

It is hereby agreed by and between C. W. Ross Solicitor for Complainant and W. P. Maulsby Jr Solicitor for Nicholas Fogle that this cause shall stand for hearing on Saturday February 8th 1873 at ten o'clock A.M.

Charles W Ross
Solicitor for Complainant
Wm. P. Maulsby Jr.
Solicitor for N. Fogle

The Clerk will set the case for hearing as per Agreement -
Filed February 5th 1873.

John W. French

Circuit
Opinion

George H. B. Shuman
vs.
William Stitely & wife
Nicholas Fogle & others

No. 3718 Equity
In the Circuit Court for Fresh as a Court of Equity.
December Term 1872

This is a bill to foreclose a Mortgage from William Stitely and wife to the Complainant and is submitted as the Bill, answers, exhibits, testimony and agreed statement of facts and without argument. It appears from the proceedings that John Ritchie and Nicholas Fogle Trustees in Equity cause No. 3355 in this Court sold the Real Property mentioned in this case to the said William Stitely and that said sale was finally ratified and confirmed by the Court; that said William Stitely borrowed from the Complainant the sum of Twelve hundred dollars (\$1200.) to make the first or cash payment on said purchase and executed to the Complainant a Mortgage on said Land to secure the payment thereof on the 14th December A.D. 1867. that on the 3rd February A.D. 1870 the said Trustees executed a deed to said William Stitely for the Land so purchased that said William Stitely and wife on the 29th March A.D. 1870 executed to said Nicholas Fogle a Mortgage on the same Land to secure the payment of Seven hundred and fifty dollars (\$750.) which he had borrowed from said Nicholas Fogle to pay the balance of the purchase money, that Nicholas Fogle when he loaned the said sum of money to William Stitely and received his Mortgage to secure the same knew of the existence of the prior Mortgage to the Complainant and knew that said Mortgage was given to secure the said twelve hundred dollars borrowed by William Stitely with which to make the first payment on the Land he and his Co-Trustee had sold him, and it also appears from the testimony that said twelve hundred dollars and the interest thereon from the 14th December A.D. 1867 are still due and unpaid, Nicholas Fogle contends that his Mortgage is entitled to payment before the Mortgage of the Complainant mainly on the ground that his Mortgage was executed and delivered to him simultaneously with the delivery by him of said deed to said William Stitely and was given to secure to him the said purchase money which he had advanced to said Trustees, William Stitely at the time of the execution of the Mortgage by him to the Complainant had such an equitable interest in this property as might be sold or mortgaged. In Smith's Manual of Equity 298 it is said "generally every description of property and every kind of interest in it which is capable of absolute sale may be the subject of a legal mortgage or its equivalent in Equity, Now Fogle at the time he loaned his money to Wm Stitely and took