

THE CHANCELLOR :

This is an application to enforce, by attachment, the order of the 19th April last, by which Benjamin H. Ellicott was removed from the office of receiver, to which he was appointed under a previous order of this Court, and directed to account and deliver to Richard C. Warford, administrator *pendente lite* of the deceased, the personal estate and effects in his hands ; and the only questions which properly arise upon this application, are two. *First*, can the receiver appeal from the order ? and *secondly*, if he cannot, will this Court, notwithstanding he has entered and filed an approved appeal bond, proceed to enforce its execution ? In addition to these, however, the counsel have argued a *third*, and that is, whether an appeal will lie from the order in question, in behalf of any of the parties in interest ? and upon each of these I propose very briefly to express an opinion.

It is conceded, that if the right of appeal exists, it is not in virtue of any statutory enactment expressly giving it. If it exists at all, the right is founded either upon general principles regulating the subject of appeals, or is derived, by implication, from some one of the various Acts of Assembly which have been passed from time to time, or is to be drawn from the general scope and spirit embodied in them as a whole.

The general rule undoubtedly is, that an appeal will not lie from a mere practical order of this Court, preparatory to the final hearing, and by which the rights of the parties are not affected. Such was announced to be the law in the case of *Thompson vs. M'Kim*, 6 H. & J., 312, and is asserted in every subsequent case in which the subject has been spoken of in the Court of Appeals.

Now it cannot be said that an order appointing a receiver, or discharging him, has, or can have, any influence upon the rights of the parties. The late Chancellor, in 1 *Bland*, 421, laid down the rule upon the subject in the clearest terms, and the Court of Appeals, in *Ellicott vs. The United States Ins. Co.*, 7 Gill. 307, repeat and adopt his language.

It is true, that by the proviso to the 1st section of the Act