cause of action was not barred. *Watson vs. Higgins*, 2 *Eng. R.*, 475, *cited*.

Error to the Circuit Court of Phillips County.

DEBT, by petition, determined in the Phillips circuit court, at the May Term, 1847, before the Hon. WM. C. SCOTT, judge. The facts are stated in the opinion of this court.

S. H. HEMPSTEAD, for the plaintiff. As statutes of limitation affect the remedy, it has become a fundamental principle that it is competent to enlarge or shorten the period of limitation, although the legislature cannot revive a right of action once barred. On the 14th of January, 1843, the saving in the 13th section of the limitation law (*Rev. Stat.* 588,) as to non-residents was repealed. *Acts of 1842, p. 57.* The cause of action on the note in question is to be considered as then commencing, and the plaintiff was allowed *three years from that day to sue.* On the 14th of December, 1844, the legislature passed another law allowing non-residents the period of two years to institute suit upon any causes of action they might have. *Acts of 1844, p. 25.* They were not barred by this act until the 14th of December, 1846. At the time of the passage of the act of 1844, the plaintiff had a cause of action and was a non-resident as shown in the replication. The action was commenced 18th September, 1846, and within the time prescribed, and therefore the replications of the plaintiff to the second, third and fourth pleas of Hanly were a complete answer to them, and the court erred in sustaining the demurrers to those replications. On the authority of the case of *Watson vs. Higgins*, decided by this court, 2 *English Rep.* 475, I confidently contend that the replications demurred to were good, and that the remedy was not barred. The principles decided in that case are decisive on this question.

CUMMINS, contra. The replications to the pleas of statute of limitations are bad. The act of December 14, 1844, was pros-

pective in its operation, and did not revive causes of action then barred. *Couch vs. McKee*, 1 *Eng. R.* 484. *Hawkins vs. Campbell*, 1 *Eng. R.* 513.

The replications do not attempt to bring the plaintiff within any of the exceptions contained in the act of limitations in the Revised Statutes; and of course admit that the statute commenced running when the note fell due; and having once commenced it would run out—no subsequent disability would stop it. *Ruff vs. Ball*, 7 *Har. & J.* 14. *Haslet vs. Glenn*, *ib.* *Hepburn vs. Sewell*, 4 *Har. & J.* 393, 430.

The bar of three years is good even after the acts extending the period of limitation, when the contract sued on shows upon its face, that it is governed by the first act.

The case of *Watson vs. Higgins*, 2 *Eng. R.* 475, differs from the present in this, that the replication there showed that the party was *non-resident* when the cause of action accrued, and thence continued; and sustains the above positions.

CONWAY B, Judge. This was an action brought by Carneal against Thompson and Hanly, by petition in debt, instituted the 18th of September, 1846, on a promissory note due the 15th of May, 1838. Process appears not to have been legally executed on either of the defendants, but Hanly appeared and pled seven pleas. Among them were three setting up the statute of limitations. To these the plaintiff replied his non-residence of the State. Hanly demurred to the replications and the court sustained the demurrer. The plaintiff excepted and rested on his exception. Final judgment was rendered against him and he has brought error.

Previous to the act of the 14th January, 1843, there was no limitation on causes of action belonging to non-residents. That act being simply a repeal of this exception in favor of non-residents, they had the same time after the passage, for the institution of suit as residents had prior to its enactment. *Watson vs. Higgins*, 2 *Eng. R.* 475. Three years was then the limitation to

residents for actions on promissory notes. Consequently the right of non-residents to sue on such causes of action then existing expired the 14th of January, 1846. But the act of December the 14th, 1844, again restricted non-residents to their rights of action then existing. By it they were allowed but two years after its passage for suit in such causes. In this case the action appears to have been instituted before the expiration of two years from the 14th of December, 1844, and as the plaintiff by his replications brought himself within the saving of the statute, the court erred in sustaining the demurrers to the replications. The judgment is therefore reversed.
