

Ray v. Law.

But something further than this was necessary, to authorize a judgment for the defendant. It ought to have appeared, that Roberdeau was a resident of the state of Virginia, at the time the plaintiff came into that state in 1786; and that fact is not in the case stated. The judgment, therefore, ought to have been for the plaintiff, and not for the defendant. Judgment reversed, with costs, and judgment entered for the plaintiff on the verdict.

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Appeal.—Final decree.

A decree for a sale of mortgaged property, upon a bill to foreclose, is a final decree, from which an appeal will lie.¹

LAW having a mortgage on real estate in the city of Washington, and Ray having a subsequent mortgage on the same estate, Law had filed his bill in chancery in the Circuit Court of the district of Columbia, for a foreclosure and sale of the mortgaged property, and made Ray a defendant. The bill having been taken for confessed against Ray, a decree was obtained by Law for a sale. The sale had been made under the decree, and notice given, that on a certain day, the sale would be ratified, unless cause was shown. On that day, Ray appeared, but not showing good cause, in the opinion of the court, the sale was confirmed. Ray prayed an appeal to this court, on the decree for the sale, which the court refused, on the ground, as it is understood, that the decree for the sale was not a final decree in the cause.

Ray, on this day, presented a petition to this court, setting forth those facts, among others, praying relief, and that this court would direct the court below to send up the record. At the same time, he produced sundry papers, purporting to be the substance of that record, but not properly authenticated.

MARSHALL, Ch. J.—The act of congress points out the mode in which we are to exercise our appellate jurisdiction, and only authorizes an appeal or writ of error on a final judgment or decree.

C. Lee, for the petitioner, contended, that this was a final decree as to Ray, and cited 2 Fowler's Exchequer Practice 195, to show that such a decree would, in England, be considered such a final decree as would authorize an appeal.

March 5th, 1805. MARSHALL, Ch. J.—We can do nothing, without seeing the record, and the papers offered cannot be considered by us as a record.

*180] *The court, however, is of opinion, that a decree for a sale under a mortgage, is such a final decree as may be appealed from. We suppose, that when the court below understands that to be our opinion, it will allow an appeal, if it be a case to which this opinion applies.

¹ Whiting v. United States Bank, 13 Pet. 6; Co., 2 Black 524. And see French v. Shoemaker, 12 Wall. 86.