

CHAPTER III. EXECUTORS.

HORN *vs.* LOEDOLFF ET UXOR.

Whether non-lodgment of a claim in the estate of a deceased person is a bar to creditors claiming from executor still having assets. [Not decided; but in Moore's Executrix vs. Le Sueur, post, held not.]

1830.
Jan. 12.

[Vol. 1, p. 403.]

BRINK *vs.* ESTERHUIZEN.

Executor having distributed estate, his liability ceases.

1830.
Sept. 16.

[Vol. 1, p. 473.]

SMUTS *vs.* HAUPT'S EXECUTORS.

When a bond stipulates three months' notice it does not become payable on demand on the debtor's death; but notice must be given to his executors.

1833.
Dec. 17.

[Vol. 1, p. 70.]

MUTER & STONE *vs.* SPANGENBERG.

Executors. Title to sue. Ordinance 104.

Executors not having taken out formal letters of registration not entitled to sue.

Cloete this day, in support of his clients' title as executors of Scoon to sue the defendant, produced the will, by which they were appointed executors.

To this it was objected by the Attorney-General for the defendant, that the will had not been registered in the

1834.
June 3.

Muter & Stone
vs. Spangenberg.

1834.
June 3.
—
Muter & Stone
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Orphan Chamber before the abolition thereof, in terms of the 16th Article of the Instructions, and that although it had yesterday been enregistered in the Register of Wills, yet as the plaintiffs had not obtained letters of administration, they were not entitled to sue as executors.

Summons dismissed with costs.

FOUCHE vs. MEYER, AS EXECUTOR, AND CILLIERS, AS WIDOW
AND EXECUTRIX, OF THE LATE P. J. FOUCHE.

*Surviving spouse. Mutual will. Executrix. Exception on
qualification.*

*A surviving spouse appointed executrix under a mutual will,
but who has not yet acted in that capacity, may decline to
act.*

1835.
Aug. 13.
—
Fouche vs.
Meyer, as
Executor, and
Cilliers, as
Widow and
Executrix, of
the late
P. J. Fouche.

This action was brought against Meyer, as executor, and against Cilliers, as widow and executrix, of the late P. J. Fouche.

The widow filed the following plea: "The defendant M. Cilliers denies the qualification or capacity of executrix of the late Philippus Jacobus Fouche, assigned to her by the said declaration, and by which she is sued, and saith she is not such executrix as aforesaid, and thereupon joins issue with the said plaintiff, and prays that the costs of suit may be paid to her."

Cloete, for the plaintiff, in order to prove the capacity of the defendant Cilliers, as executrix, produced the joint will of the deceased Fouche and his wife, dated 29th June, 1825, whereby the testators nominated and appointed "the survivor of them as the executor of this their will, administrator of their estate, as well as guardian of their minor heirs," &c., &c., and a codicil thereto, dated 29th June, 1828, whereby the testators, "in virtue of the reservatory clause in their will, declare to nominate and appoint Messrs. J. H. Meyer and J. de la Harpe as the executors of this our will, and guardians over our minor heirs, grant to them all such powers as can or may, according to law, be granted to them, and especially the power of assumption and surrogation, under promise of approbation and ratification under pledge according to law."

And another codicil, dated 11th May, 1831, whereby the testators declare "the first codicil to this our will, wherein we have appointed Messrs. J. de la Harpe and J. H.