

Case No. 5,442.

GILMAN v. HERBERT.

[2 Cranch, C. C. 58.]<sup>3</sup>

Circuit Court, District of Columbia.

Nov. Term, 1812.

SALE—FRAUDULENT AS TO CREDITORS—POSSESSION.

A sale of goods in the possession of the vendor's bailee, is fraudulent as to creditors, unless the possession accompany and follow the sale, or an order be given by the vendor, and served on the bailee, to deliver possession to the vendee.

Trover, for fifty barrels of salt &c. Douglass, in May or June, 1810, being indebted to Gilman, agreed that he should have this property, which was then in the possession of Shuck, and gave Gilman a written order to Shuck to deliver the goods to Gilman, who neglected to give notice to Shuck of this order, until after Douglass had taken the oath of an insolvent debtor, and Herbert was appointed his trustee, and demanded the goods of Shuck as the property of Douglass.

Mr. Taylor, for defendant prayed the court to instruct the jury, that the sale under those circumstances, was fraudulent as to the creditors of Douglass, unless the jury should be satisfied by the evidence that the possession" accompanied and followed the deed; and that the order to Shuck did not transfer the possession from Douglass to Gilman, if notice of such order was not given to Shuck until after the discharge of Douglass under the insolvent law, and after the defendant had claimed them, as trustee.

Which opinion THE COURT gave (THRUSTON, Circuit Judge, absent).

E. J. Lee took a bill of exceptions, but did not prosecute a writ of error.

<sup>3</sup> [Reported by Hon. William Cranch, Chief Judge.]