

*MARTIN A. LEA, MONROE RABETAILLE and CHARLES G. LANGDON,
Appellants, v. ENOCH S. KELLY, Appellee.

Appeal.—Final decree.

A judgment was entered on a promissory note, drawn by Kelly and others in favor of Lea and others, in the circuit court of Alabama; afterwards, Kelly, the appellee, filed a bill on the equity side of the court, for the purpose of being relieved of the judgment at law obtained against him and two other persons, on the promissory note; the bill alleged fraud in the plaintiffs in the suit, and that the complainant had no notice of the suit, and had not authorized an appearance, nor filed any plea in the same; the bill prayed for a perpetual injunction of proceedings on the judgment, and for general relief. The injunction was granted; and afterwards, on the appearance of two of the plaintiffs in the suit at law, the circuit court decreed, that, on the condition that the complainant, Kelly, appear and plead to the merits of the case, waiving the question of jurisdiction, and pay costs of the suit at law, and the proceedings in equity, a new trial be awarded to the complainant; two of the plaintiffs in the suit at law, who had appeared to the bill, appealed to the supreme court, seeking to reverse this decree: *Held*, that the decree of the circuit court was merely interlocutory; and was not a final decree from which an appeal could be taken.¹

APPEAL from the Circuit Court for the Southern District of Alabama.

Key, for the appellees, moved to dismiss the appeal. He alleged, that the decree of the court, from which the appeal was prosecuted, was not a final decree.

TANEY, Ch. J., delivered the opinion of the court.—A motion has been made by the appellee to dismiss this case, upon the ground, that the decree of the circuit court, from which the appeal has been taken, is not a final decree, within the meaning of the act of 1803, ch. 93.

It appears, that a bill was filed against the appellants in the circuit court of the United States for the southern district of Alabama, by Enoch S. Kelly, the present appellee; for the purpose of being relieved from a judgment at law in the said court, obtained by the appellants against him and two other persons named in the proceedings, upon a promissory note signed by them, and purporting to be for the sum of \$5000, upon which judgment and execution had issued. *The complainant charges in
*214] his bill, that the claim of the appellants against him is fraudulent, and he sets out fully the particular facts upon which he relies to prove the fraud; and avers that no process, save the execution, was served upon him in the suit at law, and that he had no notice that the suit was brought against him, until the execution was issued; that he entered no appearance to the suit, nor filed any plea in it, nor authorized any one to do it for him; and that if any attorney had done so, it was without the complainant's knowledge or consent; and prays that the appellants (who were made defendants in the bill) might be perpetually enjoined from proceeding against the complainant on said judgment; and also for general relief.

The injunction was accordingly granted by the court; and afterwards,

¹ A decree cannot be said to be final, until the court has completed its adjudication of the cause. *Green v. Fisk*, 103 U. S. 518-19. A decree is not final, within the meaning the act conferring appellate jurisdiction, unless, upon

its affirmance, nothing remains but to execute it. *Grant v. Phoenix Ins. Co.*, 106 Id. 429. And see *Railroad Co. v. Express Co.*, 108 Id. 24; *Ex parte Norton*, Id. 237.

Buyck v. United States.

Lea and Langdon, two of the appellants, appeared and answered, denying all fraud, and alleging that their claim against the appellee was fair and just. It does not appear that Rabetaille, the other defendant, answered the bill; and in this state of the proceedings, the circuit court, at April term 1839, passed the following decree: "This day came the parties, by their solicitors, and this cause coming on to be heard, upon the bill, answer and exhibits, it is ordered, adjudged and decreed, that, upon condition that the said Enoch S. Kelly, complainant, appear, plead to the merits of the case, and go to trial on the same, at the next term of this court, waiving the question of jurisdiction, and pay costs of the suit at law, and the proceedings in equity, a new trial be awarded to the said complainant."

It is from this order or decree that the present appeal has been taken; and it is evident, that the order is merely interlocutory, and no final decree has been passed in the case. The bill has not been dismissed, nor has the injunction been made perpetual. The new trial at law appears to have been directed to inform the conscience of the court; and the bill retained, and the injunction continued, until the finding of the jury should be known. The suit in equity is, therefore, yet pending, and has not been disposed of by final decree; and the appeal to this court must be dismissed.

Appeal dismissed.

*ANN BUYCK, Widow of Don Augustin Buyck, deceased, and the [*215
unknown Heirs of said Buyck, Appellants, v. UNITED
STATES, Appellees.

Florida land-claims.

The decree of the superior court of East Florida, by which a grant for 50,000 acres of land, made by Governor White, the Spanish governor of East Florida, dated July 29th, 1802, was rejected, affirmed.

The land had been granted by governor White, on a petition from the grantee, stating his intention to occupy and improve the same with Bozale negroes, and native citizens of the United States; and stating that other grants of the same lands had been made, on condition of settlement, which conditions had not been performed, and such grants were, therefore, void; the petitioner promised to make the settlement within an early period after the grant. The governor granted the land, referring to the petition; also, with the condition, that the grantee should not cede any part of the land, without the consent of the government; no improvement or settlement was at any time made on the land by the grantee: *Held*, that the government of the United States were not bound, under the Florida treaty, to confirm the grant.

The description of the portion of land asked for from the Spanish governor, "lands at Musquito, 50,000 acres, south and north of said place," is not sufficiently definite; and from such a description, no exception could be made from the public lands acquired by the United States, under the Florida treaty. The regulations for granting lands in Florida, by the Spanish authorities, required that grants should be made in a certain place; there were no floating rights of survey out of the place designated in the grant, unless where the land granted could not be gotten there in its exact quantity, and an equivalent was provided for.

The laws and ordinances of the government of Spain, in relation to grants of lands by the Spanish government, must be of universal application in the construction of grants; it is essential to the validity of such grants, that the land granted shall be described, so as to be capable of being distinguished from other things of the same kind, or capable of being ascertained by extraneous testimony. The cases of Sibbald, 12 Pet. 488; Arredondo, 6 Ibid. 691; Fleming, 8 Ibid. 478; Huertas, 9 Ibid. 488; and Arredondo, 13 Ibid. 133, cited.

APPEAL from the Superior Court of East Florida. On the 23d of May 1829, Ann Buyck, the appellant, presented a petition to the superior court