

No. 13975

Supreme Court of Illinois

Ketchum

VS.

Watson

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 235. 10

1860

Kelchum
25

Hudson

W. H. H.

13073

STATE OF ILLINOIS, }
SUPREME COURT. }

THIRD GRAND DIVISION.
APRIL TERM, A. D. 1860.

JOEL B. KETCHUM
vs.
JOSEPH WATSON.

} *Error to Tazewell.*

Abstract of the Record.

This was a trial of an appeal from the trial of the rights of property before a Justice and Constable. Tried at the February term, 1860, of the Circuit Court of Tazewell county, before Harriott, Judge.

Page of
Record.

- 1 Appeal Bond from trial before Justice and Constable.
- 4 Supersedeas to Justice and Constable, and Sheriff's return.
- 7 Summons to Appellee, and Sheriff's return.
- 8 Proceedings at February term, 1860.
- 9 Judgment for Plaintiff. Trial by jury. Motion for new trial. Motion overruled.
- 10 Bill of exceptions, setting out all the evidence :
 1. Execution in favor of Joel B. Ketchum against George W. Outlaw, dated Nov. 2, 1859.
- 11
 2. Endorsement of levy of Constable on the horse in question and other property, on the second day of November, 1859.
 3. Notice of Joseph Watson to E. B. Hibbard, Constable, dated November 21, 1859, giving notice of claim of the horse in question.
- 12 Evidence of Michael Watson, called by Plaintiff, who said that he is son of Plaintiff; knew the horse in question; Plaintiff had owned the horse for four or five years; he sold the horse to George Outlaw on the eleventh day of August, 1859, conditionally; that Outlaw was to take the horse and take good care of him, and if he paid for it by the twenty-fifth of December, 1859, the horse was to be Outlaw's, but if he failed to pay for the same, the horse was to remain the Plaintiff's; Outlaw never paid for the horse. In the latter part of September, 1859, I told Ketchum of the condition which the horse had been sold upon; Ketchum then held the note upon which the judgment against Outlaw was obtained, upon which execution in question issued; I had made a conditional sale for my horse and took Outlaw's note, and which contract was rescinded on the tenth of October, when Outlaw made a conditional contract like the one my father and he had made.
- 12 Testimony of William Watson for Plaintiff:
- 13 Is a son of Plaintiff; knows the horse was in possession of Plaintiff four or five years before Outlaw got it.

13 Testimony of E. B. Hibbard, for Defendant :

He is the Constable who levied the execution. Before he received notice from Plaintiff that he claimed the horse in question, the Plaintiff told witness that he had sold the horse to Outlaw conditionally, and that he had received part of his pay for the same. When the levy was made the horse was in Outlaw's possession, and had been for some time.

This was all the evidence in the case.

13 The court then instructed the jury as follows :

1. The jury are instructed that the possessor of personal property is *prima facie* the owner thereof.

2. If the Plaintiff sold Outlaw a horse, conditioned that it should not be his property until paid for, and that Ketchum was cognizant of such contract, they will find for the Plaintiff, unless the property was in the possession of Outlaw, and the indebtedness accrued to Ketchum before such notice, and while Outlaw had said horses in possession; and if such be the case, you will find for the Defendant.

14 The Defendant then asked the court to give the following instructions, which were refused, and to which refusal the Defendant then and there excepted :

14 1. The court instruct the jury that, if they believe from the evidence that Joseph Watson sold the horse in question to George W. Outlaw, and delivered the possession upon condition that if Outlaw paid for the horse by a certain date that it was to be Outlaw's horse, and that if Outlaw neglected to pay for the same by the time specified it was to be Watson's; and that said conditional sale was not recorded according to law; and that Ketchum had no notice of the same, said conditional sale is fraudulent and void as to creditors and subsequent purchasers, and they will find for the Defendant.

14 2. The court instruct the jury that the possession of personal property should accompany and follow the title, or a sale will be void as to creditors, unless the terms of the sale are duly recorded.

15 3. The court instruct the jury that unless they believe from the evidence that Ketchum had notice of the sale to Outlaw before the notes were purchased of Porter & Brother by him, they will find for Defendant.

15 4. The court instruct the jury that unless a conditional sale of personal property is recorded, the same is absolutely void as to creditors, notwithstanding the creditor may have had notice in some other way of such conditional sale.

15 Verdict of jury for Plaintiff.

15 Motion for new trial for the following causes :

16 1. The verdict of the jury was contrary to the evidence and the instructions of the court.

2. The court refused proper instructions.

3. The court gave improper instructions to the jury.

16 Agreement of parties waiving process of Supreme Court, and agreeing that the cause may be tried at the April term, 1860, at Ottawa.

It appears from
outlaw's account

Shores
have been
given - then
company to
be recorded -

Shores have
been given

17 Certificate, seal, and signature of the clerk to the record.

Errors assigned—

1. The court refused proper instructions for Defendant.
2. The court erred in not granting a new trial,
3. The record and proceedings show that manifest injustice has been done the Defendant by overruling the motion for new trial.

S. D. PUTERBAUGH, for Plaintiff in Error.

[Faint, illegible handwritten notes or signatures, possibly bleed-through from the reverse side of the page.]

²⁸⁵⁻¹⁰
Supreme Court
April Term 1860

Joel B. Ketchum
Plff in Error

^v
Joseph Watson
Def't in Error

Abstract of Record.

Filed Apr. 19, 1860

A. Deland
Clerk

See note as to
instructions

N. D. BUTTERFIELD, for Plaintiff in Error.

Defendant by overruling the motion for new trial.

3. The record and proceedings show that manifest injustice has been done the

2. The court erred in not granting a new trial.

1. The court refused proper instructions for Defendant.

Verdict assigned --

IV. Certificate, seal, and signature of the clerk to the record.

STATE OF ILLINOIS, } ss.
~~TAZEWELL COUNTY~~
Supreme Court

Third Grand Division. April Term, 1860.

JOEL B. KETCHUM, }
vs. } ERROR TO TAZEWELL.
JOSEPH WATSON. }

POINTS FOR DEFENDANT IN ERROR.

The evidence in this case was, that Watson made a conditional sale of the horse to Outlaw, and that both Ketchum and the Constable had notice of the condition upon which Outlaw held the horse, before the execution was issued. It is well settled, that as between the parties, a conditional sale of this kind is valid, and that the property does not vest in vendee until the condition is performed.

2 Kent Com., 497.

1 Parson on Contracts, 448, note P., and the numerous authorities there cited.

And it is equally well settled, that when the creditor or subsequent purchaser has notice of the conditions upon which the debtor holds the property, that as to him, having notice, the condition is binding, and the sale valid. It was so expressly decided in

Barrett vs. Pritchard, 2 Pickering 512,

And every case deciding that conditional sales were not good, was as to creditors and purchasers without notice. All the authorities upon this question have been fully and ably reviewed by Justice Breese, in

Brundage vs. Camp, 21 Ill. Rep., 330,

And it would be useless for me again to go over the same question. If when a creditor has notice of the terms of sale, he can still go on and levy upon the property, the law that was made to prevent fraud, becomes an engine for its perpetration. The object of the Recording laws is to give notice, and when a party has notice, the requirements and intent of the law are complied with. This is so in regard to real estate, and equally so in regard to personal property. All the authorities, when deciding upon the invalidity of

transactions of this kind, qualify the proposition, by the words, "*Creditors and Purchasers without notice.*"

21 Ills. Rep., 73. 21 Ills. Rep., 330.

The court instructed the jury, that if the plaintiff sold Outlaw the horse, upon condition that it should not be his property until paid for, and that Ketchum had notice, they were to find for the plaintiff; but if the property was in the possession of Outlaw, and the indebtedness accrued to Ketchum before such notice, and while Outlaw had the horse in possession, they should find for defendant. This instruction, certainly, was as much in favor of Ketchum as he could have desired, as no proof was given when the debt accrued, whether while Outlaw had the horse in possession or not. The instruction was given by the court upon its own motion, and was manifestly wrong as against the plaintiff Watson. It is sufficient that the creditor has notice before the execution becomes a lien, unless he shows that the credit was given while the property was in possession of the debtor, a fact within his knowledge, and which he is required to prove.

It was clearly proven that Ketchum had been notified of the condition upon which Outlaw held the horse, before the execution became a lien.

The 1st instruction asked by Ketchum, was an abstract statement² of the law calculated to mislead the jury, and it had been given in substance by the 2nd instruction given by the court, there being no dispute about the notice. And even though the instruction might have been proper, yet if the jury have come to a correct conclusion, from all the evidence, the court will not for that cause reverse the judgment.

Coughlin vs. The People, 18 Ills. Rep., 266.
Newkirk vs. Cone, 18 Ills. Rep., 449.

The 2nd instruction asked by Ketchum was clearly wrong, not being qualified by the words, "*without notice.*"

The 3rd instruction is not the law and has no application to the case. There is no evidence when the indebtedness accrued, nor whether Outlaw had the property in his possession at the time it did accrue.

The 4th instruction is not the law, as the authorities above cited clearly show.

The instruction given by the court, presented the law, as applicable to the facts of the case quite as strongly as the defendant below could have asked. The jury having been told that the debt accrued while the property was in the possession of Outlaw, and before Ketchum had notice of the condition upon which Outlaw held the property that they should find for the defendant, and the defendant failing to prove (a fact most appropriately within his own knowledge) when the debt accrued, and Watson having clearly proved that Ketchum had notice before the execution become a lien, it seems clearly that the jury have come to just such a conclusion as is authorized both by the law and the evidence, and their finding should not be disturbed.

ROBERTS & IRELAND,
For Defendant in Error.

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1860.

JOEL B. KETCHUM vs. JOSEPH WATSON.

Brief, Points, &c., of Plaintiff in Error.

1. Possession of personal property should accompany the title; Thompson vs. Yeck, 21 Ill., 73; Thornton vs. Davenport, 1 Scam., 297; 14 Ill., 391; Twine's case in 1st Smith's Leading Cases, and cases there cited, support this doctrine.

2. Conditional sales of personal property, not recorded, are fraudulent and void as to creditors; 1 vol. Purple's Statutes, 586; last clause sec. 2 of Statutes of Fraud; sec. 7 Chattel Mortgage Act, id. 137; 14 Ill., 389.

3. Ketchum had no notice of the sale from Watson being conditional until after he had given Outlaw credit.

4. The whole transaction, on the part of Outlaw and Watson, was unusual and fraudulent, and calculated to deceive innocent parties, and should not be sustained.

S. D. PUTERBAUGH, *for Plaintiff in Error.*

Joel B. ^{235 = 10}Kitchin

¹²
Joseph Watson

Brief Points ¹²
for Plff in Error.

Tried Apr. 17, 1860

A. Leland

Clerk

STATE OF ILLINOIS, }
SUPREME COURT. }

THIRD GRAND DIVISION.
APRIL TERM, A. D. 1860.

JOEL B. KETCHUM
vs.
JOSEPH WATSON.

} *Error to Tazewell.*

Abstract of the Record.

This was a trial of an appeal from the trial of the rights of property before a Justice and Constable. Tried at the February term, 1860, of the Circuit Court of Tazewell county, before Harriott, Judge.

Page of
Record.

- 1 Appeal Bond from trial before Justice and Constable.
- 4 Supersedeas to Justice and Constable, and Sheriff's return.
- 7 Summons to Appellee, and Sheriff's return.
- 8 Proceedings at February term, 1860.
- 9 Judgment for Plaintiff. Trial by jury. Motion for new trial. Motion overruled.
- 10 Bill of exceptions, setting out all the evidence :
 1. Execution in favor of Joel B. Ketchum against George W. Outlaw, dated Nov. 2, 1859.
 2. Endorsement of levy of Constable on the horse in question and other property, on the second day of November, 1859.
 3. Notice of Joseph Watson to E. B. Hibbard, Constable, dated November 21, 1859, giving notice of claim of the horse in question.
- 12 Evidence of Michael Watson, called by Plaintiff, who said that he is son of Plaintiff; knew the horse in question; Plaintiff had owned the horse for four or five years; he sold the horse to George Outlaw on the eleventh day of August, 1859, conditionally; that Outlaw was to take the horse and take good care of him, and if he paid for it by the twenty-fifth of December, 1859, the horse was to be Outlaw's, but if he failed to pay for the same, the horse was to remain the Plaintiff's; Outlaw never paid for the horse. In the latter part of September, 1859, I told Ketchum of the condition which the horse had been sold upon; Ketchum then held the note upon which the judgment against Outlaw was obtained, upon which execution in question issued; I had made a conditional sale for my horse and took Outlaw's note, and which contract was rescinded on the tenth of October, when Outlaw made a conditional contract like the one my father and he had made.
- 12 Testimony of William Watson for Plaintiff:
- 13 Is a son of Plaintiff; knows the horse was in possession of Plaintiff four or five years before Outlaw got it.

13 Testimony of E. B. Hibbard, for Defendant :

He is the Constable who levied the execution. Before he received notice from Plaintiff that he claimed the horse in question, the Plaintiff told witness that he had sold the horse to Outlaw conditionally, and that he had received part of his pay for the same. When the levy was made the horse was in Outlaw's possession, and had been for some time.

This was all the evidence in the case.

13 The court then instructed the jury as follows :

1. The jury are instructed that the possessor of personal property is *prima facie* the owner thereof.

2. If the Plaintiff sold Outlaw a horse, conditioned that it should not be his property until paid for, and that Ketchum was cognizant of such contract, they will find for the Plaintiff, unless the property was in the possession of Outlaw, and the indebtedness accrued to Ketchum before such notice, and while Outlaw had said horses in possession; and if such be the case, you will find for the Defendant.

14 The Defendant then asked the court to give the following instructions, which were refused, and to which refusal the Defendant then and there excepted :

14 1. The court instruct the jury that, if they believe from the evidence that Joseph Watson sold the horse in question to George W. Outlaw, and delivered the possession upon condition that if Outlaw paid for the horse by a certain date that it was to be Outlaw's horse, and that if Outlaw neglected to pay for the same by the time specified it was to be Watson's; and that said conditional sale was not recorded according to law; and that Ketchum had no notice of the same, said conditional sale is fraudulent and void as to creditors and subsequent purchasers, and they will find for the Defendant.

14 2. The court instruct the jury that the possession of personal property should accompany and follow the title, or a sale will be void as to creditors, unless the terms of the sale are duly recorded.

15 3. The court instruct the jury that unless they believe from the evidence that Ketchum had notice of the sale to Outlaw before the notes were purchased of Porter & Brother by him, they will find for Defendant.

15 4. The court instruct the jury that unless a conditional sale of personal property is recorded, the same is absolutely void as to creditors, notwithstanding the creditor may have had notice in some other way of such conditional sale.

15 Verdict of jury for Plaintiff.

15 Motion for new trial for the following causes :

16 1. The verdict of the jury was contrary to the evidence and the instructions of the court,

2. The court refused proper instructions.

3. The court gave improper instructions to the jury.

16 Agreement of parties waiving process of Supreme Court, and agreeing that the cause may be tried at the April term, 1860, at Ottawa.

17. Certificate, seal, and signature of the clerk to the record.

Errors assigned—

1. The court refused proper instructions for Defendant.
2. The court erred in not granting a new trial.
3. The record and proceedings show that manifest injustice has been done the Defendant by overruling the motion for new trial.

S. D. PUTERBAUGH, for Plaintiff in Error.

[Faint, illegible handwritten notes and signatures at the bottom of the page, possibly a docket or ledger.]

Supreme ²⁸⁵ Court
April Term 1860

Joel B. Ketchum
Plff in Error

^v
Joseph Watson
Def't in Error.

Abstract of
Record.

Filed Apr 19, 1860

L. Leonard
Clerk

2 D. BURBACH, Pl. Plaintiff in Error

Defendant by overruling the motion for new trial.

3 The record and proceedings show that manifest injustice has been done the

4 The court erred in not granting a new trial.

5 The court refused proper instructions for Defendant.

Errors assigned—

17 Certificate, seal, and signature of the clerk to the record.

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1860.

JOEL B. KETCHUM vs. JOSEPH WATSON.

Brief, Points, &c., of Plaintiff in Error.

1. Possession of personal property should accompany the title; Thompson vs. Yeck, 21 Ill., 73; Thornton vs. Davenport, 1 Scam., 297; 14 Ill., 391; Twine's case in 1st Smith's Leading Cases, and cases there cited, support this doctrine.

2. Conditional sales of personal property, not recorded, are fraudulent and void as to creditors; 1 vol. Purple's Statutes, 586; last clause sec. 2 of Statutes of Fraud; sec. 7 Chattel Mortgage Act, id. 137; 14 Ill., 389.

3. Ketchum had no notice of the sale from Watson being conditional until after he had given Outlaw credit.

4. The whole transaction, on the part of Outlaw and Watson, was unusual and fraudulent, and calculated to deceive innocent parties, and should not be sustained.

S. D. PUTERBAUGH, *for Plaintiff in Error.*

Joel B. Ketchum
v 233.
Joseph Watson

Brief Points &c
for Plff in Error

Filed Apr 19, 1865
A. L. Leland
Clerk

STATE OF ILLINOIS, }
~~TAZEWELL COUNTY.~~ } ss.
Supreme Court.

Third Grand Division. April Term, 1860.

JOEL B. KETCHUM, }
vs. } ERROR TO TAZEWELL.
JOSEPH WATSON. }

POINTS FOR DEFENDANT IN ERROR.

The evidence in this case was, that Watson made a conditional sale of the horse to Outlaw, and that both Ketchum and the Constable had notice of the condition upon which Outlaw held the horse, before the execution was issued. It is well settled, that as between the parties, a conditional sale of this kind is valid, and that the property does not vest in vendee until the condition is performed.

2 Kent Com., 497.

1 Parson on Contracts, 448, note P., and the numerous authorities there cited.

And it is equally well settled, that when the creditor or subsequent purchaser has notice of the conditions upon which the debtor holds the property, that as to him, having notice, the condition is binding, and the sale valid. It was so expressly decided in

Barrett vs. Pritchard, 2 Pickering 512,

And every case deciding that conditional sales were not good, was as to creditors and purchasers without notice. All the authorities upon this question have been fully and ably reviewed by Justice Breese, in

Brundage vs. Camp, 21 Ill. Rep., 330,

And it would be useless for me again to go over the same question. If when a creditor has notice of the terms of sale, he can still go on and levy upon the property, the law that was made to prevent fraud, becomes an engine for its perpetration. The object of the Recording laws is to give notice, and when a party has notice, the requirements and intent of the law are complied with. This is so in regard to real estate, and equally so in regard to personal property. All the authorities, when deciding upon the invalidity of

transactions of this kind, qualify the proposition, by the words, "*Creditors and Purchasers without notice.*"

21 Ills. Rep., 73. 21 Ills. Rep., 330.

The court instructed the jury, that if the plaintiff sold Outlaw the horse, upon condition that it should not be his property until paid for, and that Ketchum had notice, they were to find for the plaintiff; but if the property was in the possession of Outlaw, and the indebtedness accrued to Ketchum before such notice, and while Outlaw had the horse in possession, they should find for defendant. This instruction, certainly, was as much in favor of Ketchum as he could have desired, as no proof was given when the debt accrued, whether while Outlaw had the horse in possession or not. The instruction was given by the court upon its own motion, and was manifestly wrong as against the plaintiff Watson. It is sufficient that the creditor has notice before the execution becomes a lien, unless he shows that the credit was given while the property was in possession of the debtor, a fact within his knowledge, and which he is required to prove.

It was clearly proven that Ketchum had been notified of the condition upon which Outlaw held the horse, before the execution became a lien.

The 1st instruction asked by Ketchum, was an abstract statement of the law calculated to mislead the jury, and it had been given in substance by the 2nd instruction given by the court, there being no dispute about the notice. And even though the instruction might have been proper, yet if the jury have come to a correct conclusion, from all the evidence, the court will not for that cause reverse the judgment.

Coughlin vs. The People, 18 Ills. Rep., 266.
Newkirk vs. Cone, 18 Ills. Rep., 449.

The 2nd instruction asked by Ketchum was clearly wrong, not being qualified by the words, "*without notice.*"

The 3rd instruction is not the law and has no application to the case. There is no evidence when the indebtedness accrued, nor whether Outlaw had the property in his possession at the time it did accrue.

The 4th instruction is not the law, as the authorities above cited clearly show.

The instruction given by the court, presented the law, as applicable to the facts of the case quite as strongly as the defendant below could have asked. The jury having been told that the debt accrued while the property was in the possession of Outlaw, and before Ketchum had notice of the condition upon which Outlaw held the property that they should find for the defendant, and the defendant failing to prove (a fact most appropriately within his own knowledge) when the debt accrued, and Watson having clearly proved that Ketchum had notice before the execution become a lien, it seems clearly that the jury have come to just such a conclusion as is authorized both by the law and the evidence, and their finding should not be disturbed.

ROBERTS & IRELAND,

For Defendant in Error.

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1860.

JOEL B. KETCHUM vs. JOSEPH WATSON.

Brief, Points, &c., of Plaintiff in Error.

1. Possession of personal property should accompany the title; Thompson vs. Yeck, 21 Ill., 73; Thornton vs. Davenport, 1 Scam., 297; 14 Ill., 391; Twine's case in 1st Smith's Leading Cases, and cases there cited, support this doctrine.

2. Conditional sales of personal property, not recorded, are fraudulent and void as to creditors; 1 vol. Purple's Statutes, 586; last clause sec. 2 of Statutes of Fraud; sec. 7 Chattel Mortgage Act, id. 137; 14 Ill., 389.

3. Ketchum had no notice of the sale from Watson being conditional until after he had given Outlaw credit.

4. The whole transaction, on the part of Outlaw and Watson, was unusual and fraudulent, and calculated to deceive innocent parties, and should not be sustained.

S. D. PUTERBAUGH, *for Plaintiff in Error.*

205-
Joel B. Ketchum

Joseph Watson

Brief Points re
for Ref in Error.

Filed Apr 19, 1860

Edw. L. Leland

Clerk

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1860.

JOEL B. KETCHUM vs. JOSEPH WATSON.

Brief, Points, &c., of Plaintiff in Error.

1. Possession of personal property should accompany the title ; Thompson vs. Yeck, 21 Ill., 73 ; Thornton vs. Davenport, 1 Scam., 297 ; 14 Ill., 391 ; Twine's case in 1st Smith's Leading Cases, and cases there cited, support this doctrine.

2. Conditional sales of personal property, not recorded, are fraudulent and void as to creditors ; 1 vol. Purple's Statutes, 586 ; last clause sec. 2 of Statutes of Fraud ; sec. 7 Chattel Mortgage Act, id. 137 ; 14 Ill., 389.

3. Ketchum had no notice of the sale from Watson being conditional until after he had given Outlaw credit.

4. The whole transaction, on the part of Outlaw and Watson, was unusual and fraudulent, and calculated to deceive innocent parties, and should not be sustained.

S. D. PUTERBAUGH, *for Plaintiff in Error.*

285.
Joel B. Ketchum

²
Joseph Watson

Brief Points or
for Plff in Error.

Filed April 19, 1860

L. Leland
Clerk

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1860.

JOEL B. KETCHUM vs. JOSEPH WATSON.

Brief, Points, &c., of Plaintiff in Error.

1. Possession of personal property should accompany the title; Thompson vs. Yeck, 21 Ill., 73; Thornton vs. Davenport, 1 Scam., 297; 14 Ill., 391; Twine's case in 1st Smith's Leading Cases, and cases there cited, support this doctrine.

2. Conditional sales of personal property, not recorded, are fraudulent and void as to creditors; 1 vol. Purple's Statutes, 586; last clause sec. 2 of Statutes of Fraud; sec. 7 Chattel Mortgage Act, id. 137; 14 Ill., 389.

3. Ketchum had no notice of the sale from Watson being conditional until after he had given Outlaw credit.

4. The whole transaction, on the part of Outlaw and Watson, was unusual and fraudulent, and calculated to deceive innocent parties, and should not be sustained.

S. D. PUTERBAUGH, *for Plaintiff in Error.*

^{235.}
~~Joseph Watson~~
Joel B. Kitchin

^v
Joseph Watson

Bruf Points re
for Ref in Error.

Filed Apr 19, 1860

L. Leland
Clerk

STATE OF ILLINOIS, } THIRD GRAND DIVISION.
SUPREME COURT. } APRIL TERM, A. D. 1860.

JOEL B. KETCHUM vs. JOSEPH WATSON.

Brief, Points, &c., of Plaintiff in Error.

1. Possession of personal property should accompany the title; Thompson vs. Yeck, 21 Ill., 73; Thornton vs. Davenport, 1 Scam., 297; 14 Ill., 391; Twine's case in 1st Smith's Leading Cases, and cases there cited, support this doctrine.

2. Conditional sales of personal property, not recorded, are fraudulent and void as to creditors; 1 vol. Purple's Statutes, 586; last clause sec. 2 of Statutes of Fraud; sec. 7 Chattel Mortgage Act, id. 137; 14 Ill., 389.

3. Ketchum had no notice of the sale from Watson being conditional until after he had given Outlaw credit.

4. The whole transaction, on the part of Outlaw and Watson, was unusual and fraudulent, and calculated to deceive innocent parties, and should not be sustained.

S. D. PUTERBAUGH, *for Plaintiff in Error.*

²⁸⁵⁻
Joel B. Kitchum

✓
Joseph Watson

Brief Points &c
for Plff in Error

Filed Apr 19, 1860
L. Leonard
Clerk

STATE OF ILLINOIS, }
SUPREME COURT. }

THIRD GRAND DIVISION.
APRIL TERM, A. D. 1860.

JOEL B. KETCHUM
vs.
JOSEPH WATSON.

Error to Tazewell.

Abstract of the Record.

This was a trial of an appeal from the trial of the rights of property before a Justice and Constable. Tried at the February term, 1860, of the Circuit Court of Tazewell county, before Harriott, Judge.

Page of
Record.

- 1 Appeal Bond from trial before Justice and Constable.
- 4 Supersedeas to Justice and Constable, and Sheriff's return.
- 7 Summons to Appellee, and Sheriff's return.
- 8 Proceedings at February term, 1860.
- 9 Judgment for Plaintiff. Trial by jury. Motion for new trial. Motion overruled.
- 10 Bill of exceptions, setting out all the evidence :
 1. Execution in favor of Joel B. Ketchum against George W. Outlaw, dated Nov. 2, 1859.
 2. Endorsement of levy of Constable on the horse in question and other property, on the second day of November, 1859.
 3. Notice of Joseph Watson to E. B. Hibbard, Constable, dated November 21, 1859, giving notice of claim of the horse in question.
- 12 Evidence of Michael Watson, called by Plaintiff, who said that he is son of Plaintiff; knew the horse in question; Plaintiff had owned the horse for four or five years; he sold the horse to George Outlaw on the eleventh day of August, 1859, conditionally; that Outlaw was to take the horse and take good care of him, and if he paid for it by the twenty-fifth of December, 1859, the horse was to be Outlaw's, but if he failed to pay for the same, the horse was to remain the Plaintiff's; Outlaw never paid for the horse. In the latter part of September, 1859, I told Ketchum of the condition which the horse had been sold upon; Ketchum then held the note upon which the judgment against Outlaw was obtained, upon which execution in question issued; I had made a conditional sale for my horse and took Outlaw's note, and which contract was rescinded on the tenth of October, when Outlaw made a conditional contract like the one my father and he had made.
- 12 Testimony of William Watson for Plaintiff:
- 13 Is a son of Plaintiff; knows the horse was in possession of Plaintiff four or five years before Outlaw got it.

13 Testimony of E. B. Hibbard, for Defendant :

He is the Constable who levied the execution. Before he received notice from Plaintiff that he claimed the horse in question, the Plaintiff told witness that he had sold the horse to Outlaw conditionally, and that he had received part of his pay for the same. When the levy was made the horse was in Outlaw's possession, and had been for some time.

This was all the evidence in the case.

13 The court then instructed the jury as follows :

1. The jury are instructed that the possessor of personal property is *prima facie* the owner thereof.

2. If the Plaintiff sold Outlaw a horse, conditioned that it should not be his property until paid for, and that Ketchum was cognizant of such contract, they will find for the Plaintiff, unless the property was in the possession of Outlaw, and the indebtedness accrued to Ketchum before such notice, and while Outlaw had said horses in possession; and if such be the case, you will find for the Defendant.

14 The Defendant then asked the court to give the following instructions, which were refused, and to which refusal the Defendant then and there excepted :

14 1. The court instruct the jury that, if they believe from the evidence that Joseph Watson sold the horse in question to George W. Outlaw, and delivered the possession upon condition that if Outlaw paid for the horse by a certain date that it was to be Outlaw's horse, and that if Outlaw neglected to pay for the same by the time specified it was to be Watson's; and that said conditional sale was not recorded according to law; and that Ketchum had no notice of the same, said conditional sale is fraudulent and void as to creditors and subsequent purchasers, and they will find for the Defendant.

14 2. The court instruct the jury that the possession of personal property should accompany and follow the title, or a sale will be void as to creditors, unless the terms of the sale are duly recorded.

15 3. The court instruct the jury that unless they believe from the evidence that Ketchum had notice of the sale to Outlaw before the notes were purchased of Porter & Brother by him, they will find for Defendant.

15 4. The court instruct the jury that unless a conditional sale of personal property is recorded, the same is absolutely void as to creditors, notwithstanding the creditor may have had notice in some other way of such conditional sale.

15 Verdict of jury for Plaintiff.

15 Motion for new trial for the following causes :

16 1. The verdict of the jury was contrary to the evidence and the instructions of the court.

2. The court refused proper instructions.

3. The court gave improper instructions to the jury.

16 Agreement of parties waiving process of Supreme Court, and agreeing that the cause may be tried at the April term, 1860, at Ottawa.

17 Certificate, seal, and signature of the clerk to the record.

Errors assigned—

1. The court refused proper instructions for Defendant.
2. The court erred in not granting a new trial.
3. The record and proceedings show that manifest injustice has been done the Defendant by overruling the motion for new trial.

S. D. PUTERBAUGH, for Plaintiff in Error.

Defence Counsel
Plaintiff's Counsel
Witnesses
Exhibits
Declarations
Verdict
Findings
Costs
Settlement
Final Order

Witnesses
Exhibits
Declarations
Verdict
Findings
Costs
Settlement
Final Order

Supreme Court
April Term 1860

Joel B. Ketchum
Plff in Error

v ²³⁵⁻
Joseph Watson
Def in Error

Abstract of Record.

Filed Apr 19, 1860

L. Deland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT. }

THIRD GRAND DIVISION:
APRIL TERM, A. D. 1860.

JOEL B. KETCHUM
vs.
JOSEPH WATSON.

} *Error to Tazewell.*

Abstract of the Record.

This was a trial of an appeal from the trial of the rights of property before a Justice and Constable. Tried at the February term, 1860, of the Circuit Court of Tazewell county, before Harriott, Judge.

Page of
Record.

- 1 Appeal Bond from trial before Justice and Constable.
- 4 Supersedeas to Justice and Constable, and Sheriff's return.
- 7 Summons to Appellee, and Sheriff's return.
- 8 Proceedings at February term, 1860.
- 9 Judgment for Plaintiff. Trial by jury. Motion for new trial. Motion overruled.
- 10 Bill of exceptions, setting out all the evidence :
 1. Execution in favor of Joel B. Ketchum against George W. Outlaw, dated Nov. 2, 1859.
 2. Endorsement of levy of Constable on the horse in question and other property, on the second day of November, 1859.
 3. Notice of Joseph Watson to E. B. Hibbard, Constable, dated November 21, 1859, giving notice of claim of the horse in question.
- 12 Evidence of Michael Watson, called by Plaintiff, who said that he is son of Plaintiff; knew the horse in question; Plaintiff had owned the horse for four or five years; he sold the horse to George Outlaw on the eleventh day of August, 1859, conditionally; that Outlaw was to take the horse and take good care of him, and if he paid for it by the twenty-fifth of December, 1859, the horse was to be Outlaw's, but if he failed to pay for the same, the horse was to remain the Plaintiff's; Outlaw never paid for the horse. In the latter part of September, 1859, I told Ketchum of the condition which the horse had been sold upon; Ketchum then held the note upon which the judgment against Outlaw was obtained, upon which execution in question issued; I had made a conditional sale for my horse and took Outlaw's note, and which contract was rescinded on the tenth of October, when Outlaw made a conditional contract like the one my father and he had made.
- 12 Testimony of William Watson for Plaintiff:
- 13 Is a son of Plaintiff; knows the horse was in possession of Plaintiff four or five years before Outlaw got it.

13 Testimony of E. B. Hibbard, for Defendant :

He is the Constable who levied the execution. Before he received notice from Plaintiff that he claimed the horse in question, the Plaintiff told witness that he had sold the horse to Outlaw conditionally, and that he had received part of his pay for the same. When the levy was made the horse was in Outlaw's possession, and had been for some time.

This was all the evidence in the case.

13 The court then instructed the jury as follows :

1. The jury are instructed that the possessor of personal property is *prima facie* the owner thereof.

2. If the Plaintiff sold Outlaw a horse, conditioned that it should not be his property until paid for, and that Ketchum was cognizant of such contract, they will find for the Plaintiff, unless the property was in the possession of Outlaw, and the indebtedness accrued to Ketchum before such notice, and while Outlaw had said horses in possession; and if such be the case, you will find for the Defendant.

14 The Defendant then asked the court to give the following instructions, which were refused, and to which refusal the Defendant then and there excepted :

14 1. The court instruct the jury that, if they believe from the evidence that Joseph Watson sold the horse in question to George W. Outlaw, and delivered the possession upon condition that if Outlaw paid for the horse by a certain date that it was to be Outlaw's horse, and that if Outlaw neglected to pay for the same by the time specified it was to be Watson's; and that said conditional sale was not recorded according to law; and that Ketchum had no notice of the same, said conditional sale is fraudulent and void as to creditors and subsequent purchasers, and they will find for the Defendant.

14 2. The court instruct the jury that the possession of personal property should accompany and follow the title, or a sale will be void as to creditors, unless the terms of the sale are duly recorded.

15 3. The court instruct the jury that unless they believe from the evidence that Ketchum had notice of the sale to Outlaw before the notes were purchased of Porter & Brother by him, they will find for Defendant.

15 4. The court instruct the jury that unless a conditional sale of personal property is recorded, the same is absolutely void as to creditors, notwithstanding the creditor may have had notice in some other way of such conditional sale.

15 Verdict of jury for Plaintiff.

15 Motion for new trial for the following causes :

16 1. The verdict of the jury was contrary to the evidence and the instructions of the court.

2. The court refused proper instructions.

3. The court gave improper instructions to the jury.

16 Agreement of parties waiving process of Supreme Court, and agreeing that the cause may be tried at the April term, 1860, at Ottawa.

17 Certificate, seal, and signature of the clerk to the record.

Errors assigned—

1. The court refused proper instructions for Defendant.
2. The court erred in not granting a new trial.
3. The record and proceedings show that manifest injustice has been done the Defendant by overruling the motion for new trial.

S. D. PUTERBAUGH, for Plaintiff in Error.

Handwritten notes in cursive script, likely bleed-through from the reverse side of the page. The text is partially illegible but appears to contain names and dates.

Supreme²⁸⁵ Court
April Term 1860

Joel B. Ketchum
Plff in Error

vs
Joseph Watson
Def't in Error.

Abstract of Record.

Filed Apr. 19, 1860

A. Nelson
Clerk

S. D. PUTERbaugh, for Plaintiff in Error

Defendant by overruling the motion for new trial.

2. The record and proceedings show that manifest injustice has been done, the

3. The court erred in not granting a new trial.

4. The court refused proper instructions for Defendant.

5. Error assigned —

6. Certificate of seal, and signature of the clerk to the record.

STATE OF ILLINOIS, } ss.
~~TAZEWELL COUNTY.~~

Supreme Court.

Third Grand Division. April Term, 1860.

JOEL B. KETCHUM, }
vs. } ERROR TO TAZEWELL.
JOSEPH WATSON. }

POINTS FOR DEFENDANT IN ERROR.

The evidence in this case was, that Watson made a conditional sale of the horse to Outlaw, and that both Ketchum and the Constable had notice of the condition upon which Outlaw held the horse, before the execution was issued. It is well settled, that as between the parties, a conditional sale of this kind is valid, and that the property does not vest in vendee until the condition is performed.

2 Kent Com., 497.

1 Parson on Contracts, 448, note P., and the numerous authorities there cited.

And it is equally well settled, that when the creditor or subsequent purchaser has notice of the conditions upon which the debtor holds the property, that as to him, having notice, the condition is binding, and the sale valid. It was so expressly decided in

Barrett vs. Pritchard, 2 Pickering 512,

And every case deciding that conditional sales were not good, was as to creditors and purchasers without notice. All the authorities upon this question have been fully and ably reviewed by Justice Breese, in

Brundage vs. Camp, 21 Ill. Rep., 330,

And it would be useless for me again to go over the same question. If when a creditor has notice of the terms of sale, he can still go on and levy upon the property, the law that was made to prevent fraud, becomes an engine for its perpetration. The object of the Recording laws is to give notice, and when a party has notice, the requirements and intent of the law are complied with. This is so in regard to real estate, and equally so in regard to personal property. All the authorities, when deciding upon the invalidity of

transactions of this kind, qualify the proposition, by the words, "*Creditors and Purchasers without notice.*"

21 Ills. Rep., 73. 21 Ills. Rep., 330.

The court instructed the jury, that if the plaintiff sold Outlaw the horse, upon condition that it should not be his property until paid for, and that Ketchum had notice, they were to find for the plaintiff; but if the property was in the possession of Outlaw, and the indebtedness accrued to Ketchum before such notice, and while Outlaw had the horse in possession, they should find for defendant. This instruction, certainly, was as much in favor of Ketchum as he could have desired, as no proof was given when the debt accrued, whether while Outlaw had the horse in possession or not. The instruction was given by the court upon its own motion, and was manifestly wrong as against the plaintiff Watson. It is sufficient that the creditor has notice before the execution becomes a lien, unless he shows that the credit was given while the property was in possession of the debtor, a fact within his knowledge, and which he is required to prove.

It was clearly proven that Ketchum had been notified of the condition upon which Outlaw held the horse, before the execution became a lien.

The 1st instruction asked by Ketchum, was an abstract statement of the law calculated to mislead the jury, and it had been given in substance by the 2nd instruction given by the court, there being no dispute about the notice. And even though the instruction might have been proper, yet if the jury have come to a correct conclusion, from all the evidence, the court will not for that cause reverse the judgment.

Coughlin vs. The People, 18 Ills. Rep., 266.

Newkirk vs. Cone, 18 Ills. Rep., 449.

The 2nd instruction asked by Ketchum was clearly wrong, not being qualified by the words, "*without notice.*"

The 3rd instruction is not the law and has no application to the case. There is no evidence when the indebtedness accrued, nor whether Outlaw had the property in his possession at the time it did accrue.

The 4th instruction is not the law, as the authorities above cited clearly show.

The instruction given by the court, presented the law, as applicable to the facts of the case quite as strongly as the defendant below could have asked. The jury having been told that the debt accrued while the property was in the possession of Outlaw, and before Ketchum had notice of the condition upon which Outlaw held the property that they should find for the defendant, and the defendant failing to prove (a fact most appropriately within his own knowledge) when the debt accrued, and Watson having clearly proved that Ketchum had notice before the execution become a lien, it seems clearly that the jury have come to just such a conclusion as is authorized both by the law and the evidence, and their finding should not be disturbed.

ROBERTS & IRELAND,

For Defendant in Error.

1
Pleas to a Term of the Circuit
Court within and for the
County of Jayewell and State
of Illinois begun and held
at the Court House in the
City of Pekin On the first
Monday of the Month of Feb-
ruary in the year of Our Lord
Eighteen hundred and Sixty.
Present, the Honorable James
Hamriatt Judge of the Twenty
first Judicial Circuit, Compe-
ssed of Jayewell Mason &c

Be it remembered that on the 5th
day of December A.D. 1859 a Bond and
precipe was filed in the words and
figures following to wit:-

Know all men by
these presents that we Joel B. Ketchene
and S. D. Ruterbaugh of the County of
Jayewell and State of Illinois are held
and firmly bound unto Joseph Watson
in the penal sum of Twenty Dollars law-
full money of the United States for the payment
of which we bind ourselves our heirs, executors
and administrators jointly severally and firmly
by these presents. Witness our hands and

seals this 5th day of December A. D. 1859.

The condition of the above obligation is such, that whereas an execution bearing date the 2nd day of November A. D. 1859 issued out of the office of Joseph L. Davis Esq a Justice of the Peace in and for said County of Jayceville and State of Illinois in favor of the above bounden John B. Ketchum and against the goods and chattels of George Outlaw for the sum of Sixty four \$100 dollars and costs of Suit; which execution came to the hands of E. B. Hibb and an acting constable in and for said county on the 2nd day of November 1859. and was by him levied upon the following described goods and chattels to wit One large bay horse together with other property as the property of the said George Outlaw whereupon the said large bay horse was claimed by the said Joseph Watson as being his own goods and chattels and as belonging to him, who gave notice to the said constable of his said claim, and intention to prosecute the same according to Law. and thereupon the said constable proceeded on the 30th day of November A. D. 1859, before Joseph L. Davis Esq a Justice of the Peace in and for said county to try the right of property of the claimant, and the said parties having attended at the time

and place aforesaid such proceedings were had before such justice and a jury, and that a verdict was found in favor of said Claimant and against said Execution, and the said Joel B. Ketchum feeling himself aggrieved by the said verdict of the said jury prayed an appeal therefrom to the Circuit Court of the County of Jay, State of Illinois, and tendered said S.D. Puterbaugh as his security in the appeal bond, which is accepted and approved by the clerk of said Court. Now if the said Joel B. Ketchum shall will and truly prosecute his said appeal to effect and doth pay or cause to be paid all costs that have accrued or may accrue on said appeal if judgment shall be given against him in the said Circuit Court of Jay County Illinois on the trial of said appeal - then the above obligation to be void and of no effect, otherwise to remain in full force and virtue,

J. B. Ketchum *Dea*
S.D. Puterbaugh *Dea*

Joseph Watson

-as-

Joel B. Ketchum } The clerk will please issue supersedeas & appeal summons. S.D. Puterbaugh

And now afterwards to-wit on the 5th day of November in the year A.D. 1859 a Supersedeas issued in the words and figures following to-wit-

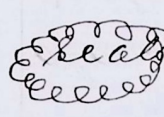
State of Illinois } The People of the state of
 Tazewell County } Illinois To Joseph L Davis
 a Justice of the Peace and E. B.
 Heibbard a constable in and for the County
 of Tazewell and State aforesaid -- Greeting.

Whereas in a certain suit lately pending before you the said Joseph L. Davis a Justice of the Peace, wherein Joel B. Kitchens is plaintiff & George Outtaw defendant, judgment was rendered in favor of the said plaintiff for the sum of Ninety four and 67/100 Dollars & costs of suit. And whereas an execution bearing date the 2nd day of November A.D. 1859 issued out of the Office of the said Joseph L. Davis a Justice of the Peace in & for said County of Tazewell, in favor of the said Joel B. Kitchens & against the goods & Chattels of the said George Outtaw for the said sum of Ninety four & 67/100 Dollars & costs of suit which said execution came to the hands of E. B. Heibbard, an acting constable in and for said County as aforesaid on the 2nd day of November A.D. 1859 and was by him levied upon one

5 large Bay Horse etc. as the property of the said George Outtau Wherapow. the said large bay Horse was claimed by one Joseph Watson as his own goods and chattels. and belonging to him. who gave notice to the said constable of his said claim and his intention to prosecute the same according to law. Thereupon afterwards to wit on the 30th day of November A.D. 1859 the said Constable proceeded before you the said Joseph L. Davis Esq Justice of the Peace aforesaid. to try the right of property. of the said Claimant Joseph Watson. and the said parties having attended at the time and place aforesaid wherein such proceedings were had before you the said Joseph L. Davis a Justice of the Peace aforesaid and a jury & that a verdict was found in favor of said claimant Joseph Watson and against the execution. And that the said Joel B. Kitchum feeling himself aggrieved by the said verdict of the said jury prayed an appeal therefrom to the Circuit Court of the County of Lapeer - will & State of Illinois and his given bond with security to the said Joseph Watson for the due prosecution of his said suit according to law. which said Bond is filed as of Record in the Clerk's office of said Circuit Court.

We therefore command and enjoin you the said Joseph L. Davis Esq and

4 E. B. Heibbard so bring Justice and constancy
as aforesaid that you do entirely supersede
and desist from proceeding any further
in said suit, and that you do forthwith
suspend all proceedings in relation thereto
and cease from molesting the said Joel B.
Ketchum in any wise on that account un-
-til the said circuit Court shall make other
order to the contrary. And this you are in
no wise to omit at your peril.

Witness Merrill C Young clerk of
said Circuit Court & the seal thereof
 Hereunto offered at Pekin this 5th day
of November A.D. 1859

Merrill C Young Clk

By S. B. Stone Deputy Clk

To the Sheriff of Tazewell County to execute

And now afterwards to wit on the
27th day of January 1860 said Supersedeas
was returned with the following endorsement
thereon to wit:

State of Illinois }
Tazewell County } I have duly served the
within by reading the same to the within
named defendants this 10th day of January
A.D. 1860

J. C. Reers S. J. C.

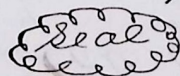
By J. B. Reers Deputy

And now afterwards to wit on the
5th day of December a Summons was
issued in the words and figures following
to wit. =

State of Illinois } The People of the State of
Sagwell County } ^{ss} Illinois To the Sheriff
of said County - Greeting.

We command you that you summon
Joseph Watson if he shall be found in your
County, personally to be and appear before
the circuit Court of said County, on the
first day of the next term thereof, to be held
at the Court House in Pekin in said County
on the first Monday of February next to pro-
secute his suit against Joel B. Kitcham
lately appealed from before Joseph L. Davis.
And have you then and there this writ with
an endorsement thereon in what manner
you shall have executed the same

Witness Merrill C. Young clerk of said
circuit Court and the seal thereof at
the City of Pekin, this 5th day of December



A.D. 1859

Merrill C. Young clerk circuit court

By Eldestone Deputy clk

And now afterwards to wit on the 27th

8 day of January A.D. 1860 said summons were returned with the following endorsement thereon to wit

State of Illinois }
Lazwell County } I have duly served the
writhe by reading the same to the within
named Joseph Watson this 11th day of
January A.D. 1860 J.C. Reems S.H.
By J.B. Reems Deputy

And now afterwards to wit at a Term of
the Circuit Court begun and held at the
Court-House in the City of Pekin within
and for the County of Lazwell and State
of Illinois on the first Monday of the Month of
February in the Year of Our Lord One Thousand
eight hundred and Sixty. Present the Honorable
James Harriott Judge Hugh Fullerton Esq
Prosecuting Attorney J.C. Reems Sheriff and
Merrill Le Young Clerk the following
proceedings were had in said cause to wit:

Thursday February 16th 1860

Joseph Watson } Appeal
Joel B. Ketchum } Trial of rights of
Property.

And now on this day comes as well the Plaintiff by his attorney J. Roberts as the Defendant by his attorney S. D. Puterbaugh, Whereupon came a jury of twelve good and lawful men to wit: Thomas Birkett - Lucius W. Case. Symon B. Evans - J. Gordon Bailey. - Moses Young - Henry Danforth. - John J. Anderson. Joseph Evans - Milton Bentley - Thomas Roberts. John Sharp & W. W. Crosby, duly elected tried and sworn, who, having heard the proofs and allegations of the Parties, and the argument of Counsel thereon, for Verdict say, "We the jury agree that the right of Property is vested in Watson."

It is therefore ordered and adjudged, by the Court, that the Plaintiff recovers of said Defendant, the Costs and Charges by him about his suit expended, and that Execution issue therefor. Thereupon the Defendant enters his motion for a new trial of this Cause - which motion is, by the Court overruled.

10. State of Illinois } Circuit Court.
Jayceville County } February Term 1860.

Joseph Watson }
-vs- } Bill of Exceptions
Jarl B. Ketchum }

Be it remembered that upon
the trial of this cause, which was an appeal
from the trial of the right of property before a
Justice and Constable.

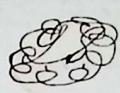
The plaintiff or claim-
ant offered in evidence the execution and
endorsement which is in the words and fig-
ures as follow to wit

State of Illinois } The People of the State of Illinois
Jayceville County } To any Constable of said
County. - Greeting.

We command you that of the goods and
chattels of George W. Outlaw in your Coun-
ty, you make the sum of Ninety four Dollars
and 67 cents debt and one Dollar and
30 cents costs which, J. B. Ketchum assignee of
Porter & Bro lately occurred before me in
a certain plea against the said Geo W.
Outlaw, and thereof make due return to
me within seventy days from this date.

Given under my hand and seal this 2nd

day of November 1859.

J. L. Davis J. R. 

Endorsed as follows to-wit

Re this Ex this Nov 2nd 1859 at 9 o'clock
A.M. E. B. Hibbard Const

By virtue of this Ex I have levied on one large bay horse one Black snip face one Iron Axel Wagon, also one log Wagon in the hands or possession of Dunham, one large Shovel plow one two horse sled one Spade this Nov 2nd 1859 E. B. Hibbard Const J.C.

Returned no other property found to make this demand, Trial of right to horses before Justice & appealed to Court, to await decision Jan'y 12th 1860 E. B. Hibbard Const. And then the notice of his claims to the property in the words and figures to-wit

To E. B. Hibbard Constable

Sir I hereby claim property in the following Goods or Chattels - to-wit. One large bay horse 8 years old next spring levied upon by you by virtue of an execution issued by J. L. Davis Esqr a Justice of the Peace of Taylor County and to you delivered in favor of Joel Kitchern or for his benefit against the goods and Chattels of George Outtew and I intend to prosecute my claim to the same according to the Statute in such cases

made and provided. Dated this 21st day
 of Nov 1859 Joseph Watson

The plaintiff then called Michael Watson, who said that he is son of plaintiff knew the horse in question. Plaintiff had owned the horse 4 or 5 years - he sold the horse to George Outlaw on the 10th day of August 1859 conditionally - That Outlaw was to take the horse and take good care of him, and if he paid for the horse by the 25th day of December 1859, the horse was to be Outlaw's, but if he failed to pay for the same the horse was to remain the Plaintiff's. Outlaw never paid for the horse. In the latter part of September 1859 I told Kitchum, of the condition upon which the horse had been sold, Kitchum then had the note upon which the judgment against Outlaw was obtained upon which execution in question issued.

I had made a conditional sale for my horse and took Outlaw's Note, and which contract was included on the 10th of October - when Outlaw made a conditional contract like the one my Father and he had made.

William Watson called by Plaintiff, is a

son of Plaintiff knows the horse was in possession of Plaintiff 4 or 5 years before Outlaw got it.

This was all the evidence offered by Plaintiff

The Defendant then called E. B. Heibbard the Constable, who lived the execution, who said that before he received notice from Watson that he claimed the horse in question, the Plaintiff told Witness that he had sold the horse to outlaw conditionally and that he had received part of his pay for the same, when the levy was made the horse was in Outlaws possession and had been for some time.

This was all the evidence offered. The court then gave the following Instruction

1st The jury are instructed that the possessor of Personal property is prima facie the owner thereof

2nd If Plaintiff sold Outlaw a horse conditioned that it should not be his property until paid for, and that Ketchum was cognizant of such contract, they ^{will} find for the plaintiff, unless the property was in the possession of Outlaw, and the indebtedness

accorded to Kitchum before such notice and while Outlaw had said horses in possession, and if such be the case you will find for the defendant.

The defendant then asked the Court to give the following instructions which were refused, and to which refusal defendant then & there excepted.

1st The Court instruct the jury that if they believe from the evidence that Joseph Watson sold the horse in question to George W. Outlaw, and delivered the possession upon condition, that if Outlaw paid for the horse by a certain date that it was to be Outlaw's horse and that if Outlaw neglected to pay for the same by the time specified it was to be Watson's, and that said conditional sale was not recorded according to law and that Kitchum had no notice of the same, that such conditional sale is fraudulent and void as to creditors and subsequent purchasers and they will find for the defendant.

2nd The Court instruct the jury that the possession of personal property should accompany and follow the title or a sale will be void as to creditors unless the

Terms of the ^{sale}, are duly Recorded.

3rd

The Court instruct the jury that unless they believe from the Evidence that Kitchens had notice of the sale to Cutlaw before the notes were purchased of Porter & Bro. by him they will find for Defendant.

4th

The Court instruct the jury that unless a conditional sale of personal property is recorded the same is absolutely void as to creditors, notwithstanding the creditor may have had notice in some other way of such conditional sale.

The case was then submitted to the jury who returned the following verdict.

On the Jury agree that the right of property is vested in Watson.

The Defendant then moved for a new trial as follows

State of Illinois } Circuit Court
Lapeer County } February Term 1860

Joseph Watson }

-vs-

John B. Hutchens } and now comes

the defendant and move the court to grant a new trial in this cause for the following ~~causes~~

- 1st The Verdict was contrary to evidence and the instructions of the court
- 2nd The Court refused proper instructions -
- 3rd The court gave improper instructions to the jury.

which motion was overruled, to which defendant excepted, and now prays this bill of exceptions to be signed and sealed which is done

J Harriott Seal

State of Illinois	}	Circuit Court
Lynnville County		
Joseph Watson	}	February Term 1860
-as-		
John B Ketchum	}	Agreement

It is agreed between the parties hereto that this cause may be taken to the supreme court and tried at the April Term 1860 at Ottawa, the defendant in error hereby waiving all process from the supreme court.

James Roberts Atty for Plff
S.D. Puterbaugh Atty for Deft

State of Illinois } ss
Sageville County }

I Merrill C. Young, Clerk of the Circuit Court, within, & for the County of Sageville, do hereby certify that the foregoing sixteen pages contain a true, perfect & complete copy of the Record of the Proceedings had in the Cause therein named, as the same appears of Record in my Office.



In Witness whereof I have hereunto set my hand and affixed the Seal of said Court at Pekin this 3^d day of March A.D. 1860.

Merrill C. Young Clerk

And now comes the said Joel B. Ketchum and says that in the record and proceedings aforesaid manifest errors have intervened in this to wit:

- 1st The Court erred in refusing proper instructions asked for by Defendant
- 2^d The Court erred in overruling motion for new trial:

S. D. Buterbaugh
Plaintiff's atty.

And the said Defendant Watson comes and says that there is

no error in said record and
may said judgment to be affirmed
James Roberts
for Sept in error

Joseph Watson
 &

Joel B. Ketchum
 Plff. in Error

Transcript

Filed Apr. 18, 1860
 L. Island
 Ct. H.

75. P.

J. D. Puterbaugh
 for Plff in Error.

State of Illinois. } Third Grand Division
Supreme Court, } April Term 1860.

Joel B. Ketchum, Plaintiff in Error.

^v
Joseph Watson, Defendant in Error.

Argument of Plaintiff.

The facts in this case as will appear from the Record, briefly stated, are about as follows: Joseph Watson, the defendant in error, sold to George W. Outlaw a horse on the 11th day of August 1859, which sale was conditioned that Outlaw was to take the horse and keep the possession of it, and if he paid for it by the 25th day of December 1859, the horse was to be his, but if he failed to pay for the same by that time the horse was to be Watson's - Outlaw took the horse and kept possession of the same until it was levied upon by the execution - Watson received part payment for the horse.

On the 2^d day of November 1859 Ketchum, the plaintiff in error, ob-

tained a judgment against Outlaw and on the same day swore out an execution and had it levied upon the horse in question. On the 21st day of November 1859 Watson notified the constable who had made the levy of his claim to the horse, and to try the right of property.

There are two points in this case which I think should reverse the decision of the Court below.

1st

In all cases the possession of personal property should accompany the title, This has been a long and well established principle of law. In the case of Powers v Green 14 Illinois, at page 389, the court say that, "the contract must be made both in good faith and upon a valuable consideration, and accompanied and followed by possession". Such is the doctrine laid down in Irvine's case, 3 Coke R. 8 (1 Smith's Leading cases 1) and in Edwards v Harben 2 Term R. 597; and adopted by our own Court in the

case of Thornton v Davenport 1 Scammon 298; and subsequently approved in Rhines v Phelps & Gilman 464; Kitchell v Brodton 1 Scammon 302; Thompson v Yeck 21 Illinois 73. In the case of Powers v Green 14 Illinois on page 389, in this connection the court say: "indeed there is no controversy on this point; nor on the cases that form exceptions to this general rule, as to the necessity of immediate change of possession; embracing mortgages, antinuptial settlements, and post nuptial made in pursuance of antinuptial agreements, sales by public officers, Conditional sales, where the continuance of possession is not only provided for in the sale, but fair and consistent with the objects and purposes of the transaction"

In case of Reed v Eames 19 Illinois at page 596, the Court say that the "possession must accompany the ownership, that being one of the strongest evidences of title to personal property"

It has ever been the anxious solicitude of Courts to close the doors

against fraud. And the law will not sanction a transaction where a party places personal property in the hands ^{of another} for an unreasonable time to give a person credit on the strength of the property, and then after a credit has been gained to come in and claim the property as in this case. It is not pretended in this case that the transfer of the possession and use of the property in controversy from Watson to Outlaw was a mere loan - but a conditional sale. The vendor merely reserves a lien on the property for his purchase money. The intention was a sale. And as they say the object was to hold the title to the property until it was paid for. If Watson only desired security, why did he not take a Chattel mortgage in the usual way? The mode is simple and easy. He then would have been fully secure, and outside parties could not have been imposed upon, and Kitchum would never have given the credit.

2^d

The second point we desire to make in the case is this. That all conditional sales of personal property, the terms of which are not declared in writing, and duly recorded, are fraudulent and absolutely void as to creditors. And the first and second instructions asked for by Ketchum's counsel below were founded upon the statute of frauds. The last clause of the second section of the statute of frauds and purgeries, (Purples Statutes page 586) reads thus:

"Where any reservation or limitation shall be pretended to have been made of an use, or property by way of condition, reservation, remainder or otherwise in goods or chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to creditors and purchasers of the person aforesaid, so remaining in possession to be fraudulent, and that the absolute property is with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded

"as aforesaid"

The counsel for Watson contended on the trial below that the clause just quoted, by its connection with the clause just preceding referred to the space of five years" The preceding clause reads this:

"In like manner where any loan of
" goods and chattels shall be pretended
" to have been made to any person,
" with whom, or those claiming under
" him, possession shall have remained
" for the space of five years, without
" demand made and pursued by due
" process of law, on the part of the
" pretended lender, or (Here follows
clause first above quoted)

The Court will see that in the clause last above quoted by me, the pretended lender must make a demand and follow it up by a suit at law within five years, in order to reclaim his property. This clause makes no mention of creditors. Can it be possible that the legislature in framing this statute intended to place creditors referred to in the one clause on the same footing

with the pretended lender referred to in the other. Certainly not. The statute cannot bear any such legal or grammatical construction.

The last clause of the section was intended to cover just such transactions as has been made between Watson and Outlaw, which by the statute is clearly fraudulent and void in law, as to creditors, unless declared in writing and duly recorded. The statute is peremptory in its provisions and must be strictly observed.

To give this statute the construction that the counsel for Watson would give it, would be giving a conditional sale a much wider scope than has ever been given to ~~the~~^a Chattel Mortgage. It would throw open the doors and invite dishonest persons to the practice of fraud. A party might buy an unlimited amount of property on just such conditions and get the possession of the same and upon the strength of it obtain an extensive credit, and when his creditors attempted to enforce their rights the

Vendor could step in and claim the property, and innocent creditors become defrauded in the transaction. The vendor might have received the greater part of his pay and yet, according to the reasoning of Watson's counsel, be heard to say that the property could not be reached on execution. and thus cut off innocent creditors.

Conditional sales have been held good in certain cases, where no fault has been shown on the part of vendor, in other states however. and may be good under certain circumstances in this state, but they must be of an entire different character from the case in point.

If the statute of frauds has no bearing on cases of this kind, it would still be incumbent on the vendor to show that the creditor had due notice of the conditions of the sale before the credit was given. or that the horse had not gone into Outlaw's possession until after the credit had been given - They affirm that Ketchum had due

notice of the conditions of the sale, but the proof shows that Ketchum had the notes upon which the judgment was obtained at the time Watson's son had the conversation with Ketchum in regard to the conditions of the sale from Watson to Outlaw. This notice was equivalent to no notice at all. Ketchum had then already given the credit. The notes had been purchased of Porter Bros. and were then in Ketchum's hands. Ketchum could not then have rescinded his contract and placed himself in the condition he was in before he got the notes. It is too late to warn a man that a substance is poison after the poison has been taken.

Watson affirms that Ketchum had due notice, but fails to prove a satisfactory one. It is for him to explain this whole matter if it can be done.

The whole transaction between Watson and Outlaw is strange and unusual; and out of the usual course of honest, fair and open

dealing, and one that is calculated to mislead and deceive innocent parties who are not cognizant of the facts in the case in time to keep out of danger.

What must have been the intention of Watson and Outlaw in making a sale of this character? Certainly not merely for the purpose of securing the purchase money. if that had been his only intention he could have taken a chattel mortgage in the usual way and made himself secure, and at the same ~~time~~^{price} prevented third parties from being deceived. Watson then very well knew that by placing the property in Outlaw's possession and allowing him to exercise acts of ownership over it he would thereby be giving Outlaw a credit which his means and standing otherwise would not warrant. and that thereby some innocent person would be deceived into giving Outlaw credit on the strength of property in his possession which was supposed to be his.

The transaction is unfair and should

not therefore be sustained. The whole matter is tainted with unfairness - How careful Watson was to call his son up to witness the terms of the sale - And after the sale has been made, and before there was any controversy about the property in question, but after Ketchum had given Outlaw credit. the son of Outlaw is sent to apprise Ketchum of the conditions upon which the sale was made. - Very kind indeed after they supposed Ketchum had burnt his fingers to apprise him of it - The fact is their sale was fraudulent and void as far as creditors are concerned.

One of the most difficult points in the practice is to get a jury to discriminate between a fraud in fact and a fraud in law. and the facility with which testimony can be made available to bolster up transactions of this sort in order to give them a fair appearance upon their face, it is often difficult to get a proper decision in a case of this character.

The points involved in this case are important. And we trust the court will give them all due consideration and make a decision at their earliest convenience as the expense of keeping the property will be great.

S. D. Puterbaugh.

Supreme Court
April Term 1860.

Joel B. Ketchum
v. (235)

Joseph Watson

Argument for
Plaintiffs

Filed April 12 1860
L. Leland
clerk

S. D. Peterbaugh
Att'y.

STATE OF ILLINOIS, } ss.
~~TAZEWELL COUNTY,~~
Supreme Court,

Third Grand Division. April Term, 1860.

JOEL B. KETCHUM, }
vs. } ERROR TO TAZEWELL.
JOSEPH WATSON. }

POINTS FOR DEFENDANT IN ERROR.

The evidence in this case was, that Watson made a conditional sale of the horse to Outlaw, and that both Ketchum and the Constable had notice of the condition upon which Outlaw held the horse, before the execution was issued. It is well settled, that as between the parties, a conditional sale of this kind is valid, and that the property does not vest in vendee until the condition is performed.

2 Kent Com., 497.

1 Parson on Contracts, 448, note P., and the numerous authorities there cited.

And it is equally well settled, that when the creditor or subsequent purchaser has notice of the conditions upon which the debtor holds the property, that as to him, having notice, the condition is binding, and the sale valid. It was so expressly decided in

Barrett vs. Pritchard, 2 Pickering 512,

And every case deciding that conditional sales were not good, was as to creditors and purchasers without notice. All the authorities upon this question have been fully and ably reviewed by Justice Breese, in

Brundage vs. Camp, 21 Ill. Rep., 330,

And it would be useless for me again to go over the same question. If when a creditor has notice of the terms of sale, he can still go on and levy upon the property, the law that was made to prevent fraud, becomes an engine for its perpetration. The object of the Recording laws is to give notice, and when a party has notice, the requirements and intent of the law are complied with. This is so in regard to real estate, and equally so in regard to personal property. All the authorities, when deciding upon the invalidity of

transactions of this kind, qualify the proposition, by the words, "*Creditors and Purchasers without notice.*"

21 Ills. Rep., 73. 21 Ills. Rep., 330.

The court instructed the jury, that if the plaintiff sold Outlaw the horse, upon condition that it should not be his property until paid for, and that Ketchum had notice, they were to find for the plaintiff; but if the property was in the possession of Outlaw, and the indebtedness accrued to Ketchum before such notice, and while Outlaw had the horse in possession, they should find for defendant. This instruction, certainly, was as much in favor of Ketchum as he could have desired, as no proof was given when the debt accrued, whether while Outlaw had the horse in possession or not. The instruction was given by the court upon its own motion, and was manifestly wrong as against the plaintiff Watson. It is sufficient that the creditor has notice before the execution becomes a lien, unless he shows that the credit was given while the property was in possession of the debtor, a fact within his knowledge, and which he is required to prove.

It was clearly proven that Ketchum had been notified of the condition upon which Outlaw held the horse, before the execution became a lien.

The 1st instruction asked by Ketchum, was an abstract statement^a of the law calculated to mislead the jury, and it had been given in substance by the 2nd instruction given by the court, there being no dispute about the notice. And even though the instruction might have been proper, yet if the jury have come to a correct conclusion, from all the evidence, the court will not for that cause reverse the judgment.

Coughlin vs. The People, 18 Ills. Rep., 266.
Newkirk vs. Cone, 18 Ills. Rep., 449.

The 2nd instruction asked by Ketchum was clearly wrong, not being qualified by the words, "*without notice.*"

The 3rd instruction is not the law and has no application to the case. There is no evidence when the indebtedness accrued, nor whether Outlaw had the property in his possession at the time it did accrue.

The 4th instruction is not the law, as the authorities above cited clearly show.

The instruction given by the court, presented the law, as applicable to the facts of the case quite as strongly as the defendant below could have asked. The jury having been told that the debt accrued while the property was in the possession of Outlaw, and before Ketchum had notice of the condition upon which Outlaw held the property that they should find for the defendant, and the defendant failing to prove (a fact most appropriately within his own knowledge) when the debt accrued, and Watson having clearly proved that Ketchum had notice before the execution became a lien, it seems clearly that the jury have come to just such a conclusion as is authorized both by the law and the evidence, and their finding should not be disturbed.

ROBERTS & IRELAND,

For Defendant in Error.

236 226
Jock B. Kitchum

vs
Joseph Watson

Brief

J. Leland Apr. 19, 1865
L. Leland
Clerk

from the evidence the only question for the court to decide is whether the plaintiff has established his right to the property in dispute. The plaintiff claims that the property was conveyed to him by the defendant, and that he is entitled to possession thereof. The defendant claims that the property was conveyed to him by the plaintiff, and that he is entitled to possession thereof. The court is of the opinion that the plaintiff has established his right to the property in dispute, and that he is entitled to possession thereof.

The court instructed the jury that if the plaintiff sold Oulawa the horse upon which the plaintiff has a claim, the plaintiff is entitled to possession thereof.

ROBERTS & HEILAND
Attorneys at Law
The plaintiff claims that the property was conveyed to him by the defendant, and that he is entitled to possession thereof. The defendant claims that the property was conveyed to him by the plaintiff, and that he is entitled to possession thereof. The court is of the opinion that the plaintiff has established his right to the property in dispute, and that he is entitled to possession thereof.