

OWEN ET AL. V. BLANCHARD.

{2 Cranch, C. C. 418.}¹

Circuit Court, District of Columbia. Oct. Term, 1823.

DECEASE OF ADMINISTRATOR PENDENTE LITE.

If a suit is brought originally against an administrator, and he die pendente lite, the administrator de bonis non may be compelled to appear to defend the suit.

This suit had been originally brought by the plaintiffs {Owen & Longstreth} against William Blanchard, administrator of William Cocking. Blanchard died pendente lite, and Charles Glover, the administrator de bonis non, was summoned to defend the suit, but failed to appear; and Mr. Key, for the plaintiffs, moved for an attachment against Glover to compel his appearance.

Mr. Jones, as amicus curiæ, suggested that Glover was not bound to appear. The suit abates by the death of Blanchard, Act Md. 1785, c. 80, not having provided for the case of the death of an administrator who was the original defendant, and who had not come in pendente lite. There is no privity or connection between Blanchard and Glover. If an administrator acknowledge a debt so as to take it out of the statute of limitations, the administrator de bonis non is not bound by it. And in regard to costs, the administrator was liable, personally, for the costs, in his time; but if the administrator de bonis non comes in, he will be made liable, not only for the costs incurred in his own time, but for those of his predecessor.

Mr. Key stated that the practice of the courts of Maryland always has been to compel the administrator de bonis non to appear, in such a case.

THE COURT (nem. con.) ordered the attachment.

¹ [Reported by Hon. William Cranch, Chief Judge.]

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