

HANGER & Co. v. KEATING, *Adm'r., etc.*

JURISDICTION—*Prohibition.*—Where there is no final judgment, no appeal will lie. Prohibition is the only remedy before determination, where courts are proceeding without jurisdiction.

*Appeal from Pulaski Circuit Court.*

HON. JOHN WHYTOCK, Circuit Judge.

*Garland & Nash*, for appellants.

*Watkins & Rose*, for appellee.

HARRISON, J.

Thomas D. Keating, administrator of Milus Killian, deceased, applied, by petition, in the circuit court of Pulaski county, for an order to sell the lands belonging to his intestate's estate, for the payment of its debts.

Peter Hanger & Co., and Fletcher & Hotze, creditors of the estate, as they alleged, appeared in court and demurred to the petition upon the ground that the subject thereof, and the power to make such order, was not within the jurisdiction of the court. The court overruled the demurrer and made an

order that all persons interested in the estate should be notified to show cause, on the first day of the next term of the court, why the prayer of the petitioner should not be granted. Peter Hanger & Co. and Fletcher & Hotze excepted to the rulings of the court, and without further proceedings being had, prayed an appeal to this court.

It is manifest that there was no final judgment, or order, in the proceeding from which an appeal might be taken. If the court was proceeding in a matter not within its jurisdiction, a prohibition was the only remedy which could be resorted to, before the determination of such proceeding. The case must therefore be stricken from the docket.

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