

## SMITH v. ARDEN.

{5 Cranch, C. C. 485.}<sup>1</sup>

Circuit Court, District of Columbia. Nov. Term, 1838.

REAL PROPERTY—PARAMOUNT  
TITLE—SUBPURCHASER—NOTES—RIGHTS OF  
INDORSES.

1. A sub-purchaser, who gets in the paramount title, is bound in equity to fulfil his contract with the first purchaser, deducting what he has been obliged to pay to get in the title.
2. The first purchaser of several lots having given his several notes for each lot respectively, with the same indorser, and the lots having been resold for his default, some of the lots bringing more, and some less than the first contract price, it was *held* that the indorser was entitled to the benefit of the surplus of one to make good the deficiency of the others.

{This was an action by Clement Smith against Arden's heirs.}

Upon a motion for ratification of a sale which had been made under a decree in this cause, and for disposition of the proceeds of the sale, the facts, by the statement of the parties, appeared to be these: Certain lots in the city of Washington had been sold under a deed of trust from D. C. Mr. Arden became the purchaser, and gave a separate note for each lot, with J. C. R. as his indorser. Arden sold a lot to Hill, who sold it to Mr. Coyle. Arden's note, given for the lot, was assigned to the complainant, Clement Smith; Arden failed to pay Smith; Hill failed to pay Arden, and Coyle failed to pay Hill. The lot was resold by the trustee of D. C, and at that sale Coyle became the purchaser, with notice of the sale by Arden to Hill, and of Hill's delinquency.

On the 28th December, 1838, THE COURT (MORSELL, Circuit Judge, doubting) decided that

Coyle, standing in the place of Hill, with notice, must pay the purchase-money due from Hill to Arden, deducting what Coyle has paid, or is to pay, to get in the legal title. And as some of the lots sold for more, and some for less, than the respective notes given by Arden, therefore.

THE COURT (CRANCH, Chief Judge, not giving any opinion upon that point) decided that the indorser of Arden's notes was entitled to the benefit of the surplus of one to make good the deficiency of the others.

<sup>1</sup> [Reported by Hon. William Cranch, Chief fudge.]

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