

GAINES AS AD'R OF PATTON *vs.* PATTON ET AL.

Decree *pro confesso*, and reference to a matter to ascertain facts necessary to base final decree upon—Held that no appeal would lie from such interlocutory decree. (a)

*Appeal from the Chancery side of the Chicot Circuit Court.*

The facts are stated by the court.

PIKE & BALDWIN, BYERS & CHAPMAN, for appellant.

E. A. MEANY, for appellees—moved to dismiss on the ground that no appeal would lie from the interlocutory decree of the court below.

CONWAY B. J. Roger Patton and others as heirs of W. B. Patton, dec'd, filed their bill of complaint against William H. Gaines as administrator *de bonis non* of Benjamin Patton, dec'd. Gaines demurred to the bill and his demurrer was overruled. He declined to plead or answer, and the court decreed "That all and singular the matters and allegations of said bill of complaint be taken as true against said defendant, but by reason of the difficulty of ascertaining the amount due and to be recovered against him, it is ordered that Robert

(a) But see *Smith and wife et al. v. Yell*, 4 Ark. R. 293.

S. Taylor be, and is hereby, appointed a commissioner and master in this case, to hear testimony therein and report unto this court at its next term the amount due by said Gaines as administrator, to said complainants, the amount converted by said Benjamin Patton, dec'd, belonging to said William B. Patton's estate, also the amount overcharged in said judgment against said William B. Patton's estate, also the errors, if any, in said settlement of said Benjamin Patton with said William B. Patton's estate, and full report make to this court touching the premises in said bill alleged, and said commissioner is duly authorized to hear testimony in said cause, and complainants are hereby authorized to take depositions generally, and this cause is continued to next term." Gaines prayed an appeal to this court which was granted him. The sixth section of article sixth, of the State Constitution declares that "until the General Assembly shall deem it expedient to establish courts of chancery, the Circuit Courts shall have jurisdiction in matters of equity, subject to appeal to the Supreme Court, in such manner as may be prescribed by law," and the law provides for appeals from *final* decisions, orders, or decrees of any court exercising chancery jurisdiction, but makes no provision for appeals from interlocutory decisions, orders, or decrees; and this court consequently has no jurisdiction of such cases. A final decision, order, or decree in a cause is the final sentence of the court, pronounced on hearing and understanding all the points in issue and determining the rights of all the parties in the suit according to equity and good conscience. *Hinde's Practice*, 429.

Where references to the master are necessary to ascertain facts upon which the decree must be founded, as in cases of account or questions of title, the decree is always interlocutory. 2 *Mad. Ch.* 455.

The case is dismissed for want of jurisdiction.