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Courts-Appellate Jurisdiction of Circuit Courts of Appeals-Final Decree or Judgment

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COURTS—APPELLATE JURISDICTION OF CIRCUIT COURTS OF APPEALS—
FINAL DECREE OR JUDGMENT—Plaintiff below brought an action in a District Court of the United States which he designated as a bill in equity for recovery for breach of contract. The lower court found that the alleged contract between the plaintiff and defendant was a good and valid one, that the defendant had breached the provisions thereof, and that the plaintiff was entitled to recover. It was then decreed that the defendant render a full, true, and accurate account of all due to the plaintiff under said contract, and pay the same to plaintiff with interest. The case was referred to a master in chancery to ascertain and report to the court the amount due to the plaintiff in accordance with the above decree, the plaintiff to have judgment for such amount as the master's report would show

"provided said master's report is approved by this court." This is an attempted appeal from this decree. *Held*, Appeal dismissed for want of jurisdiction. *Dodge Mfg. Co. et al. v. Patten*, Circuit Court of Appeals, Seventh Circuit, Sept. 30, 1930, 43 Fed. (2nd) 472.

This case gives rise to an opportunity to consider the jurisdiction of Circuit Courts of Appeals in regard to appeals from lower courts. The jurisdiction of such courts is wholly statutory. *Emlenton Refining Co. v. Chambers*, 14 Fed. (2nd) 104. Furthermore, the implication in an act of Congress to confer jurisdiction must be not only clear, but a necessary one. *Idem*. With these points in mind, the appellate jurisdiction of said courts may be analyzed and determined from the following summary of the statutes thereon.

It is provided that "the circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error final decisions" in the district courts, in all cases save where there is express provision for a direct review in the Supreme Court. *Judicial Code*, Sec. 128, amended; 28 USCA, Sec. 225.

Said courts have in addition certain powers of review over interlocutory orders or decrees of district courts. In case of an interlocutory order or decree of a district court that grants, continues, modifies, refuses, or dissolves an injunction, an appeal may be taken to the circuit court of appeals. If an application to dissolve or modify an injunction is refused, an appeal may be taken. The same may be done in case of an interlocutory order or decree appointing a receiver, or one refusing an order to wind up a pending receivership or to take appropriate steps to accomplish the purposes of said receivership. Such appeal must be applied for within thirty days after the entry of the order or decree. 28 USCA, Sec. 227.

The aforesaid courts have appellate and supervisory jurisdiction in bankruptcy proceedings. "The circuit courts of appeals of the United States . . . are invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases." 11 USCA, Sec. 47.

The several courts of appeals have jurisdiction in equity either interlocutory or final, to superintend and revise in matter of law the provisions of the several inferior courts of bankruptcy within their jurisdiction. This power may be exercised on due notice and petition by any party aggrieved. *Idem*. In the following cases appeals in bankruptcy proceedings may be taken: "(1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; (3) from a judgment allowing or rejecting a debt or claim of \$500.00 or over," appeal to be made within ten days after the judgment appealed from has been rendered. 11 USCA, Sec. 48.

Said courts are empowered to enforce, set aside, or modify orders of the Interstate Commerce Commission, the Federal Reserve Board, and the Federal Trade Commission. 28 USCA, Sec. 225, par. (e). As to the Federal Trade Commission, the statute is as follows: "If such person, partnership, or corporation fails or neglects to obey such orders of the commission while the same are in effect, the commission may apply to circuit courts of appeals of the U. S. within any circuit where the method of competition in question was used or where such person, partnership, or

corporation resides or carries on its business, for the enforcement of its order." *Idem*.

Also it is provided that "any party required by such order of the commission to cease and desist from using such methods of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside." 15 USCA, Sec. 45.

Substantially the same words are applied to orders of the Interstate Commerce Commission and the Federal Reserve Board. 15 USCA, Sec. 21.

Review of a decision of a district court of the United States within one of the said States shall be in the circuit court of appeals for the circuit embracing the particular state. 28 USCA, Sec. 225, par. (d).

No attempt is here made to outline the appellate jurisdiction of the circuit courts in regard to decisions of United States courts outside the United States, such as the district courts for Alaska, the Virgin Islands, the Canal Zone, the Supreme Courts of the Territory of Hawaii and of Porto Rico, or the United States Court for China. Said jurisdiction may be readily traced by referring to 28 USCA, Sec. 225.

In view of this brief summary of the statutes, the principal case was easily and correctly decided. The statutes provided that in such case as this the decree of the district court must be a *final* one. That this is indispensable has been held by *O'Brien v. Lashar*, 266 Fed. 215; *Crooker v. Knudsen*, 232 Fed. 857; *McLish v. Roff*, 141 U. S. 661, and countless others. This leaves the sole question as to whether a reference to a master as in the principal case constitutes a final decree.

"The rule . . . for determining whether, for the purposes of an appeal, a decree is final, is, in brief, whether the decree disposes of the entire controversy between the parties." *La Bourgogne*, 210 U. S. 95, 28 S. Ct. 664. On the other hand, a "final decree" is not necessarily the last order in a case, as orders sometimes follow merely for the purpose of carrying out or executing the matters which the decree has determined; but when it finally fixes the rights of the parties, it is final. *Gas and Electric Securities Co. v. Manhattan and Queens Traction Corp.*, 266 Fed. 625, 632. Here, however, there was something more than a mere carrying into effect the terms of a complete decree. The reference to the master was to determine by an accounting what the defendant was to pay, and said accounting was subject to the approval of the court. In such cases it has been consistently held that although it has already been decreed that the defendant is liable, such decree does not determine the extent of the plaintiff's rights, and is not final. *Parsons v. Robinson*, 122 U. S. 112; *Lodge v. Twell*, 135 U. S. 232, 10, S. Ct. 745; *Latta v. Kilbourn*, 150 U. S. 524, 14 S. Ct. 201; *Macfarland v. Brown*, 187 U. S. 239, 23 S. Ct. 105.