Statement of the case.

defendants. The facts are, that, from the return of the execution satisfied, the Federal court had no control over the parties. The case between the plaintiffs in error against Griggs had been decided, the money made on the execution, and the debt paid.

Upon the facts of the case, as they appear in the record, we have determined that no one of the questions described in the 28th section of the Judiciary Act necessarily arose or was decided by the Supreme Court of Minnesota. We think it unnecessary to particularize such decided questions as will give jurisdiction to this court under that act. We therefore dismiss the writ of error to the Supreme Court of Minnesota.

DISMISSAL ACCORDINGLY.

HUMISTON *v.* STAINTHORP.

A decree in chancery, awarding to a patentee a permanent injunction, and for an account of gains and profits, and that the cause be referred to a master to take and state the amount, and to report to the court, is not a final decree, within the meaning of the act of Congress allowing an appeal on a final decree to this court.

STAINTHORP and Seguine had filed a bill in the Circuit Court for the Northern District of New York, against Humiston, for infringing a patent for moulding candles; and had obtained a decree against him.

The decree was that the complainants were entitled to a *permanent injunction*, and for an account of gains and profits, and that the cause be *referred to a master to take and state the amount and report to the court.*

A motion was now made to dismiss the cause for want of jurisdiction.

Mr. Gifford, in favor of the motion of dismissal: An appeal lies only from a final decree; this is an interlocutory one.

Argument in favor of the motion.

A final decree in equity is one which finally decides and disposes of the whole merits of the case, and reserves no questions or directions for the future judgment of the court from which an appeal could be taken. This court will not allow a case to be divided up into a plurality of appeals.

In *The Palmyra*,* restitution with costs and damages was decreed, and an appeal taken before the damages had been assessed. The court held that the decree was not final, and dismissed it. They say, "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 case of *Barnard et al.* v. *Gibson*,† was one on letters patent. The decree referred it to a master to ascertain and report the damages. An appeal was taken; a motion made to dismiss it, and the motion was granted. The court say, "The decree in the case under consideration is not final within the decisions of the court. The injunction prayed for was made perpetual, but there was a reference to a master to ascertain the damages by reason of the infringement."

In *Perkins* v. *Fourniquet*,‡ the decree was that the complainant was entitled to two-sevenths of certain property, and referred it to a master to take and report an account of it, reserving all other questions until the coming in of the master's report. It was held that this was not a final decree on which an appeal could be taken.

In *Pulliam et al.* v. *Christian*,§ the decree set aside a deed and directed an account from trustees. This was held not to be a final decree, and an appeal from it was dismissed.

In *Craighead et al.* v. *Wilson*,‖ a bill was filed claiming property as heirs. A decree was made, which, among other things, referred it to a master to take an account. The court held that this decree was interlocutory, and that no final decree could be made until after the coming in of the master's report, and the appeal was dismissed.

* 10 Wheaton, 502.
† 7 Howard, 650.
‡ 6 Id. 206.
§ 6 Id. 209.
‖ 18 Id. 199.

In *Crawford* v. *Points*,* a decree was made directing an account. An appeal was taken before the accounting. On a motion to dismiss the appeal, the court say, "The decree is not final. . . An account is directed to be taken of the rents and profits, &c. While these things remain to be done, the decree is not final, and no appeal from it would lie to this court."

In *Beebe et al.* v. *Russell*,† the court thus distinguishes between the two sorts of decrees: "A decree is understood to be interlocutory whenever an inquiry as to matter of law or fact is directed, preparatory to a final decision. 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."

These cases seem conclusive.

Mr. Norton, contra.

I. The precise question whether an appeal may be taken from such a decree does not seem to have arisen in this court, but the principles which have controlled the decisions concerning appeals, establish the right of appeal from the decree herein.

In *Ray* v. *Law*,‡ it was held (Marshall, C. J.), "That a decree for a sale under a mortgage is such a final decree as may be appealed from," although in such cases there follows a decree confirming the sale, and it may be for execution for a deficiency. That case was followed in *Whiting* v. *Bank of United States*,§ the court saying, in reference thereto, "This decision must have been made upon the general ground that a decree, *final* upon the merits of the controversy between the parties, is a decree upon which a bill of review would lie, without and independent of any ulterior proceedings."

In *Forgay* v. *Conrad*,‖ where the decree set aside as void

* 13 Howard, 11. † 19 Id. 285. ‡ 3 Cranch, 179.
§ 13 Peters, 6. ‖ 6 Howard, 201.

Argument against the motion.

certain deeds of lands and slaves, and directed an account of profits, and expressly retained a part of the bill for further decree, it was held that an appeal from same was well taken.

In *Barnard* v. *Gibson*,* relied on by the other side, where the decree was for an injunction and an account of profits, and expressly reserved "the question of costs and all other questions" not specifically passed upon, it was held that from such decree an appeal would not lie; and in that case this court did not undertake to reverse its former decisions, but to abide thereby.

Now the decree in this case, though different from that in either of the cases thus referred to, is much nearer that in *Forgay* v. *Conrad* than the one in *Barnard* v. *Gibson*, for it fully disposes of the merits, without reserving any question whatever, and leaves nothing uncompleted but an accounting, like that in *Forgay* v. *Conrad;* and upon the principle established in those cases, the appeal was well taken. That principle is, that whenever a decree *decides the merits of the controversy*, it *is final*, for the purposes of an appeal, though ulterior proceedings have to be had and a further or additional decree yet remains to be made. Thus in *Forgay* v. *Conrad*, the court say of the decree therein, "undoubtedly it is not final, in the strict technical sense of the term," and then adopting a wider view of the act of Congress, lay down the principle that when a decree decides the right in controversy, and permits it to be carried into execution, it is *pro tanto, final* for the purposes of an appeal. And the only way of reconciling *Barnard* v. *Gibson* with that case is, that it reserved the question of costs and other questions.

II. An appeal from such a decree as this is, should be allowed:

1st. Because it disposes of *the entire merits*, and leaves nothing but a mere accounting.

2d. Because the court below has power to render and enforce such a decree (and the practice of rendering and

* 7 Howard, 653.

enforcing such decrees has become very general), and unless an appeal be allowed therefrom, the right of appeal to this court is virtually annulled in this class of cases, where the decree is for the complainant.

3d. Because the accounting in such cases is necessarily tedious and expensive, and should therefore be postponed until the merits are finally disposed of; for if the decree be reversed the accounting becomes a needless waste of time and money, and even if it be modified, as to the nature or extent of the patent or of the infringement of same, such accounting becomes almost equally useless.

Mr. Justice NELSON delivered the opinion of the court, and after stating the case said:

The decree is not final within the act of Congress providing for appeals to this court, according to a long and well-settled class of cases, some of which we only need refer to in disposing of the case.*

MOTION GRANTED.

MURRAY *v.* LARDNER.

Coupon bonds, of the ordinary kind, payable to bearer, pass by delivery. And a purchaser of them, in good faith, is unaffected by want of title in the vendor. The burden of proof, on a question of such faith, lies on the party who assails the possession. *Gill* v. *Cubit* (3 Barnewall & Cresswell, 466), denied; *Goodman* v. *Harvey* (4 Adolphus & Ellis, 870), approved; *Goodman* v. *Simonds* (20 Howard, 452), affirmed.

LARDNER was the owner of three bonds of the Camden and Amboy Railroad Company, for $1000 each. They were coupon bonds of the ordinary kind, and *payable to bearer*. He resided in the country, about nine miles from Philadelphia, but had an office in that city, where he went to transact business two days in the week, Wednesdays and Saturdays. He kept the bonds in a fire-proof in this office.

* The Palmyra, 10 Wheaton, 502; Barnard et al. *v.* Gibson, 7 Howard, 650; Crawford *v.* Points, 13 Id. 11; Craighead *v.* Wilson, 18 Id. 199; Beebe et al. *v.* Russell, 19 Id. 283.