

Case No. 17,807.

WILSON v. HARBAUGH.

{1 Cranch, C. C. 315.}¹

Circuit Court, District of Columbia.

June Term, 1806.

DEATH OF PARTY—SUBSTITUTION OF ADMINISTRATOR.

In case of the death of a plaintiff, the filing of letters of administration by his administrator is such a proceeding in the case before the tenth day of the second court, as will justify the court in retaining cognizance of the cause, under Act 1785, c. 80, § 1.

The plaintiff's death was suggested, July, 1805.

Mr. Morsell, for defendant, then objected that the appearance of the executor was not entered within the first ten days of this term, and relied on the acts of assembly of 1785, c. 80, § 1, and of 1787, c. 9, § 7. The act of 1785, says, if there be no appearance or other proceeding before the tenth day of the second court, &c, the action shall be struck off.

Mr. Van Horne. The plaintiff's letters of administration were filed on the 7th day of this term. This is a "proceeding." The words of the act of 1787, "where new parties are to be made," gives a further time. The act of 1785, meant to give a year.

Mr. Morsell, in reply. The word "proceeding," in the act of 1785, applies only to the case of the death of the defendant. The words "to be made" in the act of 1787, are only applicable to cases happening after the passage of that act.

THE COURT was of opinion that the filing of the letters of administration was such a proceeding in the case before the tenth day of the second court, as justified the court in retaining cognizance of the cause.

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