

No. 12488

Supreme Court of Illinois

Davis

vs.

Ransom, et al

Sup: Ct: June 7. 1856. -

And now comes the said William Davis by his said attorneys and says that there is manifest error in the foregoing record in this Court:

First - The court erred in permitting the witness Sexton to answer ^{an} improper question asked by Peffs Counsel & in refusing to permit a proper question to be asked said witness by defendants counsel,

Second - The court erred in admitting the instrument in writing or Mortgage in evidence before the jury. -

Third The court erred in refusing the instructions asked for by the deft. & in altering & giving the instruction given by him,

Fourth The court erred in overruling the motion for a new trial because the verdict was against the law and the evidence -

Thompson & Higgins
for Peff in error



Filed in the Circuit Court of Ogles County, and State of Illinois
at the May Term, in the year of our Lord one thousand eight
Hundred and Fifty six, before Hon. J. Wilson Davis
Presiding Judge of the Sixth Judicial Circuit of the State
of Illinois

Jonathan A. Ramsom &

Joshua A. Bates

vs

William Davis

Deftor

Copy of Affidavit

State of Illinois

Ogles County

Sworn, A. W. for and in behalf of Jonathan
A. Ramsom and Joshua A. Bates

being duly sworn, on his oath states, that the said Ramsom and
Bates, are the owners as mortgagors, of the property herein mentioned
and that they are lawfully entitled to the same, to wit: of the following goods and chattels, all the merchan-
dize and stock in trade consisting of Thirty pieces of Broad
cloth, cassimere, and salted cloth, Thirty pieces of Linghams
300 pieces of prints, 30 pieces of Alpaccas, 30 pieces of dress
goods, 20 pieces of Ribbands, 50 pieces of Shirting, a quantity
of Shirting, 20 pieces of Cambric, 5 pieces of Velvet, 5 pieces
of Silks, 6000 and under coals, 30 pairs of pants, 30 vests
12 pairs of Boots, 100 pairs of shoes, 50 pairs of brogans, a
quantity of groceries, a quantity of hardware, and a quantity
of ~~hardware~~ crockery, together with all and every article of
merchandise of whatever kind and description now in that part
of Ebnys building, namely occupied by E. P. Sexton, being
the same stock of goods, wares and merchandise now in

"possession of said Septon. except so much thereof as may
 "have been sold since the execution of the Mortgage aforesaid
 "to being a Mortgage from said Septon to the said Wamsom
 "and Bates. And executed on or about the 5th day of March
 "last. All of which property aforesaid has been unlawfully
 "taken and detained at and within said county by William
 "Davis. And that they are the value of Ten thousand Dollars
 "And said affiant further states that the said property has not
 "been taken by any tax, assessment or lien levied by any law
 "of this state. Nor seized under any execution or attachment
 "of the said goods and chattels of the said Wamsom and Bates
 "nor either of them liable to execution or attachment. All of which
 "statements aforesaid, this affiant believes to be true
 "sworn and subscribed before me William "H. A. Wise"
 "this 10th day of May A.D. 1855
 "R. P. Light clerk"

Now advised

"Filed May 10. 1855"

"R. P. Light clerk"

Copy of receipt for costs

"State of Illinois" Circuit Court of said County
 "Ogle County" May Term 1855

"Amathan A Wamsom &

"Joshua A. Bates"

"William Davis"

"I do hereby enter myself security
 "for costs, and acknowledge myself bound to pay same as

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"paid all costs that may accrue in this action. with costs of the opposite
party or to any of the officers of this court. in pursuance of the
laws of this state. Dated this 10th day of May A.D. 1855

"J. A. Wix Esq."

Wm. Wadsworth

Filed May 10. 1855-

"B. B. Light Clerk"

Copy of Replevin Bond

"Know all men by these presents that
in Jonathan A. Parsons and Joshua A. Bates of the city
of New York and state of New York as Principals and J.
A. Wix of the County of Cook and state of Illinois as security
as well as firmly bound unto Charles Lawrence Sheriff
of the County of Cook and state of Illinois in the penal sum of
Ten Thousand Dollars lawful money of the United States
for the payment of which full and ready sh^{al} be made. in and
among me heirs, executors, administrators, and assigns and
every of them jointly by these presents. Witness our hands and
seals this 10th day of May A.D. 1855

"The condition of the abov^e obligation is such, that whereas the abov^e
bounden Jonathan A. Parsons and Joshua A. Bates has
this day sued out of the Circuit Court of Cook County Illinois a
writ of Replevin against William Davis of the County
of Cook and state of Illinois. for the recovery of the possession of all
the following described merchandise. And stock in trade, consisting
of Thirty pieces of Broadcloth, Casimeres, and Melminets. Thirty
pieces of Gingham. 300 pieces of Prints. 30 pieces of Calpacas. 20 pieces of
Dress goods. 20 pieces of Ribband. 50 pieces of Whiting. a quantity of
Whiting. 20 pieces of Cornish. 5 pieces of Salt. 5 pieces of Licks. 60
men and women coats. 20 pairs of pants. thirty vests. 12 cases of Boots

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"100 pairs of shoes, 50 pairs of Brogans, a quantity of groceries, a quantity
"of hardware, and a quantity of crockery, together with all and every
"article of Merchandise of what kind and description now in that part
"of Cynthiana building recently occupied by E. P. Dutton being the same
"stock of goods, wares, and Merchandise recently in the possession of
"said Dutton, all of the value of Five Thousand Dollars, returnable
"at the next term of the Circuit Court, to be held in said Court House
"in Oregon in said County on the second Monday of October A.D. 1855
"Now if the said Amos A. Wansom, and Joshua, A. Bales shall
"procure, this said writ to effect and without delay, and make return
"of the property if return thereof shall be awarded, and can and keep
"harmless the said Sheriff in displaying the said property, then this
"obligation shall void, otherwise remain in full force and effect,
"In presence of

"Amos A. Wansom
"Joshua, A. Wansom
"By A. A. Wix his attorney
"Lawfully authorized
"Henry A. Wix"

Wm. Wansom

Filed May 11, 1855

"V. B. Light clerk"

Copy of writ of Replevin

"State of Illinois
"Cogle County

The People of the State of Illinois
To the Sheriff of Cogle County, greeting

"Thomas, Amos A. Wansom & Joshua, A. Bales by their
"Attorney A. A. Wix, Plaintiffs complain — William Davis
"Of and from unlawfully and wrongfully came in possession of

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and still does detain from the possession of them the said
Plaintiff. All the Merchandise and stock in trade consisting of
Thirty pieces of Broad cloths Casimires. and Battistes.
Thirty pieces of Lingham. 500 pieces of Prints. 30 pieces of
Alpacas. 20 pieces of Dnf goods. 20 pieces of ribbons. 50 pieces
of Whiting. a quantity of Shuteing 20 pieces of Cambric. 5 pieces
of Velvets. 5 pieces of Silks. 60 dm and under coats. 50 pairs of
pants. thirty hats. 12 cases of Boots. 100 pairs of shoes. 50 pairs
of Brogans. a quantity of groceries. a quantity of hardware
and a quantity of crockery. together with all and every article
of Merchandise of what kind and description now in that
part of Eberys building namely. occupied by E. F. Sipton
being the same stock of goods. wares and Merchandise now
in the possession of said Sipton. of the value of Five Thousand
Dollars. and that the same have been unlawfully taken & detained
by Wm. Davis. Therefore I command you. that if the said
Plaintiff shall give Bond. with good and sufficient security. in double
of the value of said goods & chattels. as required by law to prosecute
his suit in this behalf. to effect & without delay. and to make return
of the said goods & chattels. if return thereof shall be awarded. and to
save & keep you harmless in restoring said goods and chattels. you
shall deliver the said goods and chattels. or replace and deliver to the said
Plaintiff. without delay. And also that you summon the said
Defendant. or once appear before the Cgl. county Circuit Court. or
holden in the Court House in Oregon on the second Monday of October
next. to answer unto the said Plaintiff in the premises. and then you
shall and then this writ with an ex parte must. thereon in what manner
you shall have executed the same. together with the Bond which you shall
take from the said Plaintiff as before commanded before executing
this writ

Witness B. B. Leigh Clerk of said circuit court and the seal

"Wm of at Origin in said county this 10th day of May A.D. 1855
"R. B. Light Club"

S. S.

Copy of Sheriff's return returned on same

"Executed the within writ by reading the same in the presence and
"hearing of the within named William Davis this 10th day of
"May A.D. 1855 and also by replevying and delivering the
"within described property unto the possession of the Plaintiff's
"Agent N. A. Mix this same date, May 10th 1855

"Charles Newcomb Sheriff Cpl
"Co Ill"

Said writ returned

"Filed May 16, 1855

"R. B. Light Club"

Copy of Declaration.

"State of Illinois — Circuit Court of said County
"Cpl County — October Term 1855

Amathan. A. Benson &

Joshua. A. Bates

vs

William Davis

Amathan. A. Benson and Joshua
"A. Bates of New York the Plaintiff's complain of William
"Davis, in a plea wherein, he took the goods and chattels of the
"said Benson and Bates, and detained the same against debts
"and pledges. And wherein the Plaintiff's complain, for that

"the defendant on the tenth day of May A D 1855 absconded with
 "said County took the goods and chattels to wit: Thirty pieces
 "of Broad cloths, capes, and salinets. Thirty pieces of
 "Ginghams, Three hundred pieces of prints. Thirty pieces of
 "Apoccas. Twenty pieces of dress goods. Twenty pieces of
 "Ribbands. Fifty pieces of Shirts. a quantity of Shaking
 "Twenty pieces of Cambric. five pieces of Vests. five pieces of Suits
 "fifty m and under coats. Thirty pairs of pants. Thirty coats
 "Turk cases of Boots. one hundred pairs of shoes. fifty pairs
 "of Brogans. a quantity of greens. a quantity of Macawood. a
 "quantity of crockery. together with all and every article of
 "Merchandise of whatever kind and description. nearly in the
 "possession of E. J. Sykes of whom the said Plaintiffs of great
 "value consist of the value of Five thousand Dollars. And
 "unjustly obtains the same. against rents and pledges. & the
 "damage of the Plaintiffs as they say of one thousand dollars
 "and therefore they sue
 "H. A. Mix for
 "D.C."

Same evidence

Filed Sept 28. 1855

"B. B. Light Club"

Copy of Pleas

Circuit Court of Cgl. County

William Davis

vs

Jonathan A. Ramm &

Joshua A. Bates

of the Oct
Term 1855

And the said William

Davis. Defendant in this suit. by Higgins & Thompson
 his attorneys. comes and defends the wrong & injury whereto

and says that he does not detain the said goods and
 chattels in said declaration mentioned, or any part thereof
 in manner and form as the said Plaintiffs have shown
 thing complained against him, and of this he puts
 himself upon the country &c

Higgins & Thompson
 Defts. Attyrs.

And for a further plea in this behalf, by leave of court said plea &
 obtained the said Defendant says, that the said Plaintiffs
 ought not to have or maintain their action aforesaid, thing
 against him because he says that the said goods and chattels
 in the said declaration mentioned at the time when &c were
 the property of one Edmund P. Sexton, and not the property
 of the said Plaintiffs, as by said declaration is shown
 supposed, and that Thomas A. Cummings, Charles B.
 Collins, George C. T. Seaman & Anas state by the
 consideration & judgment of the Circuit Court of the United
 States, for the Northern District of Illinois, at the April
 Term A. D. 1855, rendered a Judgment against the
 said Edmund P. Sexton of the sum of Two Thousand
 four Hundred fifty Two & 10/100 Dollars, Damages
 & costs of suit, upon which said Judgment a writ of
 execution was issued out of said court on the 26th day of
 April A. D. 1855, directed to the Marshall of the Northern
 District of Illinois, commanding him of the goods & chattels
 lands & tenements of said Sexton in said District he came
 to be made said sum of money, so as aforesaid rendered
 against him the said Sexton, and returnable in ninety days
 from the date thereof, and thereupon writ: on the said 26th
 day of April 1855 the said writ of execution was delivered
 to Michael Regan then and there being a Deputy Marshall

"duly authorized & appointed under & by Harry Wilcox, Marshall
 "of said District to execute said writ, & Henry, and by virtue
 "of said writ of Execution the said Michael Hegan, Deputy
 "Marshall as aforesaid, afterwards to wit, in the County of Ogle in said
 "day of April A.D. 1855 at the County of Ogle in said
 "District and before the return of said writ, arrived upon, & took
 "the said goods & chattels, mentioned in said Declaration
 "as the property, goods & chattels, of the said Edmund
 "P. Sexton, liable to said execution, and then with & to satisfy
 "the said writ of Execution, and then upon the said Michael
 "Hegan, Deputy Marshall as aforesaid placed said goods &
 "chattels in the custody of the said William Lewis
 "Defendant in this suit, who held the same for said
 "Deputy Marshall in his absence, and which were then
 "delivered to said Marshall at his request, and this the said
 "Defendant is ready to verify, when for he prays judge-
 "ment if the said Plaintiff ought to have or maintain
 "this aforesaid action thing, against him, and he prays
 "a return of the said goods & chattels, together with his
 "costs in this behalf, be adjudged to him

"Heggins & Thompson
 "Defts. Atty's

"And for a further plea in this behalf by law of Court &c the
 "said Defendant says that the said Plaintiff's ought not
 "to have or maintain this aforesaid action thing, against
 "him, because he says, that the said goods and chattels
 "in the said Declaration mentioned at the time when he
 "were the property of one Edmund P. Sexton, and not the
 "property of the said Plaintiff's as by said declaration is
 "supposed, and this the said Defendant is ready to
 "verify &c when for the said deft. prays judgment
 "&c.

"Higgins & Thompson
"deft. Allys"

Same evidence

Filed May 6, 1856

"W. B. Light Clerk"

Copy of Replications

"Jonathan Ransom &

"Joshua H. Bates

vs

"William Davis



"And the said Plaintiffs
as other plea of the said defendant first above pleaded &
wherin the said defendant hath put himself upon the
country with the like"

"And the said Plaintiffs as other plea of the said defendant
secondly above pleaded say procludi non because they say
that there was not at the time when &c. any such judge-
ment in the district Court of the United States, or any
such writ of execution, as is, in & by said plea alleged
And this the said Plaintiffs pray may be assigned of
by the country &c"

"And the said Plaintiffs for a Replication to Defendants
second plea, by them &c say procludi non. because they
say that the said goods and chattels, with the Plaintiffs
Declaration, & in said plea mentioned were at the time
when &c the proper goods and chattels of the said
Plaintiffs and not of the said Edmund P. Peyton, as

"Held as per Court"

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"in And by the said plea alleged, and that the said
"Plaintiffs pray may be regained of by the Country &c"

"And the said Plaintiffs, as to the plea of the said Defendant
"thoroughly ably pleaded say, pleading non because they say, that
"the said goods & chattels in the Plaintiffs' Declaration
"in said plea mentioned are at the time when &c and still
"the goods and chattels of the said Plaintiffs, and not
"of the said Edmund J. Dwyer as in & by said plea alleged
"And that the said Plaintiffs pray may be regained of
"by the Country &c"

"A Trip
"Atty for Plffs"

Same endorsed

Filed May 13, 1856

"R. B. Light Clerk"

Copy of Limitation

"Ogle Cui Court

"William Davis

acts

"Jonathan A. Benson &

"Joshua A. Bates

May 1 1856

"And the said Defendant, as to the
"said Replication of the said Plaintiffs, by them ably
"pleaded, and which they pray may be regained of by
"the Country, doth the like

"Higgins & Thompson
"For Deft"

Same endorsed

Filed May 14, 1856

"R. B. Light Clerk"

Copy of Instructions

"Vaum et al

May Term 1856"

"vs. B. J.

"Instructions for the Defendant"

"Paris"

"Defendant"

"If the jury believe from the evidence, that the Plaintiff's
agent permitted the said Sexton to use and
support his family out of the trade or sales of the
stock of goods in question, then the Mortgage is
void as against Creditors, and the verdict must
be for the Defendant."

"Defendant"

"2 Under the Mortgage the Plaintiff's had no right of the
possession of the goods, until Sexton by some act of his
own laid the foundation of such right, as provided in
the Mortgage, and until such right of possession was
caused by some act of Sexton he could not have been
the Agent of the Plaintiff's for the purpose of trading
and disposing of the goods, as provided in the Mortgage
and if the Plaintiff's have failed to prove this right
of the goods as above stated, then the goods are liable to
execution, against Sexton, and the verdict must be
for the Defendant."

"Plaintiff"

"3 If the Jury believe from the evidence that it was intended
and understood, by the parties to said Mortgage at
the time it was made, that it was made for the benefit
of Sexton in any respect, except as in first instruction
or that it was made by him to prevent his creditors
attaching or laying upon said stock, or if it was
made for the purpose of enabling Sexton to carry
on his business with said goods in his usual course
of trade, without giving up the possession thereof, then

"in either case if it fraudulent and void as against
his creditors and the verdict must be for the Defendant"

"Referred"
4 "Under the provisions of the Mortgage Sexton could not
be the agent of the Plaintiffs for the purpose of
disposing & trading with the stock as provided in the
Mortgage and by such agency protect the goods from
his creditors"

"Referred"
5 "If the Jury believe from the evidence, that Sexton at the
time of the levy was in possession of the goods, trading
as usual as provided in the Mortgage or otherwise,
then the Mortgage is void as against his creditors
and the verdict must be for the Defendant"

"Referred"
6 "If the Jury believe from the evidence that it was
understood & agreed by the parties to said Mortgage
that Sexton was to support himself & family out of the
stock of goods or proceeds, without restrictions as to the
extent or amount, or if they believe that Plaintiffs did
allow him (Sexton) to support himself & family out
of the stock, or if they believe from the evidence, that Sexton
was allowed by the Plaintiffs to have the use & profits of
the stock, and thereby the stock or any of it would become
exhausted or used up or was in its nature perishable, in either
case the Mortgage does not give the Plaintiff a right in the
goods & the verdict must be for the Defendant."

Same enclosed

Filed May 15, 1856

"B. B. Light clerk"

Copy of Verdict of Jury

"Nathan & Bates

" vs

" William Davis

"In the sum in the above entitled suit
"find the issue with the Plaintiff, and award them
"damages at five cents

"V. A. Bogue

"Foreman"

None returned

Filed May 15, 1856

"V. B. Light club"

Copy of Motion for new trial

"Jonathan A. Bannan &

" Joshua A. Bates

" vs

" William Davis

Ordn. Cir. Court

May 5, 1856

"And now comes the said defendant
"by his Attorneys & moves the court to set aside the verdict
"entered herein and grant him a new trial for the following
"reasons viz:

"First. The court erred in pronouncing the
"instrument or mortgage, offered in this case as evidence
"by the Plaintiff valid, and allowing the same to be admitted
"as evidence"

"Second. The court erred in refusing the
"instructions asked for by the defendant"

"Third. The Court will in allowing improper questions to
 "be asked by Plff's counsel of the witness, Sexton. And also
 "in refusing to allow proper questions to be asked by the defense
 "said witness."

"Fourth. The verdict is against the law
 "and evidence" Higgins & Thompson
 "for Deft's"

Same enclosed

"Filed May 15, 1856

"R. B. Light Clerk"

Copy of Stipulations of Error

"State of Illinois

"Joshua A. Bramm & Ogle County Circuit
 "Joshua A. Bates } Court of the May
 "vs } Term A D 1856
 "William Davis }

"It is hereby stipulated and
 "agreed by the counsel of the parties to the above entitled
 "cause, that said cause may be docketed by the clerk
 "of the Supreme Court of the Third Grand Division
 "and heard and determined at a term of said Court
 "to be held at Ottawa in said Division commencing on the
 "second Monday of June A D 1856. The writ of error
 "& venire thereon in said cause being hereby waived
 "and the attorneys & counsel in said cause hereby stipulate
 "that their appearance in said cause may be entered
 "by the clerk of said Supreme Court, and the cause may
 "be heard and determined by the said Supreme Court
 "in its regular order upon the Docket thereof. And that

"the clerk of said Ogle County Circuit Court may
 "make up the record without any writ of error. The bill
 "of exceptions being duly settled and filed

"Loop, Heaton & Misp Atty.
 "Attys for Plaintiffs

"U. W. & J. A. Thompson

"Van. A. Higgins &

"W. P. Sweet

"Attys. for Defendant"

Samuel Redmond

"Filed May 20, 1856

"V. B. Light clerk"

Copy of Bill of Exceptions

"Amathan, A. Parsons &

"Joshua A. Bates

vs.

"William Davis

In the Ogle County
 Circuit Court, Of
 the May Term
 A D 1856

"Be it remembered that on the fourteenth day of May in the year
 "of Our Lord one thousand eight hundred and fifty six, at the
 "May Term of the Circuit Court. holden in and for the
 "County of Ogle in the State of Illinois, before the Honorable J.
 "William Drury, Circuit Judge, in and for the said judicial
 "Circuit in said State, upon issue joined, came on to be tried the
 "above entitled cause. Whereupon the following proceedings were
 "had, to wit: A Jury having been empanelled and sworn
 "to try the issues joined in said cause, the said Plaintiffs

to from the issues on their part. produced and caused to
 be sworn. Edmund. P. Sexton, by which said Witness the
 Plaintiffs proved the making, signing and delivery of
 by the Witnesses & the Plaintiffs of the instrument in writing
 of which the following is a true copy viz:

"Whereas I Edmund
 P. Sexton of the Village of Oregan, County of Ogle and State
 of Illinois am jointly indebted to James P. Manslow in
 the sum of Six Hundred and forty four Dollars; to J. H.
 Ransom & Co about the sum of Nine Hundred and sixty six
 Dollars; to Bates Taylor & Co. about the sum of Six Hundred
 Dollars; to Cummings Collins & Seaman, about the sum
 of Twenty four Hundred Dollars; to Hoppick & Morrey
 about Five Hundred Dollars; to Bridge & Shepherd, the
 sum of One hundred and eleven Dollars; to Lane & Southwick
 Four Hundred and some Dollars; Symon Cook & Co One
 Hundred and twenty nine Dollars; Mann, Palmer, & Stewart
 Three Hundred and thirty Dollars; Griffin & Felton Two
 Hundred and ten Dollars. And whereas, I am unable to pay
 or discharge said debts without further time, and being desirous
 to secure the payment of the same. Therefore this Indenture
 Witnesseth that I Edmund. P. Sexton, party of the first part
 and J. H. Bates and J. H. Ransom of the City of New York
 parties of the second part, that the said party of the first part being
 so jointly indebted to the several persons before named, in the
 several sums mentioned above amounting to the sum of Six
 Thousand, Two Hundred and ninety seven Dollars, for and
 in consideration of the same, and for the purpose of securing the
 payment thereof, have granted, bargained, sold and
 mortgaged, and by these presents do grant bargain, sell and
 mortgage unto the said J. H. Bates and J. H. Ransom, parties

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of the second part. all the Goods, Chattels, and Personal
Property, belonging to the party of the first part, and now in his
possession in the building known as Eimons building, that part
now occupied by the party of the first part, in the village of
Osgood, County of Ogle and State of Illinois, said property to
include all the Merchandise and stock in trade consisting of 30
pieces of Broadcloths, Capemans, and Satinets, Fifty pieces
of Linghams, One Hundred pieces of prints, Thirty pieces
of Alpaccas, Twenty pieces of Rags, Twenty pieces of
Ribbons, Fifty pieces of shawls, a quantity of Shirts
Twenty pieces of Cambric, Ten pieces of Vests, Ten pieces of Suits
Eighty one and under coats, Thirty pairs of Pants, Thirty
Vests, Ten pairs of Boots, One Hundred pairs of Shoes, Fifty
pairs of Goggles, a quantity of Groceries, a quantity of hardware
a quantity of crockery, together with all and any article of
Merchandise of whatever kind or description and of said stock
To have and to hold all and singular the said Goods, wares and
Merchandise, herein before granted, bargained and sold or
mentioned or intended to be, unto the said parties of the second
part, their Executors, Administrators and assigns, to the only
proprietor and chief of the said parties of the second part their
Executors, Administrators and assigns forever, Provided always
and then promise as upon this condition, that the said party of the
first part, his Executors or Administrators shall and do will and
lawfully pay or cause to be paid unto the said parties of the second part
their Executors, Administrators or assigns the several sums of money
due to each of said firms before mentioned with some the said
interest thereon, to be paid as follows, to wit: The said sum
specified to be paid first to J. G. Mason, the said sum
second to be paid to J. M. Pearson & Co. the said sum
specified third to Bates Taylor & Co and fourth to

"pay the other, the other said small sums, pro rata, ^{hence before}
 "mentioned. the pay must of all said small sums be made
 "within fifteen months from this date, or some of the proceeds of
 "sale of said goods, wares and Merchandise, will enable the
 "party of the first part to do so. It is hereby provided by and
 "between the parties to this mortgage, that the said Edmund
 "P. Sykes party of the first part shall have and retain
 "possession of all the goods, wares, and Merchandise
 "herby mortgaged, for the purpose of selling and disposing
 "of the same in the usual course of trade as herein
 "followed, to sell for ready pay only for the purpose of paying
 "and discharging the said small debts as, before men-
 "tioned. And for no other purposes. And that the said
 "party of the first part shall well and faithfully
 "pay on to the parties of the second part, all the moneys
 "and avails of the sales, every thirty days after the date
 "made or obtained if he choose to do so, for the purpose of
 "paying the said debts, as before mentioned. And it is
 "also provided and agreed by the parties to this mortgage
 "that the party of the first part shall not remove said goods
 "and Merchandise from the ^{of Oregon} Village where they now
 "situate without the consent of the parties of the second
 "part, their agent or attorney. And it is also provided and
 "agreed between the parties to this mortgage that if default
 "is made in the pay ment as aforesaid, or in case the
 "party of the first part, neglects to pay on as herein pro-
 "vided, the avails of the sales of said Goods and Mer-
 "chandise to the said parties of the second part, their agent
 "or attorney, as before provided, or in case the said party of
 "the first part shall do anything or act, whereby in the
 "opinion of the parties of the second part, their agent or attorney

"Comm. & Exh."

"J. P. Hanson & Bates"

"11583"

"Filed March 5, 1855"

"a J. M. Vickers"

"in Prob. C. of Mortgage"

"Pages 539, 54 & over"

"W. B. at 9/12"

"A true copy"

The Plaintiff's further proved by said witness that the witness resided in the Town of Oregon in Ogle County and his business was selling goods, that witness was acquainted with the Plaintiff's and that they were Merchants residing in New York City. The instrument a mortgage was executed by witness on the day it bears date. That the witness remained in the store & continued in possession of the goods until April 3, 1855, when the Deputy Marshall took possession of them. The Marshall informed them looked up the store & advised them, the Deputy Marshall then put them in the custody of William Davis the agent in this suit. Davis remained in custody of the goods until the 14th of May 1855 when the Sheriff took them on a process writ at the suit of the Plaintiff's. The goods sequestrated were the same goods taken by the Marshall and the same goods named in the Mortgage. That witness sold goods after the Mortgage was given & before the levy and paid over to the Sheriff the agent of the Plaintiff's amounting to \$644. Of the above sum witness paid Mr. Manlove \$600 as provided in said Mortgage. The amount of a note taken up by witness, he having paid the same to Manlove and the balance of the sum was hundred Dollars he paid to Mrs.

"The Plaintiff by his counsel asked the witness whether or
 "not the witness was indebted to the various persons (naming
 "them in said interrogatory) in the within instrument mentioned
 "and in the usual terms therein mentioned. To which question
 "the Defendant by his counsel then and then objected
 "on the ground that the within instrument had not been given
 "in evidence. And the witness could not testify of its contents
 "which objection was then and then overruled by the court
 "which ruling the said counsel for the defendant then then
 "accepted. The witness testified that he was jointly indebted
 "to the various parties named in the Mortgage. And in the
 "interrogatory terms therein mentioned

"The said Witness on cross examination by the counsel for the
 "defendant testified as follows. That the arrangement in
 "creation of the Mortgage was made by him with Mr Smith
 "the agent of the Plaintiffs. And also of Beals, Taylor
 "Reo Merchant of New York and creditors named in the
 "Mortgage. That at the time of the execution of the Mortgage
 "he was unable to meet his notes, as they became due and
 "also his liabilities as they became due. He (witness) had
 "executed a judgment note. And Smith and the counsel
 "about the creditors of witness and his business, that he
 "executed the Mortgage for the benefit of his creditors, that
 "the Mortgage embraced and named all his creditors except
 "Messrs Cornell & Willis & Jennings Reo, of New York whom
 "he owed some seven or eight hundred Dollars. And except also
 "a draft due Mr Jackson of Chicago of some \$400. That
 "Cummings Collins & Leaman the parties to whom the judgment
 "note was given were provided for in said Mortgage. That at
 "the time of the execution of the Mortgage, Smith and
 "Witness concluded that the Mortgage would save his

Creditors. And that the Mortgage contained a schedule
 of all his property and effects except tracts of land he
 then had. At the time of the execution of the Mortgage, Witness
 had acted as a Merchant in Oregon some eleven months
 and did a cash business. That he sometimes sold some goods
 on credit and kept the account in slips of paper. At the time
 of the execution of the Mortgage, witness stated that he might
 have had some thirty dollars in accounts and also two notes
 one of \$50. and one of \$30. which were given by a man up
 north, which witness did not consider worth much. The
 counsel for the Defendant then asked the following
 question of the witness viz: "At the time of the execution of the
 Mortgage did you have any other notes and accounts not
 named in the Mortgage except as stated by you?" which
 question was objected to by the counsel for the Plaintiff.
 And the said objection was sustained by the court. To which
 ruling of the court the Defendant by his counsel then & there
 excepted to. Defendant counsel then put the following
 question of the witness viz: "Had Mr Smith the agent
 with whom you negotiated the arrangement for executing
 the Mortgage, at the time of executing the same of you being
 "unable to meet your liabilities"? which question was objected
 to by the Plaintiff's counsel and the court sustained the objection.
 To which ruling of the court the said Defendant by his counsel
 then & there excepted. On being further cross examined the
 said Witness stated that at the time of the execution of the
 Mortgage, the Plaintiff and Mortgagee, had knowledge
 of his being unable to meet his liabilities. That at the time of
 the giving said Mortgage, Mr Smith the Agent looked over
 the book, but there was no invoice made at the time except
 the one contained in the Mortgage; they did not weigh

"not measure, but counted the prices, that there was in the stock
 "groceries, sugars, teas, &c. The stock remained in the
 "Witness possession the same as before in the same store, that
 "there was no change in the sign. Witness name had never
 "been in the sign. Witness had had an advertisement in the Queen
 "Newspaper but don't recollect as it was in at that time, he doesn't
 "it out before that time but doesn't know whether it was ^{taken out} or
 "Advertisement or notice was given to the public of the transaction
 "that he knew of. That he continued on, trading as usual, after the
 "execution of the mortgage, as the agent of the Plaintiff's pur-
 "suant to the mortgage - that he was the agent of the Plaintiff
 "in no other way than as provided in the mortgage. He had any
 "other interest or rights except as provided in the mortgage. Witness
 "further state that at the time of the execution of the mortgage, he had
 "some little money, and but a little as he had a few days before
 "paid it over to Mr. State. Mr. State was one of the execution creditors
 "who took the goods, and one of the firm of Cummins, Collier &
 "Seaman. Witness further states that he had a family of three
 "persons, besides himself. That at the time of the execution of the
 "mortgage, it was understood, between the agent & witness, that
 "he was, when the support of his family & self out of the goods &
 "and avails, was anxious to pay his debts, and would do the
 "business for family support, and was all witness asked, - this
 "was talked over and arranged, at the time and there was no limit
 "to the extent of the family support - that since the execution of the
 "mortgage witness has with the consent of the Plaintiff's or their
 "agents continued to support himself & family out of the stock
 "and avails - that he still remains in possession of the stock
 "trading as usual. The Plaintiff has procured by witness the
 "due execution and registry of the foregoing official instrument
 "of writing in the Records office of Ogle County and in a

"Magistrate's Docket in the Term when Septon then lived
"And then when offered said instrument as a valid (Mortgage)
"in evidence - with the introduction of which said instrument
"in evidence the case moved for the Defendant, then and
"then objected, which said objection was then then over-
"ruled by the court. To which ruling the said Defendant
"by his counsel then then accepted - And thereupon said
"Mortgage (copies as aforesaid) was read in evidence with the saying
"The Plaintiff's thereupon made a demand of said goods
"and damages for the satisfaction thereof of the amount of
"\$1000. - And then noted their case. The Defendant then
"in support of the issues on his part produced as at witness on his
"part, one Elias C. Septon who testified as follows. I know Edmund
"J. Septon, did not know anything of their being a Mortgage given
"until the goods were taken in by the Marshall. I owned the
"store when he traded, and was daily in his store, before and after
"he gave the Mortgage. - After the giving of the Mortgage Septon
"continued in possession and business ^{at the same} as before the Mortgage
"was made. I never noticed any change in his trade and
"business after the Mortgage was given from what it was
"before until the levy of the Marshall.
"The execution under which the Defendant had levied upon the
"goods and stock was then given in evidence."

"Thomas A. F. F. also

"testified that he was a Merchant, and had been for some years
"a merchant of Oregon, in this County and was well acquainted with
"Edmund J. Septon. I know of Septon's making the Mortgage
"spoken of by him - after the Mortgage was made, I noticed no
"change in his business from what it was before - he was in his store
"frequently about that time, and I all appearances he carried
"on business the same."

"The foregoing was all the testimony and evidence given
 upon the trial of the said cause. Thompson (Argument
 to the Jury having been waived on both sides) the said
 Defendant by his said counsel asked the Court to give
 to the Jury the following instructions in writing that is
 to say:

"1st If the Jury believe from the evidence that the Plaintiff
 within a year, committed the said Sultan to law, and
 support his family out of the trade value of the stock
 of goods in question. Then the Mortgage is void as against
 his creditors and the verdict must be for the defendant

"2nd Under the Mortgage the Plaintiff had no right of
 the possession of the goods until Sultan by some act of
 his own laid the foundation for such right as provided in
 the Mortgage and until such right of possession was
 caused by some act of Sultan, he could not have been the
 agent of the Plaintiff for the purpose of trading & disposing
 of the goods as provided in the Mortgage. and if the
 Plaintiff have failed to prove that right the goods are
 void stated. Then the goods were liable to execution against
 Sultan. And the verdict must be for the defendant

"3rd Under the provisions of the Mortgage, Sultan could not be
 the agent of the Plaintiff for the purpose of disposing &
 trading with the stock, as provided in the Mortgage, and by
 such agency protect the goods from his creditors

"4th If the Jury believe from the evidence, that Sultan at the time
 of the levy, was in possession of the goods trading as usual
 as provided in the Mortgage or otherwise. Then the Mortgage

"is void as against his creditors. And the verdict must be
"for the Defendant."

"^{2^d} If the Jury believe from the evidence, that it was understood
"and agreed by the parties to said mortgage, that Septon was to support
"himself & family out of the stock of goods, or proceeds, without
"instruction as to the extent or amount, or if they believe that the
"Plaintiffs did allow him (Septon) to support himself & family
"out of the stock, or if they believe from the evidence that Septon was
"allowed by the Plaintiffs to have the use & profits of the stock
"and thereby the stock was, or it became exhausted or run up
"or was, in its nature perishable, in either case the mortgage does
"not give the plaintiffs a right to the goods & the verdict must
"be for the defendant."

"All of which instructions were then and then refused to be given to the
"Jury by the court. On which said ruling of the court in refusing said
"instructions the counsel for the defendant then and then excepted.
"When upon the said counsel for the Defendant then and
"then, a question, in writing, the court gave the following instruction
"to the Jury said:—"

"^{3^d} If the Jury believe from the evidence, that it was intended and
"understood by the parties to said mortgage, at the time it was made
"that it was made for the benefit of Septon in any respect, whether it
"was made by him to prevent his creditors attaching or laying
"upon said stock, or if it was made for the purpose of enabling
"Septon to carry on his business with said goods, in his usual
"course of trade, without giving up the possession thereof then in
"either case, it is fraudulent and void ^{as} against his
"creditors. And the verdict must be for the Defendant."

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"Which said instruction the said court then and there allowed and
"modified as follows, by inserting in his own hand writing after
"the word 'respects' (the 5th word of said instruction) the words
"except as in first instruction." And with said modification and
"alteration, then and there gave said instruction to the Jury."

"To which giving of the said instruction, so as aforesaid
"modified and altered the said counsel for the defendant then &
"then objected."

"Whereupon said case was submitted to the Jury who
"retired to consider thereof, and after a short absence, returned into
"court with the following verdict said:"

"To the Jury said the issues
"for the Plaintiff, and assess their damages at five cents."

"Whereupon the said counsel for the defendant moved the court for
"a new trial and in answer of Judgment, upon the following
"grounds said:"

"1st The court erred in promissory the the instrument or mortgage
"offered in this case in evidence by Plaintiff's value, and in
"allowing the same to be admitted in evidence."

"2nd The court erred in refusing the instructions asked for by the
"defendant."

"3rd The court erred in allowing improper questions to be asked
"by Plaintiff's counsel to the witness Sexton, and also in refusing
"to allow proper questions to be asked by the defense to said
"witness."

"4th The verdict is against the law & evidence."

"Which said motion was then taken and ordered by the Court. To which
 "said ruling the said Deft by his said counsel then and there
 "excepted. And prayed that this said bill of exceptions might be
 "signed and sealed by the Court, which is done in open Court this 20th
 "day of May in the year of our Lord Eighteen Hundred and fifty
 "six. at which yet of the May Term"

"J. W. Pray S. C."

"U. N. & J. A. Thompson

"Wm. A. Higgins &

"M. P. Sweet

"Counsel for Defendant"

Said Bill of Exceptions returned

"Filed May 20, 1856

"W. B. Light Clerk"

And at the October Term of said Court was entered the following
 order in the above entitled cause in the words and figures following
 to-wit:

"October Term A. D. 1855 - Tuesday October 9th"

"Jonathan A. Parsons &

"Joshua A. Bates

"vs

"William Davis

Plffs vs Dft

"On motion of Plaintiff by their

"Attorney it is ordered by the Court that this cause be continued"

And at the May Term of said Court was entered the following
 order in the above entitled cause in the words and figures following
 to-wit:

"May Term A D 1856 Wednesday May 14th"

"Jonathan. H. Vanne &

Joshua, P. Bates

Reploring

William Davis

Now on this day come the Plaintiffs
by Mix & Loof their Attorneys and the Defendant by Thompson
his attorney. And on motion of Plaintiffs leave is given them
to file double Replication to Defendants Pleas, and Thompson
issue being joined the Sum of of a Jury. - good and
lawful men sent: Hugh Rice, Virgil A. Brown, John A
Rutledge, Charles C. Poye, Luther Odell, Horace Munson
John A. Hyams, William McPherson, Seth A. Bitts, Daniel
Cunnin, Solomon Shaw & Edward Longwell. are elected
and each sworn well and truly to try the issue in the cause
after hearing the evidence and arguments of counsel. And being
fully instructed in the law by the court. the Jury whereof con-
sider their verdict. And after consultation and deliberation
returned into court. And delivered the following verdict & sent:
In the Jury in this cause since the issue for the Plaintiffs
and a plea their damages at the sum of five cents.
Defendant their money for a new trial. which after being heard
and duly considered by the court is annulled

State of Illinois
County of Oglesby

I Robert B. Light Clerk of

the Circuit Court of said County and do hereby certify that the foregoing is a full true and perfect transcript of the papers, files, orders, returns of process, in the above entitled cause heard and determined in the said Court on the late May Term thereof A.D. 1856 as appears from the Records and files of my office after diligent search and inquiry. That the same has been carefully compared and examined by me with the original files, papers and records of and in my office, and found as above.

Witness my hand and the seal of the said Circuit Court at my office in the Town of Oregon in the said County of Oglesby this the 20th day of June A.D. 1856,
R. B. Light Clerk

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Jonathan A. Parson &

Joshua A. Bates

vs

William Davis

Francis et

Filed June 24 1886

L. Leland

Clerk



William Dyer, plaintiff in error -

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Snell Ransom et al. depts in error } Supr Court
Van H. Higgins in reply - } Error to Ogle-

I do not deem it necessary to present any of the points assigned for error, except the invalidity of the mortgage under which the defendants in error claim.

Although I have no doubt that several of the other points are well taken; *ex gratia*, that the property was subject to be seized under our execution in this case - 12 Ill. R. 262 Prior & White 23 Vermont Rep 279 - Skiff & Solace & Wend - 347 -

And I have no doubt that the Court below erred in sustaining plaintiff's objection to the question "At the time of the execution of the mortgage did you have any other notes & accounts, not named in the mortgage except as stated by you?" This question was proper to show that he had no other property to pay his debts with - and as he had reserved by deed the right to support his family out of the store for fifteen months (folia 39 of abstract) it was a strong circumstance of fraud - The mortgage was fraudulent in fact -

But the great point in the case, is, as to the validity of the mortgage itself, under which plaintiffs below claimed -

It is said on page five of the argument of defendants in error that the mortgage in this case is valid; because "The Statutes of Illinois
" recognizes the right to make Mortgages of
" chattels with the conditions & imposed in
" this instrument" - This we deny -

The statute of this State in regard to Chattel Mortgages provides as follows. Vide People's Statutes Page 137 Sec 3 -
" Any mortgage of personal property so
" certified shall be admitted to record & and
" shall thereupon if "bona fide" be good & valid
" from the time it is so recorded, for a
" space of time not exceeding two years, notwithstanding
" the property mortgaged or conveyed
" by deed of trust may be left in possession
" of the mortgagor; Provided, that such
" conveyance shall provide for the possession
" of the property so to remain with the mortgagor -

This statute provides that no mortgage shall be valid as against third persons, unless possession of the property is "delivered to & remains with" the mortgagee, or unless the mortgage be acknowledged & recorded as hereinafter

directed -

It next provides that any mortgage certified & recorded as required by that act
"if bona fide shall be good & valid for two
"years notwithstanding the property mortgaged
"may be left in possession of the mortgagor;
"Provided, that such conveyance shall provide
"for the possession of the property" so to remain
"remain with the mortgagor"

Now it is submitted that a power given to the mortgagor who remains in possession, "to sell & dispose in the usual way by retail of the property mortgaged" is not a provision, in the language of the statute; that "the property shall remain with the mortgagor". But on the contrary it is a plain & express provision that it "shall not remain with the mortgagor" - but the provision is that it shall be sold & disposed of to other persons and that the mortgagor shall receive the proceeds.

The statute never contemplated allowing a mortgagor to remain in possession with the power to "sell and convert the property" - so far from it the statute expressly prohibits such sale in the sixth section of said chattel mortgage act & a penalty is imposed for selling the property

be mortgaged -

It never was contemplated by our Statute that a mortgage should be made valid; merely, because it was certified & recorded as required by that act; - The Statute itself negatives such a position & expressly provides that "it must be bona fide" & that there must be a provision that "the mortgagor shall remain in possession" - not that he "shall sell & dispose" of the property & control the proceeds himself -

Such a provision was void at common law before the Statute & continues so under the Statute - It tends, "to hinder & delay creditors" - it empowers the debtor to set his creditors at defiance & control the property himself - & finally to destroy the mortgage lien, by a sale of the property as authorized, and to pocket the proceeds & set even other mortgages at defiance -

Is a mortgage to be held good and valid for two years under the statute, absolutely and at all events, because certified & recorded? Even if the mortgagor owned the mortgage as a bona fide debt? If so there will be no more voluntary assignments, for the debtor will do as in this case make an instrument in form of a mortgage & have it certified & acknowledged.

under the chattel mortgage act
will make his preference ~~among~~
among his creditors as in this case
& provide that he will retail and the
goods within two years - have his
living and if the property sell it
& if he pleases appropriate it to his
own use & thereby defeat the claim
of the mortgagee or trustees -

Although the instrument may
have been authenticated & recorded
as required - it was illegal upon
its face - The effect of it was to
hinder & delay creditors, & to retain
the possession of the property & control
thereof by the mortgagor - This court
will not give its sanction to an
instrument which will enable the
party to defraud creditors in this
way - The same provisions in an
assignment would clearly make
it void - But will an instrument not
within the letter of the statute be protected
by the court, which would be held void
as common law & control for the same
purpose in another form or calling the
instrument by another name? Will this
court permit a debtor to set his credi-
tors at defiance by making a chattel

Mortgage which secures to him the control of the property & the possession of the mortgaged stock with the right to support his family and of the proceeds.

When if he made an assignment of the same property containing the same provisions, the Court would declare it illegal as tending to hinder & delay creditors -

Debtors have an easy way to set their creditors at defiance for two years if this mortgage can be sustained -

All they have to do is to select one of their creditors as mortgage & provide that all ~~then~~ or a part of their creditors shall be paid in a certain order of preference & that the mortgage shall continue in possession of the property for two years & sell & manage it & retail out a stock of goods &c. and if he sells & pays over well & good the lien is gone by the sale & the mortgagee has the power in his own hands to defeat the lien at any time & can convert the same to his own use despite the mortgage.

Such an instrument never could legally be a "bona fide" one - Because it is no security - it creates a lien which the mortgagee himself is authorized to defeat

by a sale of the property -

The court has a right to pass upon the bona fides of a mortgage which is illegal upon its face,

Suppose a mortgage provided on its face that the mortgagor might support his family out of the mortgaged property for two years & remain in possession during that time - or that he should have possession of the property & have half the property for taking care of it - or suppose he should mortgage perishable property or property which would be consumed in its use & provide that mortgagor should remain in possession for two years & would this be bona fide would not the court declare this illegal on its face? "In determining whether an assignment is or is not fraudulent against creditors, the question is said to be, not whether fraud may, be committed by the assignee but whether the provisions of the instrument are such that, when carried out according to their apparent and reasonable intent, they will be fraudulent in their operation 4 Sand Ch 476 Ward & Lingley.

The effect is to delay creditors - & tie up their hands & set them at defiance without remedy.

All of these questions have been settled by the courts and the reasons given are so unanswerable for holding such a mortgage fraudulent, that I need only refer to some of the leading cases.

I will to save the Court labor, classify them & content myself with the reasons given in the books -

First - If any part of an instrument be contrary to the Statute for the protection of creditors against fraudulent transfers, the whole is void (per se) -

6 Hill 458 - *Gordrich & Downs* -

11 Wend 187 *Mulleman & Grover*

Second - This instrument was not a mortgage but a partial assignment reserving surplus to himself & void as an assignment -

Third - Whether a mortgage or partial
assignment - it is illegal. The debtor
cannot tie up his goods & property
& set his creditors at defiance until
he can retail and his goods "in the usual
way" because the statute says a chattel
mortgage which provides for possession
"to remain" with mortgagee for two years
may be voided - 10 Watts 257 Whallan & Scott
& Paige ch. Rep. 37 Hunt & Crane
& Paige — 406 Alenham & Stearns -

Fourth - It is apparent that the intention
of the mortgagee was to delay the creditors
until he could retail and the goods
& he has & has fully postponed the sale
& kept in the usual way for fifteen months
this is unconscionable & illegal - Burwell on
assignments, P 88 - 6 Watts 545 - Sheerer
& Luntgenheiser = 3 Monroe 1 - Mund & Walter
11 Alenham 689 - Hindman & Dill
4 Sand ch. R. 476 Mund & Lingley -

Fifth - But even if this be regarded
as a mortgage - it is illegal and
void - it hinders & delays creditors and
on its face it cannot be a bona fide
security because the mortgagee is on
its face empowered to defeat it
by a deed & to destroy the lien - The
tendency is to hinder other creditors
without securing the mortgage -
4 Comstock 580 Gismole & Sheldon
21 Barb. S.C. 85 Delancey & Ensign
16 Ohio Rep 547 Collins & Meyers
13 Barb. S.C. 580 - Edgell & Hunt -
3 Kernan 577 Foul & Williams
20 Ohio 589 - Brown & Webb -
17 Wend 492 Wood & Lowry -
18 Ala - 741 Johnson & Thwaitt -
4 Ohio State Rep

Sixth - The defect appears on the
face of the deed & it is fraudulent
(per se) - 5 Term 420 Estwick & Calland
6 Hill 458 Goodrich & Downs -

13 Burt S.C. 380 Edgell & Hunt -

I have no doubt that the refusal
to give the instructions was erroneous
& sufficient to reverse the judgment
as the mortgage was clearly fraudulent
in fact, if at the time there was a parol
agreement that Mortgagor should
support his family out of the mort-
=gaged property - see abstract (folio 39)
5 Alabama 297 Ruvin & Alston
8 Yerger 502 Dunning & Hunley -
4 Yerger 541 - Summerville & Norton
11 Melcalp 117 Robbins & Parker -
7 Yerger 440 Mundy & Rilloupe
8 id 419 Semper & Mitchell
6 Ala - 178. 184 - Wiswell & Lichenau -

But I have so much confidence in the
point that it was fraudulent on its
face under our statute that I do not
deem it necessary to cite authorities
on the subject -

W. H. Riggins

Of Counsel for
Plt & Intervenor -

Superior Ct.

William Davis Plff in error vs error to Ogle Co.

vs
Mrs. H. Ransom ^{et al.} Defts in error

Brief & Argument for Plff in error.

The Plaintiffs below claimed a certain stock of goods by virtue of an instrument in writing or mortgage and brought their action of Replevin against the Executions of the U.S. Marshall who had levied on the stock by virtue of an execution, as the property of Edmund P. Sexton, he (Sexton) then being in possession trading as usual,

The instrument or mortgage above ~~provides~~ (inter alia) recites that E. P. Sexton (Mortgagor) is indebted unto J. G. Manlove, J. H. Ransom & Co, Bates Taylor & Co & others, each in certain sums, that he is unable to pay without further time and conveys his "stock in trade" consisting of &c unto the Defts in error, who are two of his creditors,

2. Provides that these presents are on condition that if said Mortgagor shall pay unto said parties of second part the sums above named as follows. J. G. Manlove &c first paid, Ransom & Co next, Bates Taylor & Co next, & the others pro rata within 18 months,

3. Provides that he (the Mortgagor) is to have

and return possession of said stock for the purpose of selling and disposing of the same in the usual course of Trade, & that he shall sell & pay over the "money & avails" every 30 days, for the purpose of paying the said debts; and shall not remove the stock from the village of Ongow, without the consent of the 2^d party.

4. If default be made in payment as above or if Sexton does any thing to endanger the security the 2^d party may take the goods and all other goods & merchandise hereafter purchased by the Mortgagor & sell & pay the said debts (above specified) & return the remainder to said Mortgagor,

5. Provides that when debts are paid this Mortgage be cancelled & delivered up, &c.

Effect of this instrument

Sexton can sell & barter the goods & put the avails in his pockets; & neither his creditors nor the Mortgages

10 (Watts 23) = can get it. He may dispose of it all within the 30 days & refuse to pay over, in which case the Mortgages would not be liable & creditors, nor could the Mortgages nor his creditors trouble him.

He may dispose of the stock at any price he please he may exchange it for "avails" which are

worthless. He may squander it away
suffer it to be burned or discharged, use it up,
or with the consent of Mortgagor he may remove
the stock from the state & country. He may surely
do all this as against all creditors not named
in the deed.

He is to "sell & dispose" for "ready pay" (He need not
sell at all for cash) in the "usual course of trade"
as heretofore followed" Creditors cannot reach
Sexton's rights under the Mortgage. An execution
cannot reach them, but He is to do the
trading & disposing & creditors must stand
off. The Mortgagor therein does can not
take the stock ^{under the deed} until Sexton by some act lays
the foundation for their right, and then
it may be too late for them even to reach
anything.

This instrument is not a Mortgage. A Mortgage
contemplates that the property remain as
it is, the Mortgagor being allowed to
retain possession by indulgence of
statute. The whole legal title passes to the
Mortgagee, with a defeasance. Creditors may
reach it at any time subject to the Mortgage.
But this instrument carries the property
to pay certain debts, and Sexton is to
do the disposing and paying, ~~It is not~~
This instrument is wholly inconsistent
with the nature & object of a Mortgage.
It is more

like a partial Assignment, superferring cred-
=itors, ^{the property is appropriated,} The Nature & Legal operation of the
deed make it more of an absolute
sale than a Mortgage, and yet Sexton
is left in possession with the rights and
powers aforesaid

This instrument is made for the benefit of
Sexton, it recites that he is unable to pay his
debts, it allows him to carry on his
business as usual & set his creditors at
distance, the direct effect upon the face
of the deed is to hinder & delay, certainly
all creditors not named -

Nor can he be the agent of the Mortgagors
for by the deed the Mortgagors cannot
disturb him until he by some act
lays the foundation for the right,

1st The Court (below) erred in admitting the instrument in writing or Mortgage in evidence before the jury - first, because it is void on its face, and second it was void in connection with the evidence then before the court,

2^o The Court erred in refusing instructions Nos 1, 2, 4, 5, 6 & 7 and also in altering instruction No 7 as shown by the record,

3^o The Court erred in overruling No former trial, because the verdict was against the law and the evidence,

This Instrument is void, under our Statutes and decisions.

Our Statute makes all instruments of this kind void when possession is left in the mortgagor unless the instrument provide that the property ^{shall} ~~may~~ remain with the mortgagor, and prohibits the mortgagor from selling during the existence of the lien. The whole meaning & intent of the Chattel Mortgage act (which is at best a mere indulgence of Statute) is to secure a creditor while the debtor is allowed to retain possession and use of such property

R.S. p 91, Sec. 3.
" 3.
" Sec. 6.

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as can be kept and used by him without
circumventing or exhausting it, hence the
statute provides that it shall remain
with him, and in all the Illinois cases
(1 Scam 297. 4 ib 577. 3 Gill 464 &c.) the mortgages
provided that the property should "remain"
and "remain & continue" with mortgagor,

This instrument don't provide that the goods
shall remain with mortgagor but expressly
provides that it shall be disposed of by him
as fast as he can sell

If this is a mortgage then clearly the verdict
was against the evidence for the property was
liable to execution, subject to the mortgage
Prior v White 12 Ill 262, 8 Den 347
Shippey & Solove - 23 Remond 279

A debtor in failing circumstances is allowed, ^{only} to
place his property beyond the reach of his cred-
itors by making an assignment of all his property
for the benefit of all his creditors & not with a
view to his own advantage,

Arbiters Leiby et al 13 Ill 387

This instrument don't purport (nor in fact does
it ^{to} convey all Sexton's property, neither does
it purport (nor in fact ^{is} it) to be for
the benefit of all his creditors, but provides
that after paying certain debts the surplus

shall be returned to him, Good faith in
this case requires the debtor to convey all
his property for the benefit of all his cred-
-itors, and also to have passed over the right
to sell & pay to his assignees, together with
possession of the goods. - Of course no one
will claim this instrument good as
an assignment. -

Our Statute does not make mortgages re-
valid when possession is returned, but
it superadds another and an absolute
cause of invalidity.

Woodes Sorey 17 Wm 492
Smith & Doe ~~and~~ as Ackn 23, ⁶⁵⁸ ⁶⁵³⁺ ^{Wm 1}

2
This instrument is void as having been made
for the purpose of hindering delaying and
defrauding Creditors

Possession with power of disposition in the
Mortgagor is fraudulent & void on its face
as to Creditors. Such a Mortgage is no
security & of no effect but to ward off
Creditors -

Collins vs Myers 16 Ohio 547,
in this case (16 Ohio 547) the Court say that
to hold such an instrument as this
good would be to enable a debtor
to carry on business upon a capital
of indefinite amount as the mortgage
is to extend to future purchases, (which
is this case) at the will of the Mortgagee
protected from all other Creditors, it
would enable him to do business
in defiance of his Creditors,

Chattel Mortgage with power of sale in
Mortgagor is void on its face - "The debtor
may sell all the property, pocket the
proceeds & set his Creditors at defiance"

Brown & Co vs Webb - 20 Ohio 389, 16 Ohio 547

Poyt vs Berchard - 1 Esp R. 205

Wood vs Savory - 17 Wen 492

Edgell vs Dent - 13 Barb N.Y. 380

in 13 Barb (Eqless Dent) 380, The Court,
provided that Mortgagee shall have power
"Once per ready pay" without restriction
as to price or quantity. The Court says
"that the object upon the face of the
deed is to hinder & delay creditors
& protect from levy, it is void on its
face, & the Court should have so
declared it."

In Johnston vs Throatt 18 Alabama 741
The Mortgage reserved the right in the
Mortgagee to the use & profits of a stock
of goods - The Court held this implied
a power of disposition & sale & thus
a ^{the debtor might} ~~creditor~~ pocket the proceeds. It was
held void on its face,

When it is the purpose of the Mortgage to permit the
Mortgagee to obtain possession, sell & dispose
of it as he pleases, it is void.
Declarator vs Ensign - 21 Barb N.Y. 85 -
4 Comstock

x Griswold vs Sheldon - 4 Comstock 581, 588,
^{also see in this case Mullist f - 594.}
Stow vs M Soughton - 2 Wen 596
Jordan vs Turner - 3 Blackf 309
Womell vs Smith - 1 Camp - 332

A debtor in failing circumstances
conveys property in trust until after
the expenses of the trust be paid & the
profits & pay the debts & then the
surplus went to debtor is void

9 Smalls & Mar 394

If the deed actually does delay & hinder
creditors it is void, Permitting the debtor
to retain possession & use of prishable
property which ^{he may} diminish or be exhausted
as (groceries liquors wood &c) renders the deed
void - The property must not be wreck
up - nor disposed of by the Mortgagee,

• Mex xxx - Semmerville vs Horton	4 Yrs (Yam) 541,
Seamier vs Hamley	3 Yrs - 502,
Caullton vs Seng	5 Humphr: 496,
Maulby vs Killough	7 Yrs 440,
Scrimpr vs Mitchell	8 " 419
Ravens vs Alston	5 Alabama 297, 302
Worrell vs Lichenor	6 " 178, 184

~~A voluntary Assignment is bad when~~

The court should declare this instrument
void & not let it go to the jury,

Greenwald vs Sheldon 4 Conn Stock (& cases there enumerated upon), 588 to 591.
also Mullett J. 594,

~~Watts~~ Carpenter is Mayor 5 Watts 483.
6 Watts 247, 2° Watts 789, 147

The suggestion must be consistent with the
limitation of intent. The form of the deed
makes no difference, The nature of this
transaction does not justify possession
in Sexton,

Wheeler's Wood 2 Aiken (91-) 64,
Smith's Sea Cases 1 vol page 74,

It has sometimes been held that, in ^{some} cases
~~where the deed contemplated an approp-~~
~~riation of the property,~~ possession in the
grantor was excusable, but it was
in the grantor that he was the agent
of the grantee, and it is contended
in this case that Sexton was acting
as the agent of the Mortgagees,
but we contend that he can not
be the agent under this instrument
for he has rights reserved to him which
they can't interfere with, The Mortg-
agees have no power to terminate
his agency until he lays the foundation
for the right, possession is guaranteed
to Sexton by the deed, the deed does
not pretend that he is agent, neither
will the nature & operation of the

instrument admit of the Agency
of Sexton,

This instrument transfers property for the
benefit of certain Creditors & reserves
Surplus to himself, This makes it
void,

Barnes vs Griffin 2 Const 370

Goodrich vs Lewis 6 Hill 438

Sitch vs Hollister 4 Const 211

Wakeman vs Green 11 Wren 188.

This doctrine don't apply when the assign-
ment is to the creditors themselves for
the purpose of securing their demands
for then it operates as a Mortgage
& Creditors can attack the reversion
& are not hindered - 6 Hill
~~2 Const~~ ~~above~~,

This instrument is not a mortgage
and Sexton can ~~use~~ use & manage
the reversion as he pleases as
against the Mortgages & every body
else,

This instrument is not ~~within~~ the a
Mortgage nor within the 7th Sec of the Chattel
Mortgage act,

2

The substance of the evidence before the Court (below) (and before the Mortgage was offered in evidence) is that Hxtun after executing the Mortgage continued on trading as usual until the Marshall took the goods, that the Mortgage did not embrace all his property, nor did it provide for all his creditors, that he was unable to meet his liabilities, that no delivery was made to Matyugas, that it was understood at the time of executing the Mortgage between the parties that Hxtun was to live & support his family without limitation out of the stock & assets, that he continued to do so with the consent of Matyugas, that there was in the stock groceries, teas, sugars (& family supplies generally) that he was the agent of the Mortgage but was such agent in no other way than as provided in the Mortgage

The court erred second in suffering this instrument to go to the jury with this evidence before him, for if the instrument is not void on its face this testimony made it so - and in connection herewith the court erred in refusing instructions asked for by deft: below & in altering instruction No 7, as shown,

The law will not allow a debtor to have secured to him the support of himself & family in this way, as against execution creditors. This plainly was the agreement between the parties from the evidence

Anderson vs Derrington 24 Miss - 106,

Wooster vs Clark 23 " 75-

Cases above cited 5- Humph: 496, (4 Ver 541.

3 " 502

18 Alabama 734

Even if the so called mortgage is valid (and the court below so held it), then the

✓ Court erred in refusing instruction
No ~~2~~ ~~4~~ By the Matgus the Matgus
had no right to the goods until Sexton
lent some foundation for it. These
events must have occurred and and
must be proved. The stock was liable
on execution as Sexton with him in possession.

Hall vs Caenly 1 Barb N.Y. 542

Bank of Saratogay vs Cary 1 Ker. N.Y. 501

Illinois - Prior vs White 12 Ill. 261

Bailey vs Benton. 8 Conn 347

The Court erred in giving instruction
No 7, by inserting the words "except as
in first instruction" - thereby changing
the jury that the instrument was not
invalid although it was made for the
benefit of Sexton by securing to him
the support of himself & family,
The law will not allow him this as
against his creditors,

3 - Admitting that it was proper to permit
this instrument to go to the jury & further
admitting no error was committed in
the instructions as above claimed,
then the Court erred in refusing

a new trial, for the verdict was against
the law and the evidence, From the
preliminary features of this instrument
and the evidence in this case we
think the court should have reversed
the verdict, The Courts of this state surely
can not sustain this transaction. —
It completely ties up the hands of
all his creditors (even the creditors
named in the deed for 30 days) for
the space of 15 months, and in the
mean time Sexton has reserved to him
the right to trade & traffic in the property
without limitation or restriction, It reserves
to him the unlimited support of himself
& family out of the property,
The transaction is plainly for his benefit,
Creditors cannot reach him, there is
no legal process under which Sexton's
rights under this transaction can be
reached, At the will of the Matquys
he can hold the whole of his property
from creditors or squander it, and
even in defiance of the Mortgages
he can pocket the proceeds for 30 days
(& that may be all) and the Matquys
would not be liable to creditors,
To hold this instrument good would be
to sustain an instrument which

will enable any debtor to transact
and carry on his business in defiance
of creditors. It is not a Mortgage, Creditors
can always reach the rights of a Mortgagor
at any time, a Mortgage is a security
upon property, but this is an appropriation
of property to pay debts & the nature
purpose & legal operation of the transaction
will not permit the grantor to retain
possession, sell & dispose of the property,
It is not "consistent with the limitations
& legal operation of the deed and
is a possession beyond what is necessary
& unavoidable & is pari in loco" —
Our Chattel Mortgage act does not save
it — for its nature & purpose is not that of a
Mortgage nor a "Bill of Sale, deed of trust
or other conveyance of personal property,
which has the effect of a Mortgage or lien
upon the property" It has no such effect,
for by the provisions of the deed the "stock in
trade" may all be exchanged for new
property and the lien can't continue
as the old stock merges in new, the lien
is gone as fast as it is disposed of, the lien does
not attach to Money or property received in
exchange for the old stock,

Supreme Court

vs Davis, Plaintiff

vs

J. P. Ransom Defendant

Brief & Argument
for Plaintiff

G. W. F. Thompson
Attorney - for Davis

State of Illinois }

Supreme Court }

Third Franco. Division

William Davis

Plaintiff in Error

vs

Jonathan H. Ramsour

Joshua H. Bates

Defts in Error

Error to Ogle County

Of the June Term

A.D. 1856,

It is hereby stipulation & agreed
by and between the Attorneys in this cause
that the said cause be docketed by the Clerk
of said Supreme Court at the said Term thereof
as if the said cause were regularly brought
into said Court by due process, said process
being hereby waived, and that said cause
be heard upon the errors assigned & record
thereof, and determined at the Term of
said Court to be held at Ottawa in said
Division commencing on the second Monday
of June A.D. 1856, and the Clerk of the
said Court is hereby requested to enter
the appearance of the undersigned in said
Court in said cause. The same being the
Attorneys for the respective parties above
named.

Loaf Heaton & His for

Attys for Plaintiff & Defts in error.

G. W. J. A. Thompson

Van H. Higgins &

M. P. Sweet

Attys
for Defendant
Plff in Error

⁴²
Supreme Court

⁵⁴
¹⁵
William Davis
a Plff in Error

Bansum & Bates
Defts in Error

Stipulation

for Clerk to enter & approve

Filed June 11. 1856

L. Leland Clk

Docket can't get time
to file record, -

⁵⁴
¹⁵
510
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3240 4000

725 42

William Davis

25

Jonathan H. Hanson ^{et al.}

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1857

