

FREE v. HARRIS.

Opinion delivered February 16, 1931.

1. MORTGAGES—DIVISION OF RENTS.—Where a mortgage of land which did not include the rents was foreclosed on July 31, the rents for that year were properly divided by giving the mortgagor seven-twelfths and the purchaser five-twelfths.
2. MORTGAGES—FORECLOSURE—INTEREST ON BID.—On confirmation of a foreclosure sale, the purchaser was liable for interest on the purchase price from the date of the foreclosure sale until the purchase money was paid, though he had made a previous offer of payment.

Appeal from Lincoln Chancery Court; *H. R. Lucas*, Chancellor; reversed in part.

E. W. Brockman, for appellant.

R. W. Wilson, for appellee.

HUMPHREYS, J. This is the second appeal in this case. Reference is made to the case of *Free v. Harris*, 181 Ark. 645, 27 S. W. (2d) 510, for a general statement of the facts. Additional facts necessary to a determination of the questions arising on this appeal will be set out below.

On the first appeal, the decree of the trial court setting aside the sale of the land and allowing appellee to redeem was reversed and the cause was remanded with

directions to confirm the sale on the payment of the amount of the bid with interest. After the remand of the case issue was joined between the parties as to the ownership of the 1929 rents and the time appellant should be charged with interest on his bid of \$7,000 at the foreclosure sale.

Appellant claimed all the crop rents for the year 1929, and appellee seven-twelfths thereof. Appellee claimed interest on the bid from July 31, 1929, the date of the foreclosure sale, to June 18, 1930, the date of the payment of the purchase money and the approval of the commissioner's deed conveying said land to appellant.

Their respective claims were submitted to the court upon the pleadings filed by each and the testimony adduced in support thereof, which resulted in a decree in favor of appellee for seven-twelfths of the 1929 rents, amounting to \$638.04, and the balance thereof, or five-twelfths, to appellant, amounting to \$455.75, from which decree appellant has duly prosecuted an appeal to this court; also a decree allowing appellee interest on appellant's bid of \$7,000 up to October 21, 1929, and denying her claim for interest up to June 18, 1930, from which decree she has duly prosecuted an appeal to this court.

After appellant bid the land in at the foreclosure sale, he filed an intervening petition on September 5, 1929, claiming the crop rents for 1929 as purchaser at said sale. At that time the court had not confirmed the sale. The court entered a preliminary order impounding the rents, and the total amount of rents due for the year 1929 was later determined to be \$1,093.79.

On October 21, 1929, all interested parties appeared in court, and appellant offered to pay the purchase money upon a confirmation of his purchase at the foreclosure sale. Upon a hearing the court set the sale aside, and appellant prosecuted an appeal to this court which resulted in a reversal and remand of the cause with directions to confirm the sale upon the payment of the bid with interest as stated above. Appellee remained in possession of the premises until the confirmation of the sale

upon remand of the cause, but appellant had use of the place for farming purposes during the year 1930.

The court correctly prorated the crop rents on the land for the year 1929 under the rule announced in the case of *Deming Investment Co. v. Bank of Judsonia*, 170 Ark. 65, 278 S. W. 634, and reaffirmed in the case of *Purvis v. Elder*, 175 Ark. 781, 1 S. W. (2d) 36.

Appellant executed his note with interest at the rate of ten per cent. for the amount of his bid at the foreclosure sale. It is true that on the 21st day of October, 1929, he offered to pay the purchase money into court upon the confirmation of the sale, but the court set the sale aside, and he did not deposit the money in court but retained same. He has had the use of the purchase money himself, and, since he accepted rent from and after the date of his purchase for the year 1929 and has had the cropping use of the place during the year 1930, he necessarily must pay the interest on his bid to the date of the confirmation of his sale and the approval of the commissioner's deed which was on June 18, 1930. It would not be equitable for him to collect the rents and refuse to pay interest on his bid.

The decree is therefore affirmed relative to the division of the rents, and is reversed relative to the allowance of interest and remanded with directions to render a decree in favor of appellee for interest on the bid up to June 18, 1930.
