CARPENTER *v.* ELLENBROOK.

Opinion delivered October 28, 1893.

Appeal—Oral evidence—Review.

Where it appears that oral testimony was taken at the hearing in chancery, and the testimony was not brought into the record, either by bill of exceptions, or by reducing it to writing and causing it to be filed as part of the evidence, it will be presumed on appeal that there was sufficient evidence to support the decree.

Appeal from Garland Circuit Court in Chancery.

ALEXANDER M. DUFFIE, Judge.

U. M. & G. B. Rose for appellants.

The mortgage was void for duress. Citing 15 Cent. L. J. 232; 15 Neb. 57; 78 Ga. 67; 106 Mass. 291.

A. Curl for appellee.

The decree recites that the cause was heard upon the pleadings, depositions, etc., and *oral proof*. This latter was not brought into the record by bill of exceptions or otherwise. This court will not disturb the findings of a chancellor, when it is manifest that the whole testimony is not before this court. 44 Ark. 74; 54 *id.* 159; 55 *id.* 122; 41 *id.* 292. As to duress see 18 Ark. 215; 49 *id.* 70; 46 Ind. 532; 18 Cal. 265.

MANSFIELD, J. This was a suit to foreclose a mortgage. The answer alleged that the mortgage was executed under duress; but the finding of the chancellor was against the defendants, and the relief sought by the complaint was granted. They have appealed.

The decree recites that oral testimony was heard at the trial; and this was not brought into the record, either by bill of exceptions, or by reducing it to writing and causing it to be filed as a part of the evidence. All the testimony not being before us, we must, according to the practice of this court in such cases, presume that the finding made upon it is correct. And, as the appeal presents no question that can be determined without considering the sufficiency of the evidence to establish the defense relied upon, the judgment will be affirmed. *Casteel* v. *Casteel*, 38 Ark. 477; *Hershy* v. *Berman*, 45 Ark. 309; *Lemay* v. *Johnson*, 35 Ark. 230; *Hershy* v. *Rogers*, 45 Ark. 306.