McSTEA, VALUE & Co. v. MASON, Adm'r.

PRACTICE—*Presumption in favor of judgment.*—Where the record, on appeal, is so imperfect as not to show the facts or rulings upon which the finding of the court below was based, and no effort is made by the party aggrieved to perfect it, the presumption will be in favor of the correctness of the judgment.

APPEAL FROM POPE CIRCUIT COURT.

HON. W. N. MAY, *Circuit Judge.*

Garland & Nash, for Appellants.

Although a record is not as full as it might be, yet if there is enough presented in and by it, to place this court in possession of the points involved, that is quite sufficient, and this court will proceed to consider and determine the case; *Nichols vs. State Bank, 3 Yerger, Tenn.,* 107; *Stamps vs. Bush, 7 How., Miss.,* 255; *Jordan vs. Adams, 7 Ark.,* 348. The original note was brought on the record by the appellee's motion, under a sufficient showing why the appellants did not get a *certiorari* to perfect the record, and the court will consider the note a part of the record. *Rose's Dig., p.* 632. The endorsement on note shows it was presented and filed within two years after the granting of letters. *Brown vs. Merrick & Fenno,* 16 *Ark.,* 612, *et seq., and cases cited;* and the opening order in the transcript shows the case came on to be tried within two years after grant of letters—this does away with the plea of nonclaim. 16 *Ark., sup.;* 18 *Ark.,* 334, *and cases cited,* 13 *Ark.,* 276-9.

Clark & Williams, for Appellee.

The case is exactly within the case of *Dillard vs. Parker et al.* decided at the last term of this court, and the case of *Taylor vs. Spears,* 8 *Ark.,* 429.

The court will not reverse the case upon a question of *testimony* so long as a material portion of the testimony is left out.

BENNETT, J.—The transcript in this case is very imperfect. As far as is shown, no effort has been made to perfect it. The cause is submitted on the papers as they are. From them it would *seem* that the appellants presented, at *some* term of the Probate Court of Pope county, a claim for classification and allowance against the estate of S. D. Lewis, deceased. The administrator, at the July term, 1867, of the Probate Court, pleaded the statute of nonclaim and payment. On these issues the Probate Court found for the appellee. The appellants appealed to the Circuit Court, and finding no error in the findings and judgment of the Probate Court, affirmed the judgment. From this judgment of affirmance the appellants again appealed to this court.

There is nothing in the record to show what was the date of the account, note or claim presented for allowance. Nor is there any evidence to prove the payment of it. We cannot determine whether the court erred in finding for the appellee on the plea of nonclaim or not, but the presumptions are in favor of the judgment. The rule is that the party complaining must place the facts or rulings before us, by which they may have been aggrieved, otherwise the proceedings and judgment must be upheld as valid.

There is enough in this record to show a judgment has been rendered, and until the contrary is made to appear, it must be presumed that the evidence warranted its rendition.

Judgment affirmed.