

## COOK v. COLLINS.

Opinion delivered November 15, 1909.

MORTGAGES—SEVERAL NOTES—APPROPRIATION OF PROCEEDS.—Where a mortgage was executed to secure the payment of two notes due at different times and to different parties, upon a foreclosure sale the proceeds should be applied, first, to the payment of the cost of executing the trust, and the remainder should be appropriated *pro rata* in part payment of the two notes.

Appeal from Cross Chancery Court; *Edward D. Robertson*, Chancellor; reversed.

*J. C. Brookfield*, for appellant.

*Smith & Smith*, for appellees.

BATTLE, J. On the 8th day of April, 1905, J. C. Crabtree executed a deed of trust, and thereby conveyed certain personal property in trust, to W. W. Shaver to secure the payment of two promissory notes, one for the sum of \$840, dated the 8th day of April, 1905, payable to M. Collins, J. B. Hamilton and J. W. Cook, and the other for \$122, payable to the order of J. W. Cook, and due May 8, 1905; and provided, if the notes were not paid on or before the 8th day of May, 1905, the trustee should be authorized to sell the property at public sale to the highest bidder for cash, and appropriate the proceeds of the sale, first, to the cost of executing the trust, and, second, the aforesaid notes, and the balance, if any, pay to Crabtree. Shaver failing to act, J. C. Harrell became trustee by the terms of the deed, and sold the property according to the terms of the deed for \$787.50, which is insufficient to pay both notes. Parties differ as to how it shall be divided, and appeal to the court to decide. The chancery court decreed that it shall be appropriated

to the payment of the note for \$840, and any remaining thereafter to the other note; and Cook appealed.

The proceeds of the sale should be applied, first, to the payment of the cost of executing the trust, and the remainder should be appropriated *pro rata* in part payment of the two notes. *Penzel v. Brookmire*, 51 Ark. 105.

The decree of the chancery court is reversed, and the cause is remanded with directions to the court to render a decree in accordance with this opinion.

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