CHEATHAM & CHEATHAM, EX PARTE.

Where an applicant for mandamus has a legal right and no other specific legal remedy, the writ will not be denied.

Where one, holding a claim against an estate, presents it to the administrator, obtains his approval and allowance, files it in the office of the clerk of the probate court, and the judge refuses to class or allow it, the remedy is by appeal to the circuit court, and not by mandamus to compel him.

The approval of the account by the administrator, does not deprive the probate judge of a controlling power over it.

If the probate judge refuses an appeal from his decision, he may be compelled by mandamus to grant it.

Petition for Mandamus.

The facts appear in the opinion of the court.

CROSS J., delivered the opinion of the court.

The petitioners allege that they held a claim against the estate of Jacob Buzzard, deceased, for the sum of fifty dollars, which was probated and presented to the administrator of the estate, who endorsed thereon his approval and allowance; that afterwards they caused the claim, so endorsed, to be filed in the office of the clerk of the probate court of Lafayette county, and that said clerk presented the same to the probate judge for the purpose of having it noted upon the record as a claim against said estate, and that the judge refused not only to class it, but forbid the clerk to enter it upon the records of the court. From a transcript of the proceedings in the probate court, submitted with the petition and made part of it, the approval and allowance by the administrator is shown, as stated, and also to the refusal afterwards of the probate court to allow or spread it upon the records, upon the ground, as alleged by the judge thereof, that the same was not proved according to law.

These are the material facts upon which the petitioners rest their motion for a writ of mandamus to be directed to the judge of the

probate court, commanding him to class, and cause their claim to be entered upon the records, &c. The rule seems to be that, where the party making application has a legal right and no other specific legal remedy, the writ will not be denied. 4 *Bac. Abr.* 496. And such is the rule recognized by this court in the case of *Goings vs. Mills,* 1 *Ark. Rep.* 17, where it was held, 1st, that "the writ of mandamus is not to be considered a writ of right, but within the discretion of the court to grant or refuse it;" and 2d, that "the party applying for the writ must show a specific legal right and the absence of any other specific legal remedy, to induce the court to award it." That the petitioners in the case presented, had a specific legal remedy by appeal to the circuit court is, to our minds, abundantly evident. The Revised Statutes, *chap.* 4, *sec.* 177, provide that "appeals shall be allowed from the court of probate to the circuit court; first, on all demands against an estate when the sum in controversy exceeds ten dollars; second, on apportionments," &c., &c. An approval and allowance by an administrator previous to the action of the probate court, does not affect or destroy this remedy, as, by the provisions of our statute laws on the subject of the administration of estates, a supervisory and controlling power is obviously conferred upon the probate courts over accounts thus situated, as well as others presented by administrators for settlement. If an appeal had been prayed for and refused, the application would have occupied a very different aspect. In that case the remedy now sought by mandamus would have been the appropriate, if not the only one. The application must be refused.