

WILSON vs. HARRIS ET AL.

Wilson obtained an allowance of a demand against the estate of Harris, in Arkansas Probate Court; afterwards Desha county was established out of the territory of Arkansas, embracing the estate of Harris, and the residence of his administrator, widow, and heirs. The administrator removed the administration to Desha county, made a final settlement, turned over the residue of estate to the widow and heirs of Harris, taking no notice of the demand of Wilson, and was discharged: HELD, That the allowance in favor of Wilson against Harris' estate, was in the nature of a judgment, of which the administrator was bound to take notice, and that it was his duty in removing the administration to Desha court, to have obtained a transcript of this, as well as other allowances, that the estate might be properly settled; and, having failed to do so, Wilson had the right to file a bill against the widow and heirs of Harris, who had received his estate, for contribution and payment of his demand.

Appeal from the Chancery side of Desha Circuit Court.

F. W. & P. TRAPNALL, for the appellant. The law made it the duty of the public officers to make the change of the records: it was not the duty of the complainant to attend to it—having had his claim probated and allowed, and filed among the records of the proper court, the law takes the claim in its custody, and

nothing further is required of the creditor, except to receipt for his money after it is made in a due course of administration.

S. H. HEMPSTEAD, for the appellees.

Mr. Chief Justice WATKINS delivered the opinion of the Court.

The appellant, in November, 1847, exhibited his bill in the Desha Circuit Court, against the widow and minor heirs of Stephen Harris, deceased, one of whom, pending the suit, intermarried with the defendant, Brock, and one Jesse B. Badgett, as administrator of John Ball, deceased, alleging that Harris died intestate in what was then Arkansas county, and administration of his estate was granted to one John Maxwell. That, on the 19th July, 1838, the complainant obtained judgment of allowance in the probate court of Arkansas county of a claim in his favor against the estate for \$635. That, by act of Assembly, of December 12, 1838, creating the county of Desha out of a portion of the territory of Arkansas county, authority was given for the removal of administrations in certain cases from the old county to the new one. That the administrator and heirs resided, and the estate was situated in that portion of the territory stricken off to Desha to which the administration was removed for the settlement of the estate. That, after the removal, Maxwell ceased to be administrator, and one William Sexton was appointed administrator de bonis non, who, not long after, made his final settlement as such, and was discharged, without taking any notice of the allowance in favor of the complainant, which remains wholly unpaid; and that the remaining property of the estate, averred to be amply sufficient for the payment of all the debts owing by the estate, was turned over to his widow and heirs. That Ball, in his lifetime, of whom Badgett had become administrator, had obtained an allowance against the estate of Harris, which appeared to be unpaid, and in all respects similarly situated to that of the complainant. That, in transmitting the papers and records relative to the estate of Harris, from the probate court of Arkansas to that of Desha county, these claims were entirely omitted

through mistake, as he believes, and not with any design of injuring him. The bill prays for a decree against the widow and heirs of Harris, and they be decreed to pay him the amount of his claim with interest. A transcript of the record from the Arkansas probate court, of the allowance there in his favor, was produced by the complainant.

The defendants, Mary B. Harris, William P. Harris, and Brock, answered, not denying any material allegation of the bill, but professing their ignorance of the existence of such allowance; that, by act of the Assembly creating the county of Desha, it was the duty of the complainant to have procured the transcript of his claim, and transmitted it to the Desha probate court. That Sexton made a final settlement, and was fully discharged by order of the court on the 1st December, 1842, a transcript of which was produced, and they insisted that the demand of the complainant had not been presented within two years after the grant of administration de bonis non to Sexton, and was barred by limitation.

The cause was heard on the bill, answer, replication and exhibits; and it was in proof that certain negroes and a tract of land, worth in the aggregate \$2,000, which were part of the estate of Harris, had come to the possession of his widow and heirs; and then remained in their possession in specie in the county of Desha. The circuit court dismissed the bill for want of equity.

By the 2d section of the act creating the county of Desha, it was made the duty of the plaintiff in all civil suits, and of the prosecuting attorney in all criminal cases, pending against persons who resided in the county of Desha thereby established, to procure from the clerk of the circuit court of Arkansas county, a transcript of the record and proceedings had in such causes, together with the papers belonging to the same, and file the same with the clerk of the circuit court of Desha county; and the act provided that such suits so transferred should have day and be proceeded in as though they had originated in Desha county. The fourth section authorized the administrators residing within the limits of the new county to remove their administrations for set-

tlement in the new county, and they were charged with the duty of procuring the transcript and attending to the removal.

Besides that the second section of the act refers to suits pending in the circuit court and undetermined, this was a proceeding in the probate court, where all the claims of creditors being exhibited against the estate, the claim or suit of one could not be removed unless the entire proceedings in the matter of that estate were at the same time removed, to the end that it might be settled, the debts paid, and the residue of the estate distributed.

The allowance of the claim in the probate court of Arkansas county was, in effect, a judgment, of which the administrator was bound to take notice; and the limitation of two years, within which claimants are required to exhibit their demands against estates, could have no application to it; though perhaps after ten years from the rendition of a judgment of allowance, the presumption of payment would arise to it, as of any other judgment.

It is clear that, upon the facts stated, the court of chancery had jurisdiction to enforce payment of the allowance in the complainant's favor, against the estate of the intestate, out of assets which came to the hands of his heirs; and we are unable to see upon what ground the circuit court dismissed the bill for want of equity.

The decree will be reversed, and the cause remanded with instructions to the circuit court to have a guardian ad litem appointed for any one of the heirs of Harris who may be a minor, and allow such minor to defend by guardian; to rehear the cause; and, upon such rehearing, to decree in accordance with the opinion here expressed; to direct an account to be taken of the assets and property of the intestate which came to the hands of any of the defendants other than said Badgett, and the value thereof; and of any other allowance against said estate, if such there be, for the payment of which said property and assets would be liable; and to ascertain by such account if there be assets sufficient, which came to the hands of said defendants, to pay the claim of the complainant in full; or, if not, what pro rata he is entitled to receive on the same, and how much in value of the assets came

to the hands of each defendant, and in what proportion each one ought equitably to contribute towards the satisfaction of such claim; and to decree that the defendants, each one his due proportion according to the value of the assets received by such defendant, to pay to the complainant the amount of his said allowance, with interest, in full or pro rata, as may appear from such account to be proper. As the claim of the intestate's widow to dower accrued prior to the adoption of the Revised Statutes of 1839, it was subordinate to the claims of creditors, and out of the assets and property, if any, which came to her hands, she will be liable by such decree to contribute her due proportion towards the payment of the amount due the complainant.
