

1810.

Gorer  
vs  
Hall

that the chancellor ought to have decreed an account as they have directed. Suppose the chancellor, instead of decreeing it, had not so decreed, would not the defendants have been entitled to appeal? But suppose the defendants not to appeal from that interlocutory decree, and to have suffered an account to be taken, on which the chancellor decreed, can there be any doubt that the defendants would have been entitled to appeal; or in other words, that an appeal would properly lie in that case, and execution be stayed on filing their bond?

What then, in point of principle, is the difference between that case and the present? Why does an appeal lie in any case, unless it be, that the opinion of the chancellor, if he does wrong, may be corrected. Is it impossible that the chancellor has erred in the present instance, notwithstanding he has pursued, as nearly as he could, all the directions of the court of appeals? Most assuredly it is not. The court of appeals has only directed a general account of profits from one period to another, and to allow the complainant a certain proportion. It did not say the chancellor shall direct *certain* sums to be charged to the complainant, other *certain* sums to the defendants, and the balance to be struck and paid to the complainant. Had it so done, it might well be said, that the chancellor might be certain he had pursued its directions, and therefore ought not to stay execution on a frivolous appeal.

It surely cannot be forgotten that the auditor hath made two statements, differing in their amounts many thousand pounds, and that the defendants' counsel excepted to both accounts. Is it possible to conceive, that when the court of appeals did not direct either sum to be decreed, and did not—could not prescribe certain things to be done, from which either of the amounts, or any other certain amount should arise, and when of course the court of appeals hath not given its direction; is it possible to conceive that the defendant is not entitled, on the usual terms, to have the opinion of that tribunal, before he is compelled to pay the money decreed against him? Is it to be supposed the intent of that court, to inform the chancellor there should be no appeal from his decision, merely because they directed him to have an account stated, and to decree the sum appearing due to be paid to the complainant, and to take proper measures for carrying his de-