

could not constitute a defence against such a purchaser. He was therefore most clearly a competent witness to prove any fact upon which the defence in this case was founded. The case of *White vs. Kibling*, 11 *John*. 128, is directly in point.

Bryant
vs.
Ritterbush.

The facts stated in this case constitute a good defence against the action. The note had been paid and taken up by the mother, and was afterwards purchased by the plaintiff of one of the makers. The plaintiff must of course have had knowledge, when he bought it, that it had been paid. It is very clear, that when a note has once been paid and taken up, it ceases to be negotiable. *Chitty on bills*, 235, note by the editor.—3 *Mass. Rep.* 556, *Blake vs. Sewall*.—8 ditto 465, *Boylston vs. Green*.

Verdict set aside, and judgment for the defendant.



PETER BLOOD vs. BETSEY DARRAH, *Administratrix*.

In an action of assumpsit against an executor or administrator, "never promised within six years," is a good plea. If the testator or intestate at the time of his decease was liable, and the action commenced within two years from his decease, that matter should be replied to the plea.

THIS was an action of assumpsit. The first count was upon a note dated Feb. 26, 1810, for \$98, payable by the defendant's intestate to the plaintiff on demand, with interest. The second count was upon a note dated March 2, 1808, for \$6, payable by the intestate to the plaintiff on demand with interest.

To these counts the defendant pleaded that the said causes of action did not accrue to the plaintiff at any time within six years next before the commencement of this action.

To which plea there was a general demurrer.

Lawrence, for the plaintiff.

Farley, for the defendant.

By the Court. The demurrer in this case is not well taken. The plea is in law sufficient to bar the action. If the intestate was at the time of his decease liable to an action upon these notes, and this action was commenced within two years from the time when the defendant

Blood
vs.
Darrah.

took out letters of administration, that matter ought to have been specially replied to the plea. 2 *Saunders* 63, *H. note.*—2. *Chitty's Pl.* 608.—1 *do.* 554.

Plea adjudged good.

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WILLIAM M. BOND vs. ELIJAH DUNBAR, *Administrator.*

The last clause in the third section of the statute of Feb. 11, 1791, only authorizes a reference before the judge of probate where the dispute is respecting a claim upon an insolvent estate, which has been allowed or rejected by the commissioners. And no appeal lies from a decree of the judge of probate accepting the report of referees in such a case.

This was an appeal from a decree of the judge of probate in this county, accepting a report of referees, made under a rule entered into between the parties in pursuance of the statute of Feb. 11, 1791, sec. 3.(1)

(1) 1 N. H.
Laws 221.

Bond having certain claims against the estate of *Alexander Ralston*, deceased, of which *Dunbar* was administrator de bonis non, they entered into a reference before the judge of probate, and the referees having reported that *Bond* should recover \$1216 75 of the estate, and the judge having accepted the report, *Dunbar*, at the request of the heirs at law of *Ralston*, claimed an appeal, which was allowed by the judge of probate. *Dunbar's* counsel moved the court to dismiss the appeal, on the ground that no appeal was by law authorized in this case.

Wilson, counsel for *Bond*.

J. Parker, for *Dunbar*.

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

The third section of the statute of Feb. 11, 1791, entitled "an act for the equal distribution of insolvent estates," after giving an appeal both to the creditor and to the executor or administrator of an insolvent estate from the judgment of the commissioners appointed in the probate court to examine and allow the claims upon the estate, and directing the manner in which such appeal shall be prosecuted in the court,