

HEFFNER v. DAY.

Decided January 3, 1891.

Appeal—Final decree.

A decree avoiding an assignment for the benefit of creditors, and directing the receiver appointed to sell the property to make a statement of his account, is not a final decree from which an appeal may be prosecuted.

APPEAL from *Lonoke* Chancery Court.

D. W. CARROLL, Chancellor.

T. J. Dick, a merchant at Carlisle, Ark., made an assignment for the benefit of his creditors, preferring, among others, Mrs. E. E. Heffner. She thereupon brought suit, alleging that fact and that creditors would suffer great loss if the property was sold by the assignee. She prayed for the appointment of a receiver to sell the property under the directions of the court. A receiver was appointed.

Day, Horton & Bailey and certain other creditors intervened, alleging that the assignment was fraudulent. Upon a hearing, the court adjudged the assignment to be fraudulent. The receiver was directed to file a statement of his account, and to deposit the money in bank subject to the orders of the court. From this ruling and judgment of the court plaintiff has appealed.

T. C. Trimble and *J. W. House* for appellant.

See sec. 1266, Mansf. Dig., as to appeals: 1 Ark., 405, 406; 8 Ark., 209-10-11-12; 40 Ark., 535-536; 42 Ark., 283, 284, 285; 28 Ark., 92, 93, 94; 44 Ark., 46, 47, 48; 52

Ark., 227. An appeal is allowed when a distinct and severable branch of the cause is finally determined, although the suit is not ended. 23 Ark., 601; 25 Ark., 129. See Powell on Appellate Proceedings, p. 368, sec. 16, note 5; *ib.*, p. 371, sec. 20; *ib.*, p. 367, sec. 15. A judgment to foreclose the equity of redemption in mortgaged premises for the satisfaction of the debt, and that the defendant pay any deficiency appearing after such sale, is final and not interlocutory. 38 N. Y., 172. A case precisely in point, 67 N. Y., 199, 200-203.

J. C. & C. W. England and *N. W. Norton* for appellees.

The decree is not final, and the appeal should be dismissed. Freeman on Judg., sec. 30; 5 Ark., 398; 41 *id.*, 85. There is nothing adjudged to any one; nothing ordered to be paid to any one—no judgment even for costs.

What is a final
decree.

PER CURIAM. The decree is not a final disposition of the whole controversy as to the appellant. There is no ascertainment of the amount of the debts due the attaching creditors, who the court has indicated shall be preferred to the appellant in the distribution of the assets, and there is no direction to pay out any sum. For aught that appears, the appellant's debt may be paid out of the property covered by the assignment; and if so, no injury has been done. The appeal is premature. *Myers v. Becker*, 95 N. Y., 486; *Davie v. Davie*, 52 Ark., 224. The motion to dismiss the appeal will be granted.

It is so ordered.