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*Wolfe et al. v. Lewis.*

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JOHN D. WOLFE, EXECUTOR, AND MARIA D. L. RONALDS, EXECUTRIX, OF THOMAS A. RONALDS, DECEASED, APPELLANTS, v. JOHN H. LEWIS.

Where a fund is brought into court upon proceedings under a bill to foreclose a mortgage, it is altogether irregular for the court to order an investigation into the general accounts between the attorney and his client during past years, and to order that the attorney shall be paid, out of the fund in court, the balance which the master may report to be due. The persons interested in this decree were not properly before the court as parties.

THIS was an appeal from the District Court of the United States for the northern district of Alabama, sitting in equity.

The present appeal was from a collateral decree of the District Court, under the following circumstances:

Lewis had been for many years the attorney of Thomas A. Ronalds, the deceased testator of the present appellants. In the course of his practice, he had filed a bill in chancery to foreclose a mortgage, and thus obtain payment of a debt which was due to his client. The money was voluntarily paid, without a sale, and brought into court. Lewis then claimed a lien upon that fund, not only for his professional services in that particular case, but also for a general balance which he alleged to be due to him from his client, upon a general settlement of accounts between them. At November term, 1848, the court passed the following order:

*Order referring matters of account between Lewis and his clients to the Standing Master, to report, &c., at November, 1848—and Order to continue.*

"Come the parties by their solicitors, and, by their consent, it is ordered by the court that all matters of account between John H. Lewis, Esq., and his late client, the said Thomas A. Ronalds, deceased, and between the said John H. Lewis and the said John D. Wolfe, executor, and Maria D. L. Ronalds, executrix, of the last will and testament of the said Thomas A. Ronalds, deceased, be referred to the standing master in chancery; and it is further ordered, that said master report a statement thereof, and of all his proceedings relative thereto, to the next term of this court. And it is further ordered, that this cause be continued."

Under this order, the master went into a detailed examination of all the transactions between Lewis and his client for many preceding years, and made the report which is men-

tioned in the opinion of the court. From this report, when confirmed by the court, the present appellants appealed.

The case was argued by *Mr. Thomas* for the appellants, and by *Mr. Reverdy Johnson, jr.*, and *Mr. Reverdy Johnson*, for the appellee.

The arguments being chiefly directed to the merits of the case, into which this court did not enter, it is not deemed advisable to insert them.

Mr. Justice McLEAN delivered the opinion of the court.

This is an appeal from the District Court for the northern district of Alabama.

The bill was filed to foreclose a mortgage, given to secure the payment of \$12,000. Payments on this debt were made, amounting to the sum of \$8,527, the last payment being made the 9th of October, 1839. An account was prayed, and that the mortgaged premises might be sold.

A supplemental bill was filed the 30th of November, 1843, stating that the last instalment of the mortgage debt had become due, and praying that the premises might be sold to satisfy that payment also.

The answer admitted the allegations of the bill, but claimed an additional credit of \$600 on the mortgage. On the 23d of May, 1844, a final decree was entered, directing a sale of the mortgaged premises to pay the amount due, stated to be \$10,077.68, with interest to the time of sale. Afterwards, at November term, 1848, the commissioner, who had been appointed to make the sale, returned that Cox, the defendant, had, without sale of the property, paid him the balance due under the decree, after deducting certain payments made before his appointment, which amounted to the sum of \$8,318.47, which was brought into court.

At that term an entry in the cause was made, by consent of the solicitors of the parties, that all matters of account between John H. Lewis and his late client, Thomas A. Ronalds, deceased, and between the said Lewis and John D. Wolfe, executor, and Maria D. L. Ronalds, executrix, of the last will and testament of Thomas A. Ronalds, be referred to the standing master in chancery, "who was directed to report a statement thereof, and of all his proceedings relative thereto, to the next term of the court."

At November term, 1850, the master filed his report, which was exceedingly voluminous—covering more than two hundred and sixty pages of the record.

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The master states an account, in which he charges Lewis with all sums, and interest, from the time he became chargeable up to the date of the report, 25th of November, 1850, amounting to the sum of \$63,461.71. He shows the amount of credits claimed by Lewis, to same date, amounting to the sum of \$55,966.82. Exceptions were filed to this report by both parties; and at May term, 1854, the court made a final decree on the master's report; in which is set out the manner in which the controversy arose, and referring to the order of November term, 1848, founded upon the motion in the Cox case, to remove Lewis from his capacity as attorney, so as to procure the payment to the complainants directly of the proceeds under the decree brought into court. And the court states that it considers the proceedings, as presented, not within its cognizance, inasmuch as no writ had been issued as between these parties, no bill filed, and no suit in any form commenced; there was no allegation or charge on the one side, or response or denial on the other; nor was the matter collateral to, or growing out of, any case pending.

On consideration, the court, though disposed to strike the matter from the docket, yet decreed that, as a large sum of money had been paid in under its order, it must be, in the language of the court, in some way paid out; and the exceptions to the master's reports were overruled, and the same was confirmed; and the marshal, as receiver, was ordered to pay over to Lewis the sum of \$4,336.42 of the proceeds in his hands, and the residue, \$3,982.05, he was directed to pay to the complainants. From this decree the complainants appealed.

This was an irregular proceeding, and without the authority of law. The bill was filed originally against Bartley Cox, the defendant, against whom the decree for the sum of \$10,077.68 was entered. This being done, Lewis procured an order for his dismissal from the case, that he might bring up an account against Thomas A. Ronalds in his lifetime, and his executors since his decease, for professional services. And this was done without the form of suit, or the matter having any relation to the case before the court. And when it is considered that Ronalds was a citizen of New York, and that his representatives are citizens of New York, and do not seem to have had any notice of this illegal procedure, it can receive no sanction from this court.

It is contended that Lewis, as counsel, had a right to receive and receipt for moneys in the case; and whether he was entitled to reserve any portion thereof or not, can be properly tested only by a bill filed by the appellants against him to account.

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But the whole proceeding in behalf of Lewis, as against the complainants, was irregular and void, the court having no jurisdiction of the matter. The order was of no importance that the decree should be without prejudice to either party, and not pleadable in bar to any subsequent litigation between them upon the same subject-matter, as the proceedings were invalid. But, as regards the complainants, it was error in the court to order any part of its original decree in their favor to be paid to one who was not properly before it as a party. For this purpose, neither complainants, nor the defendant, Lewis, were before the court, or amenable to its jurisdiction. The decree is therefore reversed, with costs. And the court direct that an order be transmitted to the Circuit Court, to require the defendant, Lewis, to pay over any money received by him under the decree to the proper officer of the court, that it may be paid to the complainants.

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ROSSELL BEEBE ET AL., APPELLANTS, *v.* WILLIAM RUSSELL.

The appellate jurisdiction of this court only includes cases where the judgment or decree of the Circuit Court is final.

In chancery, a decree is interlocutory whenever an inquiry as to matter of law or fact is directed, preparatory to a final decision.

But when a decree finally decides and disposes of the whole merits of the cause, and reserves no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its final decision, it is a final decree.

Therefore, where a case was referred to a master, to take an account of rents and profits, &c., upon evidence, and from an examination of the parties, and to make or not to make allowances affecting the rights of the parties, and to report his results to the court, this was not a final decree.

The preceding cases upon this subject, examined.

THIS was an appeal from the Circuit Court of the United States for the district of Arkansas, sitting in chancery.

The bill was filed by William Russell against Roswell Beebe, Mary W. W. Ashley, Henry C. Ashley, William E. Ashley, George C. Watkins, and Mary A. Freeman, praying that they might be ordered to convey to the complainant certain pieces of property, which, it was alleged, they fraudulently withheld from him, and account for the rents and profits.

The Circuit Court decreed that the defendants should execute certain conveyances, surrender possession, and then proceeded to refer the matter to a master, with the instructions which are stated in the opinion of the court. The defendants appealed to this court.