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Term, 1867.]

Hyde, et al., v. Pinkard, surv.

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HYDE, *et al.*, v. PINKARD, *surv.*

It is error to render a final decree on default of appearance at the return term.

*Appeal from Desha Circuit Court in Chancery.*

HON. WILLIAM M. HARRISON, Circuit Judge.

ENGLISH & WILSHIRE, for appellants.

GARLAND & NASH, for appellee.

COMPTON, J.

The defendants in the court below procured an order of this court, at December term, 1866, granting them an appeal in this cause.

The bill was filed to enforce a vendor's lien. The defendants having been served with process of subpoena thirty days before the return thereof, failed to appear; and a final decree was entered against them, at the return term. This was error. According to section 19, of chapter 28, Gould's Digest, the decree should have been interlocutory, not final. See *Gordan v. Church*, 11 *Ark.*, 118, where sections 19, 20 and 21 of this chapter of the Digest, in reference to interlocutory and final decrees, are remarked upon and construed.

Let the decree be reversed and the cause remanded, with leave to the defendants to enter their appearance in the court below and to make such defense as they may choose.

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