

## NEALE AS AD. VS. PEAY AS RECEIVER.

The affidavit and prayer for an appeal from the judgment of the Probate Court, do not invest the Circuit Court with jurisdiction, unless the appeal be granted; and if the record be filed in the Circuit Court, the cause will be dismissed for want of jurisdiction; but in such case it is error to render judgment for costs.

*Appeal from Chicot Circuit Court.*

Hon. Theodoric F. Sorrells, Circuit Judge.

Stillwell, for the appellant.

S. H. Hempstead, for the appellee.

Mr. Justice Compton delivered the opinion of the Court.

A demand in favor of Peay, as Receiver of the assets of the Real Estate Bank, was allowed and classed by the Probate Court against the estate of Mauldin.

The administrator made affidavit in the usual form and

prayed an appeal to the Circuit Court, but it does not appear from the record that the appeal was granted. The Circuit Court dismissed the appeal and rendered judgment against the administrator for costs.

It was decided in *Berry vs. Singer*, 4 Eng. 128, that where on appeal from the Circuit Court to this Court, the record shows that the party appealing complied with all the prerequisites required by statute to entitle him to an appeal, but fails to show that the appeal was granted, this Court will dismiss for want of jurisdiction. No good reason has been, or can be given, why the same rule should not apply to appeals from the Probate Court to the Circuit Court, the statutes regulating each being similar in their provisions, so far as regards the point in controversy. Gould's Dig. p. 137, 867. See, also, *Moss vs. Ashbrooks*, 15 Ark. 169.

The Court having no jurisdiction, erred however, in rendering judgment against the administrator for costs. *Morris & wife vs. Walker*, 3 Eng. 569; *Heflin vs. Owen*, ib. 265; and for this error the judgment must be reversed and the cause remanded.

Absent, Mr. Justice Rector.