

MITCHELL AD'R vs. BYRD & DUNN.

Unless the bill of exceptions negatives the idea that other testimony was adduced in the court below, this court will presume in favor of the judgment below, that there was sufficient proof to warrant its judgment.

Appeal from the Circuit Court of Pulaski County.

Byrd & Dunn presented their account against Mitchell as ad'r of Gilchrist for \$133, which he refused to allow because it was

barred by the statute of limitation. On application to the probate court of Pulaski, Smith judge, the claim was allowed: Mitchell excepted, and appealed. The only material part of the bill of exceptions was, "that the account was satisfactorily proved to the court, and the statute of limitations was overruled, to all which he excepted," &c. The bill of exceptions does not attempt to set out any of the testimony. The Pulaski circuit court, Clendenin judge, affirmed the order of allowance and Mitchell appealed here.

FEILD, for the appellant.

WATKINS & CURRAN, contra.

JOHNSON, C. J. The bill of exceptions filed in the probate court does not negative the fact of other testimony either in express words or by necessary implication. It merely states that the account was satisfactorily proven and that the statute of limitations was overruled by the court. Why the plea of the statute of limitations did not prevail, we are not informed by the record. From any thing that appears the plaintiff below may have adduced such proof as to have taken the case out of the operation of the act. In the absence of any showing to the contrary we are bound to presume that the inferior court had sufficient testimony before it to warrant the judgment. The necessary inference without such a showing is that the debt was recognized at some subsequent time, and that the court decided correctly in rendering judgment against the defendant below.

Judgment affirmed.