

LOFTIS *v.* EDWARDS.

5-2590

353 S. W. 2d 535

Opinion delivered February 12, 1962.

APPEAL & ERROR—FINAL JUDGMENT.—An order which merely sustains a demurrer to the complaint or petition, leaving the cause pending in the trial court, is not a final appealable judgment.

Appeal from Pulaski Chancery Court, Second Division; *Guy E. Williams*, Chancellor; appeal dismissed.

Warren E. Wood, for appellant.

Moses, McClellan, Arnold, Owen & McDermott, by *James R. Howard*, for appellee.

GEORGE ROSE SMITH, J. At the April, 1960 term of the Pulaski chancery court the appellants obtained a default decree foreclosing a materialman's lien for \$932.54, but the decree was incomplete in that it did not appoint a commissioner to conduct the sale, nor did it fix the terms of the sale. In May of 1961 the appellants filed a petition asking the chancellor to correct the earlier decree by the entry of a *nunc pro tunc* order supplying the omissions. This attempted appeal is from an order sustaining the appellees' demurrer to the appellants' petition.

The appeal must be dismissed for the reason that an order which merely sustains a demurrer to the complaint or petition, leaving the cause pending in the trial

court, is not a final appealable judgment. *Walters v. Burnett*, 228 Ark. 45, 305 S. W. 2d 549.

Appeal dismissed.
