

SLARK, STAUFFER & CO. v. VAN GILDER.

APPEALS—*Trials, de novo*.—Cases, on appeal, from the Probate to the Circuit Courts, should be tried *de novo*, even though no motion be made for that purpose.

APPEAL FROM ASHLEY CIRCUIT COURT.

HON. HENRY B. MORSE, Circuit Judge.

Watkins & Rose, for Appellants.

J. W. Van Gilder, for Appellee.

SEARLE, J.—This suit was first instituted and tried in the Probate Court of Ashley county. From the judgment of that court, the appellants appealed to the Circuit Court. In the Circuit Court, they moved for a trial *de novo*, which was overruled, and to which they excepted. Thereupon, the Circuit Court having examined the transcript, from the Probate Court, found no error therein, and affirmed the judgment of the Probate Court. On account of this, as well as other rulings, the appellants appealed to this court.

The Circuit Court committed error in not trying this case *de novo*. *Smith & Bro. vs. Van Gilder*, 26 Ark.

The provisions of the law seem to be mandatory, and cases of this description should be tried anew, even though no motion be made for that purpose.

For the error, above indicated, the judgment of the Circuit Court is reversed, and the cause remanded to be proceeded in according to law, and not inconsistent with this opinion.