

MITCHELL v. FOWLER.

Opinion delivered May 26, 1930.

1. EQUITY—CONCLUSIVENESS OF DECREE.—A decree in partition proceedings not appealed from became final and binding on the parties thereto on lapse of the term at which it was entered.
2. EQUITY—VACATING OR MODIFYING DECREE.—Where none of the grounds mentioned by Crawford & Moses' Dig., § 6290, were alleged, a partition decree which had become final could not after the term be modified or vacated.

Appeal from Hot Spring Chancery Court; *William R. Duffie*, Chancellor; reversed.

Oscar Barnett, for appellant.

KIRBY, J. This is a partition suit for division of the estate of Sam Mitchell, Sr., deceased, among the parties and his heirs entitled thereto, the north half southwest quarter and north half southeast quarter, section 13, township 4 south, range 17 west. The case was submitted to the chancellor on the pleadings and testimony and decree rendered on March 15, 1928, adjudging the interest of the parties, and decreeing a partition of the lands in accordance therewith.

On September 12, 1929, Si Bayliss Mitchell and others filed a motion and intervention to set aside the decree of March 15, 1928, and have the lands sold because no part of same was allotted to them by the commissioner and the decree of the court. None of the grounds specified in the statute, §§ 6290-93, C. & M. Digest was alleged in the motion to modify or vacate the judgment.

The decree of March 15, 1928, ascertaining and adjudging the interest of the several parties in the lands in controversy and directing a division thereon in accordance with their rights, became final and binding upon all the parties thereto upon the lapse of the term of court at which it was entered, the term necessarily expiring on the first Monday in June thereafter, the day fixed by law for the beginning of the next term of the chancery court.

No appeal was taken from this decree which could not be vacated or modified after the expiration of the term at which it was rendered, except upon allegation and proof of some one of the grounds for such action specified in the statute § 6290, C. & M. Digest. None of the grounds as specified therein was contained or included in the motion and intervention to vacate or modify the decree, and the court erred in attempting to vacate said decree and modifying it to adjudge an interest in the lands in controversy to appellees, to which they had not been held entitled or which had not been adjudged

to them in the original and final decree of March 15, 1928, it being without authority to do so. *Ingram v. Wood*, 172 Ark. 226.

The decree is accordingly reversed, and the cause remanded with directions to cancel the commissioner's deed to the lands executed under said erroneous decree and to reinstate said decree of March 15, 1928, partitioning the said lands in accordance with the interest of the parties as adjudged therein, and for all other necessary proceedings in accordance with the principles of equity and not inconsistent with this opinion.
