

**Young Vs. Smith**

**Young Vs. Smith**

**SooperKanoon Citation :** [sooperkanoon.com/79753](http://sooperkanoon.com/79753)

**Court :** US Supreme Court

**Decided On :** 1841

**Appeal No. :** 40 U.S. 287

**Appellant :** Young

**Respondent :** Smith

**Judgement :**

Young v. Smith - 40 U.S. 287 (1841)

U.S. Supreme Court Young v. Smith, 40 U.S. 15 Pet. 287 287 (1841)

**Young v. Smith**

**40 U.S. (15 Pet.) 287**

*APPEAL FROM THE CIRCUIT COURT FOR*

*THE SOUTHERN DISTRICT OF ALABAMA*

This case was before the Court, on a motion to dismiss the appeal, the decree of the Circuit Court of Alabama being, as was contended by Sergeant, for the appellees, an interlocutory, and not a final decree. Key opposed the motion.

STORY, Justice, delivered the opinion of the Court.

This is an appeal from the decree of the Circuit Court of the Southern District of Alabama in a suit in equity, and the only question now submitted for our consideration is whether the decree in the case is a final decree in the sense of the Acts of Congress of 24 September, 1789, ch. 20, § 22, and the Act of 3 March, 1803, ch. 93, from which an appeal lies to this Court.

The original bill was brought by the plaintiffs (now appellants)

Page 40 U. S. 288

against the appellees, as executors of John Parks, to recover their respective proportions, as residuary legatees, of the personal estate of the testator under his will, and for an account and due administration of the assets. Upon the coming in of the answer, it was referred to a master to take an account; the master afterwards made a report, to which exceptions were filed, and it was thereupon ordered by the court that the sum of \$7,795.27, admitted to be in the hands of the executors, be paid into court subject to the order of the court, which was accordingly paid, and the report was thereupon referred back to the master, and after several intermediate proceedings and reports, the master made his final report on 2 March, 1840, by which he found a balance then in the hands of the executors of \$11,355.23, inclusive of the said sum of \$7,795.27 and exclusive of sundry uncollected debts then outstanding, some of which were good, some doubtful, and some bad. To this report the plaintiffs filed certain exceptions on the 27th of the same month, which exceptions were disallowed by the court as not having been taken before the master or filed in the proper time. And thereupon the court proceeded to decree that the report be accepted, that the plaintiffs should have execution for the said sum of \$11,355.23, and

"that as to the residue of the debts due to the estate of John Parks, deceased, and not collected, it is ordered and adjudged by the court that as soon as the said executors shall succeed in the collection of the same or any part thereof, that they do pay the amount into court for distribution, to be made under the direction of this court."

The plaintiffs having received the said sum of \$7,795.27, acknowledged the receipt thereof, which was to be credited on the decree as a payment made on 18 November, 1838; to the above decree the appeal is taken.

We are of opinion that the decree is an interlocutory and not a final decree in the sense of the act of Congress. It is plain that it does not dispose of the whole matter in controversy between the

Page 40 U. S. 289

parties. And if an appeal could now lie upon the decree already rendered, an appeal could also lie from time to time from any future decree of distribution of any assets which may be collected after the former decree, *toties quoties*, without any final decision's being made of all the matters in controversy. In our judgment, this would be against the clear import and intention of the acts of Congress, which were designed to give an appeal only from a decree final upon the whole matters and merits of the controversy. The consequence is that the appeal must be

*Dismissed with costs.*

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Alabama, and was argued by counsel, on consideration whereof it is the opinion of this Court that the decree in this case is an interlocutory and not a final decree in the sense of the act of Congress, whereupon it is now here ordered and decreed that this appeal be and the same is hereby dismissed with costs and that this cause be and the same is hereby remanded to the said circuit court to be proceeded in according to law and justice.