

## GILL, v. MIDDLETON.

Opinion delivered January 26, 1895.

*Garnishment—Administrator.*

An administrator, as such, is not subject to garnishment, and a judgment obtained against him in a garnishment proceeding before a justice of the peace is void.

Appeal from Sebastian Circuit Court, Fort Smith District.

EDGAR E. BRYANT, Judge.

*Clayton, Brizzolara & Forrester* for appellants.

1. The constitution provides that probate courts shall have *exclusive* jurisdiction in matters relative to \* \* estates of deceased persons, \* \* administrators, \* \* etc. Probate courts having exclusive jurisdiction, any judgment in any other court is *coram non judice* and void. 8 Blatch. 420; 69 Mo. 153; 47 *id.* 285; *Ib.* 289.

2. An administrator is not subject to garnishment. 5 Ark. 55; 8 Mass. 247; 7 *id.* 259; 24 *id.* 496; 51 Ark. 361; 8 Am. & Eng. Enc. L. pp. 1138-39.

3. Want of jurisdiction is not waived by appearance. 9 Wend. 465; 1 Johns. Cases, 377; 2 *id.* 443.

---

\* See abstract of brief of Attorney General in *Harris v. State* (1), *ante*, p. 210.

4. A void judgment can be attacked collaterally. Am. & Eng. Enc. Law, 12 Sub. "Jurisdiction," bot. p. 311; 48 Ark. 156.

*Jo Johnson* for appellee.

1. The justice's judgment was not void. An administrator may be sued to establish a claim. 49 Ark. 51; 51 *id.* 367.

2. The justice has jurisdiction of the person of the administrator, and the subject-matter was within his jurisdiction, being a suit to collect \$38.40 and interest. The administrator should have appealed; failing to do so, the judgment became final. He cannot attack it collaterally. 47 Ark. 131, 511; Van Vleet, Collateral Attack, sec. 65.

WOOD, J. The appellee instituted garnishment proceedings against the appellant, as administrator, before a justice of the peace, and obtained judgment. This judgment was presented to the probate court for allowance and classification against the estate of which appellant was the administrator. The claim was disallowed, and the appellee appealed to the circuit court, where he obtained judgment, from which this appeal was prosecuted.

An administrator is not subject to garnishment. The proceedings before the justice—the basis of this action—were *coram non judice*, and void. *Fowler v. McClelland*, 5 Ark. 188; *Thorn v. Woodruff*, 5 Ark. 55; Const. Ark. art. 7, sec. 34; 8 Am. & Eng. Enc. of Law, 1138; Drake on Attachments, sec. 492 *et seq.*; 2 Wade on Att. sec. 425, 426; Kneeland on Att. sec. 416.

Reversed, and judgment here for appellant.