

LEE v. BLACK et al.

APPEALS—*When no final judgment, etc.*—Where the record shows no final judgment or decree, in the court below, the appeal will be dismissed.

APPEAL FROM INDEPENDENCE CIRCUIT COURT.

HON. ELISHA BAXTER, *Circuit Judge.*

Montgomery & Warwick and Whipple, for Appellant.

U. M. Rose, for Appellees.

HARRISON, J.—This was an action of trespass, for assault and battery and false imprisonment, by James Lee against Thomas Black, Jesse Hinkle, George W. Gray, Roland Landers, Rutledge Smith, Joseph Walker, Bailey Brooks, Nicholas Mosier, Elisha Arnold and Hartwell Walker. All the defendants, except Elisha Arnold and Hartwell Walker, appeared and pleaded jointly the general issue, and also the statute of limitations.

The plaintiff filed three replications to the latter plea, to each of which a demurrer was sustained, and judgment was

TERM, 1871.]

rendered thereon against him. The plaintiff then took an interlocutory judgment, by default, against Elisha Arnold and Hartwell Walker, with an order for an inquiry of damages at the next term, and at the same term (November term, 1867) appealed to this court.

The appeal was prematurely taken; there was no final judgment to appeal from. *Sec. 80, Ch. 133, Gould's Digest*, says: "Where there are several defendants in a suit, and some of them appear and plead, and others make default, the cause may proceed against the others, but only one final judgment shall be given in the action." See *Bailey vs. Ralph*, 4 Ark., 591; *Bevins vs. McElroy*, 11 Id., 23. As no appeal will lie to this court except from a final judgment or decree, the appeal must be dismissed.
