

HAYNIE vs. McLEMORE.

Part of the matters in controversy between the parties remaining undetermined, and the cause continued by the court, there is no final decree from which an appeal will lie. °

Appeal from the Ouachita Circuit Court in Chancery.

This was a bill in Chancery filed by Francis Haynie against Pleasant McLemore, determined in the Ouachita Circuit Court at the April Term, 1851, before the Hon. JOHN QUILLIN, Chancellor.

The bill alleged that defendant sued complainant at law on an account for money had and received, &c., and work and labor, &c. That complainant interposed by way of set-off an account for a larger amount than that claimed by the defendant. That at the trial complainant was deprived of the benefit of the testimony of an important witness, who was suddenly taken sick, &c., and judgment obtained against him, &c. Prayer that the judgment be set aside, and for injunction, &c. Temporary injunction granted in vacation.

At the return term, defendant answered, and then filed a motion to dissolve the injunction, upon which the court rendered the following decree:

"Come again the parties by their solicitors, and it is by the

court ordered, adjudged and decreed, that except as to the sum of fifty dollars of the judgment at law, with the interest on said fifty dollars, the injunction in this case be dissolved; that damages be assessed on the amount of one hundred and seventy-one dollars and ninety-three cents of the judgment at law at the rate of six per cent., making the sum of ten dollars and thirty-one cents damages; that execution issue from this court for said six per cent. damages, and that execution issue from the common law court for the amount of the judgment at law, except the fifty dollars in which the injunction has not been dissolved; and that the defendant recover against the complainant all the cost in and about said motion to dissolve the injunction, to be included in the execution for the ten dollars and thirty-one cents damages aforesaid. And this cause is continued."

Complainant appealed to this court. Appellee's counsel moved to dismiss for want of jurisdiction, on the ground that there was no final decree in the court below.

Mr. Justice SCOTT, delivered the opinion of the Court.

The decree in this case is interlocutory beyond all question; it has no resemblance to one that is final. As to fifty dollars of the sum in controversy the remedy sought, has neither been granted nor refused, and the cause has been continued by the court in express terms. As to this sum the injunction has neither been perpetuated, nor has the bill been dismissed. Something therefore remains to be done by the court between the parties remaining in court. While this is the case, no final decree can be rendered from which an appeal will lay under our statute, contemplating as it does but one final decree in a cause. (*Crittenden, Ex parte*, 5 Eng. 350.) Let the motion be granted.