

EDWARDS *v.* BOND.

Opinion delivered November 18, 1912.

MORTGAGES—ABSOLUTE DEED—BURDEN OF PROOF.—Where a deed is absolute in form, the burden is upon him who claims that it is a mortgage to prove same by evidence that is clear, unequivocal and convincing.

Appeal from St. Francis Chancery Court; *Edward D. Robertson*, Chancellor; affirmed.

*J. F. Wills* and *C. L. O'Daniel*, for appellant.

*W. Gorman*, *S. H. Mann* and *J. W. Morrow*, for appellee.

An instrument, absolute on its face, is presumed by law to be what it purports to be, and to overcome this presumption the evidence must be clear, unequivocal and convincing. 88 Ark. 299; 75 Ark. 551.

KIRBY, J. This is a suit in chancery to declare a deed, absolute on its face, a mortgage, for an accounting and redemption of the land conveyed, and from a decree in favor of appellee, refusing to grant the relief prayed, this appeal comes.

The testimony is in sharp conflict, and it may be that there is a bare preponderance of it in favor of appellant.

The deed being absolute in form, the burden was upon appellant to show that it was a mortgage, the law presuming that an instrument is what it appears on its face to be, an absolute conveyance, and, in the absence of fraud or imposition, the proof to overcome this presumption and establish its character as a mortgage must be clear, unequivocal and convincing. *Hays v. Emerson*, 75 Ark. 551; *Rushton v. McIlwene*, 88 Ark. 299.

We are unable to say that the chancellor erred in holding the evidence insufficient to overcome the presumption arising from the deed of absolute conveyance, that it is what it purports to be, and the decree is affirmed.

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