

DILLINGER v. PICKENS.

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4-5852

138 S. W. 2d 388

Opinion delivered March 25, 1940.

1. APPEAL AND ERROR—NECESSITY FOR BILL OF EXCEPTIONS.—Where there is no bill of exceptions, the Supreme Court can look to the record only, and unless the record shows error on its face, the judgment will be affirmed.
2. PLEADING—DEMURRER.—In determining the sufficiency of a complaint, every allegation therein together with every inference reasonably deducible therefrom must be considered, and if, when so considered, it states a cause of action, a demurrer thereto should be overruled.
3. PLEADING.—Appellee's complaint in an action to vacate a judgment against him alleging that he traded property with appellant; that appellant retained a lien on the property conveyed to appellee for \$3,500, but that they had an understanding that if the mortgage had to be foreclosed appellant would not take a deficiency judgment; and that notwithstanding this agreement, appellant bought the property in for \$1,800 and took a deficiency judgment for \$1,700; that he, appellee, relying upon the agreement, did not attend the sale to protect himself and praying that the judgment be vacated stated a cause of action.

Appeal from Benton Chancery Court; *Lee Seamster*, Chancellor; affirmed.

Eugene Coffelt, for appellant.

Duty & Duty, for appellee.

MEHAFFY, J. On January 23, 1939, appellee, E. C. Pickens, instituted this action against the appellant, Tom Dillinger, to set aside a judgment against Pickens. He

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alleged that he had traded property with Dillinger, and Dillinger had retained a lien on the property conveyed to Pickens, for \$3,500; that he had had a conversation with Dillinger and thoroughly understood that when Dillinger foreclosed the mortgage, no deficiency judgment would be taken; that but for this understanding, he would have attended the sale and protected himself; but notwithstanding this conversation, Dillinger foreclosed the mortgage and took a deficiency judgment against Pickens for \$1,800, Dillinger buying the land at the sale for \$1,700.

Dillinger filed a demurrer to the complaint which was overruled by the court, and an appeal prayed and granted to the supreme court.

A bill of exceptions was filed, but on January 8, 1940, it was stricken by order of this court. There being no bill of exceptions, we can only look to the record, which in this case is the complaint and demurrer, and unless the record shows error on its face, it will be affirmed.

In determining whether a demurrer to a complaint should be sustained, every allegation made in the complaint, together with every inference which is reasonably deducible therefrom, must be considered, and if when so considered there is a cause of action stated, the demurrer will be overruled. *Texarkana Special School Dist. v. Ritchie Gro. Co.*, 183 Ark. 881, 39 S. W. 2d 289; *White v. Williams*, 187 Ark. 113, 59 S. W. 2d 23; *Brown v. Ark. Cent. Power Co.*, 174 Ark. 177, 294 S. W. 709. There are many other cases decided by this court holding that in considering the sufficiency of complaint on demurrer, not only every allegation contained in the complaint will be considered, but every reasonable inference deducible therefrom.

The complaint did not state facts very fully, but we think that the facts stated together with reasonable inferences deducible therefrom stated a cause of action, and the court did not err in overruling the demurrer.

The decree of the chancery court is affirmed.