

registry cannot affect subsequent purchasers and mortgagees with notice.

I do not think it possible to maintain, successfully, that a copy from the record of the mortgage to Johns would be admissible evidence, and, therefore, I am of opinion that the registry of it is not to be held as affecting Scott with constructive notice; and as there is no pretence or intimation anywhere that he had actual notice, his mortgage having been duly executed, acknowledged, and recorded, is entitled to priority of payment, should the proceeds of the sale of the premises prove insufficient to satisfy both mortgages.

The Chancellor will sign a decree for the foreclosure and sale of the mortgaged premises, first, to pay the mortgage debt of Mr. Scott, and reserving to the complainant, Mr. Johns, the right to come in upon the surplus proceeds of sale, when the difficulty in regard to the omission to make the wife of the mortgagor a party to his bill is removed by amendment or agreement, and reserving also the question of his right under his mortgage to be paid out of that portion of the mortgaged premises which belonged to the wife of the mortgagor, the Court not meaning now to decide that the mortgage, though defectively acknowledged, can, in equity, be supported as a contract against her.

JAMES L. BARTOL and CHARLES H. PITTS, for Johns.  
ALBERT CONSTABLE, for Scott.

[An appeal was taken in this case, which is still pending.]

WILLIAM ROBERTSON, Exr. of  
THOMAS ROBERTSON, Deceased,  
vs.  
ISAAC PARKS, AND OTHERS.

DECEMBER TERM, 1850.

[CHANCERY PRACTICE—CREDITOR'S BILL—EVIDENCE—SET-OFF.]

THE fact that a defendant dies, after answering, leaving minor heirs, who are then made parties to the suit, does not and cannot vary the effect of