

## MORELAND VS. GILLIAM, ADM.

The Probate Court having allowed expenses of administration of the husband's estate, against the estate of his widow, the Circuit Court properly reversed the judgment.

No bill of exceptions is necessary to give the Circuit Court jurisdiction on appeal from the Probate Court, where the error appears upon the record.

*Appeal from Pulaski Circuit Court.*

Hon. John J. Clendenin, Circuit Judge.

Bertrand, for the appellant, contended that the Circuit

Court had no jurisdiction, because there was no bill of exceptions setting out the testimony on the trial in the Probate Court: that in *Dempsey vs. Fenno*, (16 Ark. 491), it was decided that a bill of exceptions was unnecessary where the record itself presents everything necessary to a full adjudication of the case; but in this case there was testimony, which does not appear upon the record.

Fowler & Stillwell, for the appellee.

Mr. Justice Fairchild, delivered the opinion of the court.

Moreland had been the administrator of Wiley Beasley, and in defending law suits as such administrator, had incurred costs, as he claimed, to the amount of one hundred and seventeen dollars and ninety cents.

Gilliam had become the administrator of Lucy Beasley; whereupon without presentation of the claim to Gilliam, and without notice to him, Moreland presented his petition to the Probate Court of Pulaski county, at its October term 1857, to have the aforementioned sum allowed to him out of the estate of Lucy Beasley, as expenses of the administration of Wiley Beasley's estate.

The Probate Court sustained the petition and ordered the allowance to be made.

On a subsequent day, at the same term, Gilliam appeared in the Probate Court, and prayed and obtained an appeal against the allowance to the Circuit Court.

There the judgment of the Probate Court was reversed, and on hearing of the case in the Circuit Court, judgment was rendered against Moreland.

No reason is shown why Lucy Beasley's estate should be charged with the account presented in Moreland's petition. We do not see how expenses of administration could be allowed against her estate, but at the instance of its representatives, and for moneys paid out in the course of the administration of that estate.

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Term, 1860.]

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No bill of exceptions was necessary to give the Circuit Court jurisdiction, the error appearing upon the record of the Probate Court. Dempsey vs. Fenno, 16 Ark. 493; Jones vs. Jones, 21 Ark.

The judgment of the Circuit Court is affirmed.

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