

BISCOE ET AL., TRUSTEES, &C. vs. MADDIN, ADR.

On appeals from the Probate to the Circuit Court, appellant is not required to give bond for costs. (*Digest, chap. 4. secs. 176, 183.*) The 3d section of the act of 4th January, 1849. (*Pamp. Acts p. 59.*) applies to appeals from the county courts authorized by the second section of that act, and in no respect applies to appeals from the Probate Court. *Morrow v. Walker and wife*, 5 *Eng. Rep.* 569, *contra*, is overruled.

*Appeal from Pope Circuit Court.*

At the October term, 1849, of the Probate Court of the county of Pope, that court refused to allow a claim presented by the Trustees of the Real Estate Bank, against the estate of James Maddin, dismissed the case and adjudged the costs against the Trustees. They appealed to the circuit, where, in March, 1850, on motion of the administrator, the cause was dismissed for want of bond for costs—and the Trustees appealed to this court.

There are three cases standing on precisely the same ground.

PIKE & CUMMINS, for the appellants, contended that under the act of 4th January, 1849, the only restrictions on the appeals therein provided for from the Probate Court, were those prescribed in *chap. 14, Dig.*; that the 3d section of the act of 1849, requiring a bond for costs, applied only to the appeal, allowed by the 2d section, from the county court; and cited *King v. Gwenop*, 3 *T. R.* 135. *King v. Marks*, 3 *East* 157. *Morris v. Mellin*, 6 *B. & C.* 446. *Bennett v. Daniell*, 10 *B. & C.* 500. *The State v. Lawson*, 5 *Ark.* 665, as settling the proper construction of the act.

F. W. & P. TRAPNALL, *contra*, relied upon the case of *Morrow v. Walker and wife*, 5 *Eng.* 570.

Mr. Justice SCOTT delivered the opinion of the Court.

The appeal in this case was taken in pursuance of the statute. No bond for costs was necessary, (*Dig. 142, sec. 176, and p. 143, sec. 183.*) The 3d section of the act approved the 4th January, 1849, (*Pamphlet Acts, p. 59,*) applies to appeals from the county courts authorized by the second section of that act, and in no respect applies to appeals from the Probate court, the case of *Morrow v. Walker and wife*, (5 *Eng. 569,*) to the contrary notwithstanding, which case is hereby overruled.

Judgment reversed, and cause remanded to be proceeded with.

---