

allowed the appeal, and issued the order of notice. The appellants demurred.

*Ray, Drew & Jordan*, for the appellants.

*W. & H. Heywood and Fletcher & Fletcher*, for the appellee.

BINGHAM, J. No judge of probate shall act as such in the settlement of any estate in which he is interested as an executor. Gen. St., c. 170, s. 11. In such a case he has, and can have, no jurisdiction. The acts of Bedell were absolutely void. *Stearns v. Wright*, 51 N. H. 610; *Moses v. Julian*, 45 N. H. 60.

*Demurrer overruled.*

DOE, C. J., did not sit.

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STEVENS v. ROLFE & a.

The 46th rule, considering the signatures of instruments declared on as admitted if not denied within the first four days of the first term, does not apply to an instrument declared on in an amendment made after the first term.

ASSUMPSIT, on the common counts against the defendants as partners, under the name of The Essex Well Company. After the first term, the declaration was amended by the addition of a count on a note, signed "E. F. Bailey, Agent of Essex Well." There was no evidence tending to show that the defendants authorized Bailey to give the note, or held him out as having authority to give it, or were estopped to deny his authority. The plaintiff excepted to the ruling, that the signature of the note was not admitted under the 46th rule, and to a nonsuit ordered by the circuit court.

*Ray, Drew & Jordan*, for the plaintiff.

*G. A. Bingham, Aldrich & Shurtleff*, and *Dudley*, for the defendants.

ALLEN, J. The instrument being declared on in an amendment made after the first term, the signature was not admitted under the 46th rule, which considers signatures admitted unless denied within the first four days of the first term. *Benedict v. Swain*, 43 N. H. 33.

*Exceptions overruled.*

STANLEY and BINGHAM, JJ., did not sit.