

In re SCHILLING *et al.*

THE AMSTERDAM.

(Circuit Court, S. D. New York. December 3, 1891.)

CUSTOMS DUTIES—CLASSIFICATION—“SWEETENED CHOCOLATE.”

“Sweetened chocolate” is subject to duty as “manufactured cocoa,” under paragraph 319 of the tariff act of 1890.

At Law. Appeal by the collector of customs at New York from the decision of the general appraisers concerning certain merchandise imported by Schilling, Stollwerck & Co. Reversed.

Edward Mitchell, for collector.

Curie, Smith & Mackie, for importers.

LACOMBE, Circuit Judge. “Crude cocoa” is on the free-list. “Cocoa manufactured,” which is apparently a very comprehensive term, is contained in paragraph 319. Cocoa, according to the testimony, is manufactured into a substance known as “prepared cocoa;” also into a substance known as “chocolate;” and of chocolate we have information here of two varieties,—chocolate confectionery and sweetened chocolate. As manufactured cocoa, all these articles—prepared cocoa, chocolate and its varieties—would be included in the phrase “cocoa manufactured.” “Cocoa prepared” is expressly provided for in paragraph 319. “Chocolate confectionery” is expressly provided for in paragraph 238. “Chocolate” itself, excepting the confectionery and the sweetened chocolate, is specially provided for in paragraph 318. I find no provision in the tariff act for “sweetened chocolate,” except in a parenthetical phrase, where it is excepted in the enumeration of chocolate; and therefore I think it should be classified under “manufactured cocoa,” as covered by paragraph 319. The decision of the board of general appraisers is therefore reversed, and the merchandise in this case should be classified by the collector as cocoa manufactured, (paragraph 319,) and duty imposed accordingly.

ARGALL *v.* SEYMOUR *et al.*BIERMAN *et al. v.* SAME.

(Circuit Court, S. D. Iowa, C. D. May, 1883.)

1. FRAUDULENT CONVEYANCES — CHATTEL MORTGAGES — CHANGE OF POSSESSION — RECORDING.

When a chattel mortgage authorizes the mortgagee to take possession at any time, the fact that he does not record it for over 30 days, and allows the mortgagor to remain in possession for about 70 days, selling from the stock in the usual course of business, does not avoid the mortgage as to prior existing creditors, in the absence of any fraudulent intent.

2. SAME—INTERVENING CREDITORS.

But as to a prior creditor, who extended the time of payment while the mortgage was unrecorded, the mortgage is void.

At Law. Proceeding in garnishment.

MCCRARY, J., (*orally.*) These cases are before me, having been submitted upon the answer of the garnishee and other testimony taken upon the issue joined thereon, by stipulation of counsel jury being waived. The proceeding is against one Toy, as garnishee; and the claim of the plaintiffs in the several cases—I believe there are a number of them, all to be determined by the ruling upon these two—is that Toy, as garnishee, is responsible to certain judgment creditors of A. W. Seymour for the value of the stock of goods which Mr. Toy took under a chattel mortgage, and caused to be sold, receiving the proceeds. Seymour was a merchant in the town of Alta, in the northern part of this state, carrying on a retail establishment. Being indebted to Mr. Toy for money advanced by Toy to him in order to enable him to pay certain debts, he executed a chattel mortgage upon his stock of goods. The mortgage was dated on the 30th of September, 1881. It was not filed for record until the 3d of November, 1881, a period of about 30 days. Possession was not taken until the 12th of December, 1881. During the period from the time of the execution of the mortgage until the time when possession was taken, the mortgagor, Seymour, remained in possession of the stock of goods, and continued to deal with it, making sales therefrom in the ordinary course of business. There was no provision in the mortgage authorizing him to retain possession and continue to make sales; but he did so, with the consent, undoubtedly, of the mortgagee, and that was the understanding and purpose, as clearly appeared in the proof. The claims of these plaintiffs, with one exception, to which I shall presently refer, all, so far as I am advised, antedated the execution of the mortgage. In other words, none of them, with the exception to be noted, contracted with the mortgagor after the execution of the mortgage and before its record.

The rule laid down in the case of *Robinson v. Elliott*, 22 Wall. 523, is recognized as establishing this proposition: A mortgage of chattels, which provides that the mortgagor may retain possession of the property and continue to deal with it as his own by selling therefrom from time to time, is at least constructively fraudulent as to creditors, and therefore void. That case went no further than that. It held that, where