

eral assignment of *all* his property for the benefit of *all* his creditors a few days after the sale to Hopper, the property conveyed to Hopper passed under the assignment, and must be, under the provisions of the act of April 6, 1881, c. 121, (Acts 1881, p. 154,) distributed *pro rata* among all the creditors. This point was substantially disposed of at the hearing. *Flash v. Wilkerson*, 20 FED. REP. 257; *Ordway v. Montgomery*, 10 Lea, 514. It may be further remarked that when this bill was filed an attachment issued, by which the plaintiffs acquired a lien before the assignment, and there is nothing in the act referred to which displaces this lien. It does displace any mortgage, deed of trust, or other conveyance of a portion of the debtor's property for the benefit of any particular creditor, or any confession of judgment, or judgment by default or collusion within three months preceding the assignment; but, plainly, this does not include a lien acquired under sections 4288 and 4291 of the Code. The case of *Ordway v. Montgomery*, *supra*, is conclusive of this, as the principle of *noscitur a sociis* clearly applies to exempt both the sale to Hopper and the lien of the creditors, under this bill, from the operation of that act. The principle is the same as that on which the case of *Love v. Pamplin*, 21 FED. REP. 755, 760, was recently decided in this court by Mr. Justice MATTHEWS.

The report of the master must be modified in accordance with this opinion. Decree accordingly.

KERBS v. EWING.

(Circuit Court, W. D. Missouri, W. D. 1884.)

ASSIGNMENT FOR BENEFIT OF CREDITORS—MISSOURI STATUTE—DEED OF TRUST FOR BENEFIT OF CERTAIN CREDITORS.

No matter what the form of the instrument, where a debtor in Missouri, being insolvent, conveys all of his property, to a third party to pay one or more creditors, to the exclusion of others, such a conveyance will be construed to be an assignment for the benefit of all his creditors; the preference being in contravention of the assignment laws of the state.

Demurrer to Bill of Complaint.

Scott & Taylor, for plaintiffs.

Karnes & Ess and *Adams & Stuebenrauch*, for defendants.

McCrary, J. This case is not different in principle from the case of *Martin v. Hausman*, 14 FED. REP. 160. It is true that in *Martin v. Hausman* the technical deed of trust, which was construed to be an assignment for the benefit of creditors, was defective as a deed of trust, in having no defeasance clause attached thereto. In this case, the instrument is a deed of trust in proper form. This, however, can make no difference. No matter what the form of the instrument, where

a debtor, being insolvent, conveys all his property to a third party to pay one or more creditors, to the exclusion of others, such a conveyance will be construed to be an assignment for the benefit of all the creditors; the preference being in contravention of the assignment laws of this state. Demurrer overruled.

PRICE, Receiver, v. COLEMAN and others.

(Circuit Court, D. Massachusetts. January 6, 1885.)

EQUITY PRACTICE—DOCKET FEE—HEARING ON DEMURRER.

A hearing on demurrer is a final hearing, and a docket fee of \$20 may be taxed. Rev. St. § 824.

In Equity. Appeal from the clerk's taxation of costs in favor of George N. March, one of the defendants.

A. A. Ranney, for Price, receiver.

Jesse M. Wheeler, for defendants.

COLT, J. We approve of the clerk's taxation of costs. The taxation is not contrary to equity rule 62, because the defendant filed his separate demurrer, and appeared by separate counsel. We also think the hearing on demurrer a final hearing within the meaning of section 824, Rev. St., and that therefore a docket fee of \$20 was properly taxable. A demurrer raises an issue which, when tried, will finally dispose of the case, unless leave to amend or plead over is granted. There can be no other trial, except at the discretion of the court, and if final judgment is entered on the demurrer it will be a final determination of the rights of the parties, which can be pleaded in bar to any other suit for the same cause of action. This is the view expressed by the supreme court in *Alley v. Nott*, 111 U. S. 472, 475; S. C. 4 Sup. Ct. Rep. 495.

Appeal dismissed.

PRICE, Receiver, v. COLEMAN and others.

(Circuit Court, D. Massachusetts. January 6, 1885.)

NATIONAL BANKS—REV. ST. § 5242—INSOLVENCY—TRANSFER OF PROPERTY TO INDEMNIFY SURETIES.

The Pacific National Bank, of Boston, suspended November 18, 1881, but after examination resumed March 18, 1882, with the consent of the comptroller of the currency, and continued to transact business until May 22, 1882, when it again failed. Between March 24, 1882, and April 28, 1882, certain creditors, whose claims had been disputed and placed in a suspense account, attached the property of the bank, whereupon the bank gave bond with the president and