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.

ROSWELL BEEBE ET AL., APELLANTS, *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.

It was submitted by *Mr. Lawrence* for the appellants, and *Mr. Pike* for the appellee.

Mr. Justice WAYNE delivered the opinion of the court.

This is an appeal from the Circuit Court of the United States for the district of Arkansas.

We find, from our examination of the record, that the decree from which this appeal has been taken is not final, within the meaning of the acts of Congress of 1789 and 1803. It will therefore be dismissed for a want of jurisdiction. The right of appeal is conferred, defined, and regulated, by the second section of the act of March 2d, 1803, which, however, adopts and applies the regulations prescribed by the 22d, 23d, and 24th sections of the judiciary act of the 24th September, 1789, ch. 20, respecting writs of error. The language of both is, that final judgments and decrees, rendered in any circuit, &c., &c., may be reviewed in the Supreme Court, where the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars. It has been the object of this court at all times, though an accidental deviation may be found, to restrict the cases which have been brought to this court, either by appeal or by writ of error, to those in which the rights of the parties have been fully and finally determined by judgments or decrees in the court below, whether they were cases in admiralty, in equity, or common law. In the case of the Palmyra, (10 Wheat., 502,) where, in a libel for a tortious seizure, restitution with costs and damages had been decreed, but the damages had not been assessed, this court held that the decree was not final, and dismissed the appeal. It said, "the decree of the Circuit Court was not final in the sense of the act of Congress. *The damages remain undisposed of, and an appeal may still lie upon that part of the decree awarding damages.* The whole cause is not, therefore, finally determined in the Circuit Court, and we are of the opinion that the cause cannot be divided so as to bring up distinct parts of it." This court also ruled, in Brown *v.* Swann, (9 Peters, 1,) that a decree enjoining a judgment at law taxing a sum which remained to be ascertained with precision was not final, to permit an appeal from it. We might multiply citations from the reports of this court, to show its caution upon this subject. We feel very confident no case has been decided by it, when the question of the finality of a decree or judgment has been brought to its notice, in which the distinction between final and interlocutory decrees has not been regarded as it was meant to be by the legislation of Congress, and as it was understood by the courts in England and in this country, before Congress acted upon the

subject. A decree is understood to be interlocutory whenever an inquiry as to matter of law or fact is directed, preparatory to a final decision. (1 New., 322.) And we find it stated in the second volume of Perkins's Daniel's Chancery Practice, 1193, "that the most usual ground for not making a perfect decree in the first instance, is the necessity which frequently exists for a reference to a master of the court, to make inquiries, or take accounts, or sell estates, and adjust other matters which are necessary to be disposed of, before a complete decision can be come to upon the subject-matter of the suit." 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. It is true, a decree may be final, although it directs a reference to a master, if all the consequential directions depending upon the result of the master's report are contained in the decree, so that no further decree of the court will be necessary, upon the confirmation of the report, *to give the parties the entire and full benefit of the previous decision of the court.* (Mills *v.* Hoag, 7 Paige, 18.)

Testing, then, this decree by the citations just given from Daniel's Chancery Practice, from the case of Mills *v.* Hoag, our inquiry is, whether further action of the court in the nature of a decree would not be necessary to give to the defendant in error the benefit of the "rents and profits received by the defendants in the court below, or which could or ought to have been received by them, or any of them, for any part of the premises," which it had directed the defendants to surrender to the complainant; and whether the court's direction to the master, how he should take the accounts of rents and profits, and that no allowances were to be made by the master for improvements which the defendants had made, and that no account of rent was to be taken upon permanent and valuable improvements erected by them, do not involve rights in the respective parties, and a pecuniary uncertainty in respect to the sum to be paid by the defendant, which are only made certain and operative by a decree of the court upon the master's report. The court's direction was, "that it be referred to the master, to take an account of the rents and profits received, or which could and ought to have been received, by the defendants, or any of them, for any part of the said premises; that he take such an account distributively as to the said Ashley and Beebe, in the lifetime of Ashley, and as to his heirs since his death, and as to said G. C. Walker since his purchases; that he make no allowances for improvements made

by them, or either of them, and take no account of rent upon permanent and valuable improvements erected by them; and that he report to the court here, at the next term thereof. And it is further ordered, &c., that the defendants do pay the costs of this suit." Thus leaving a sum to be ascertained with precision by the master from different elements, from which he is directed to make up the account, and those not merely consequential from the previous directions of the decree. Further, a decree from which an appeal may be taken must not only be final, but it must be one in which the matter in dipute, exclusive of costs, shall exceed the sum or value of two thousand dollars. The value of the subject-matter in controversy may be shown from the record, or by evidence aliunde, when it is disputed; and in this case the record discloses that to be such as would give the court jurisdiction; but the decree also shows that a sum is still unascertained between the parties, which may or may not exceed two thousand dollars, and, if it does, which may be the subject of another appeal. The object of the law, and the interpretation of it by this court, is to prevent a case from coming to it from the courts below, in which the whole controversy has not been determined finally, and that the same may be done in this court. We say, "in which the whole controversy has not been determined." Wherever it has been, and ministerial duties are only to be performed, though that be to ascertain an amount due, the decree is final.

But the reference of a case to a master, to take an account upon evidence, and from the 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, is not a final decree; because his report is subject to exceptions from either side, which must be brought to the notice of the court before it can be available. It can only be made so by the courts overruling the exceptions, or by an order confirming the report, with a final decree for its appropriation and payment. We have just said the decree is final when ministerial duties are only to be done to ascertain a sum due. The case of Ray *v.* Law, in 3 Cranch, 179, is an instance. It was then ruled by this court, that a decree for a sale under a mortgage is such a final decree as may be appealed from. Afterwards, when that case was cited in the case of the Palmyra, (10 Wheat., 502,) Marshall, Chief Justice, said for the court: "In that case, which was an appeal in an equity cause, there was a decree of foreclosure and sale of the mortgaged property. The sale could only be ordered after an account taken, or the sum due on the mortgage ascertained in some other way. And the usual decree is, that unless the defendant shall pay that sum in

a given time, the estate shall be sold. The decree of sale, therefore, is in such a case final upon the rights of parties in controversy, and leaves ministerial duties only to be performed." In such a case, the direction is but a consequence of the decree, and no further decree is necessary. So a decree upon the coming in of the master's report on a bill for specific performance, ascertaining the quantity of land to be conveyed, and the balance of money to be paid, and that the conveyance should be executed on such balance being tendered, is a final decree. (Navis *v.* Waters, 1 John. Ch., 85.) But in the last case cited, it would not have been final if the decree had not directed the conveyance of the land upon the sum found by the master being tendered.

It has been supposed that this court did not apply its present interpretation of the laws regulating appeal in the cases of Whiting *v.* Bank of the United States, (13 Peters, 6,) of Michaud *v.* Girod, (4 How., 503,) and in Forgay et al. *v.* Conrad, (in 6 Howard, 201.) It is, however, not so. Whiting's case, in that part of it relating to appeals, was only what this court had said in Ray *v.* Law, in the case of the Palmyra, before cited, that a decree of foreclosure and sale is final upon the merits of the controversy, and an appeal lies therefrom. In Michaud *v.* Girod, no such point was made in the argument of it, nor touched upon in the opinion of the court. In Forgay's case, it was made upon the decree given by the court below, and it was adjudged by this court to be final to give this court jurisdiction of it. But it was so, upon the ground that the whole merits of the controversy between the parties had been determined, *that execution had been awarded*, and that the case had been referred to the master merely for the purpose of adjusting the accounts. The fact is, the *order of the court in that case for referring it to a master was peculiar*, making it doubtful, if it could in any way control or qualify the antecedent decree of the court upon the whole merits of the controversy, or modify it in any way, *except upon a petition for a rehearing.* We refer to the case, however, with confidence, to show that the reasoning of the opinion is cautionary upon the subject of bringing appeals, and confirmatory of what we have said in this case. We dismiss the case, the court not having jurisdiction of the appeal.