

jurisdiction are such that it has become the settled practice, in declaring upon a judgment, to allege generally the rendition of the judgment, and not, as formerly, to set out the whole proceeding. 12 Am. & Eng. Enc. Law, 149h. So, too, of the attachment proceedings. It is sufficient to allege the issuance of, and levy under, a writ of attachment, and the subsequent order in the judgment directing the sale of the attached property. In my opinion, it was not necessary to allege that any affidavit was filed for attachment, so that it makes no difference that complainant says the "usual" affidavit was filed. The facts conferring jurisdiction upon a domestic court of general jurisdiction need not be pleaded, and, upon the same reason, the facts which authorize the attachment in question need not be shown. The supreme court of this state holds that a lien by attachment and execution may be obtained upon real estate, notwithstanding a prior fraudulent transfer thereof, and that the lien creditor may bring his suit to remove the obstacle of the fraudulent conveyance in the way of his legal remedy without showing that execution had issued, and been returned *nulla bona*, in the law action. The creditor may stop with his judgment, and proceed in equity to have the cloud removed from the title to the property to which the lien of his judgment has attached.

In this case, however, it is argued that under the act of congress, and the act of the legislature of this state of 1891, relative to the liens of judgments, the plaintiff's judgment does not constitute a lien upon the property in question; that to have that effect the judgment must have been docketed in the judgment lien docket. Without stopping to inquire whether such docketing is necessary to a lien, as between the judgment creditor and the fraudulent transferee, it is clear that in any case where there has been an attachment levied, and an order in the judgment directing the sale of the attached property, the lien exists. Section 151 of the Code provides that when the certificate of attachment is filed "the lien in favor of the plaintiff shall attach to the real property described in the certificate from the date of the attachment." "The effect of the levy of the attachment is to create a lien upon the real property, in favor of the attaching creditor, from the date of the levy." *State v. Cornelius*, 5 Or. 46. The demurrer is overruled.

RIEDERER v. PFAFF et al.

(Circuit Court, D. Oregon. June 1, 1894.)

No. 2,049.

CHATTEL MORTGAGE—SUBSEQUENT MORTGAGEE.

A chattel mortgage is valid without renewal, as against a subsequent mortgagee with actual notice, since he is not a mortgagee "in good faith."

Action by Ludwig Riederer against Emil Pfaff, Portland National Bank, and J. L. Hartman to foreclose a chattel mortgage.

T. J. Geisler, for plaintiff.

W. D. Fenton, for defendants.

BELLINGER, District Judge. This case is tried on a stipulation of facts. On August 17, 1892, one Emil Pfaff was indebted to the plaintiff in the sum of \$3,500, secured by a chattel mortgage in Yamhill county. On that date, to further secure this debt upon chattels acquired since this mortgage was given, he executed a new chattel mortgage, which was filed in the proper records on the date of its execution. On February 6, 1893, Pfaff was indebted to one Velten for \$450, to secure which, and future advances, he executed a chattel mortgage upon the property already mortgaged to complainant. At the time Pfaff gave the mortgage to Velten, he informed the latter of the existing mortgage in favor of the complainant, but stated to him, in that connection, that there was no consideration for such prior mortgage; that the same was merely intended to protect Pfaff against his creditors. The Velten note was assigned after maturity to the defendant Hartman, who now holds it. On February 18, 1893, Pfaff was indebted to one Marquam, in the capacity of trustee and agent for the defendant bank, in the sum of \$296. To secure this debt, Pfaff gave Marquam a third chattel mortgage on the property in question, at the same time informing Marquam of complainant's mortgage, and making the same representations respecting it that were made to Velten.

There was no renewal of complainant's mortgage within the year, and the question is, did the complainant lose the priority of his lien over the mortgages of the defendants by his failure to file the renewal affidavit provided by statute? I am of the opinion that he did not lose his prior right by such failure to renew.

In this state, it is provided that a chattel mortgage shall cease to be valid, "as against the creditors of the person making the same or subsequent purchasers or mortgagees in good faith after the expiration of one year from the filing of the same," unless an affidavit of renewal is filed within 30 days next preceding the expiration of the year. Those from whom defendants took their mortgages did so with actual notice of complainant's lien. In its results, "good faith" is synonymous with "conscience." It embraces those obligations which are imposed upon one, in dealing with property, by the circumstances surrounding it at the time. It is not questioned but that, at the time defendants' mortgages were taken, the property was subject to complainant's lien; that Pfaff held it subject to complainant's right. That right continues until cut off by a superior right,—by a right which, in conscience, is entitled to preference. It is fundamental that such preference cannot be acquired by any one having notice of the existing right. Lord Hardwicke laid it down that "the taking of a legal estate after notice of a prior right makes a person a mala fide purchaser. *Le Neve v. Le Neve*, 2 White & T. Lead. Cas. Eq. (4th Am. Ed.) 109. Undoubtedly, it is an act savoring of fraud for a person who has received actual, direct notice of another's right to go on, and knowingly acquire the property, in violation of that other's right." Pom. Eq. Jur. § 591. The result does not, however, depend upon fraud in the subsequent purchaser, who may intentionally assume the position of subsequent holder, as was done in this case. Having done so the failure of the

prior mortgagee to comply with the technical rule of the statute, requiring him to file a renewal affidavit, creates no equities in such subsequent purchaser. The words "good faith," in the statute, are therefore synonymous with "without notice." *Bank v. Sprague*, 21 N. J. Eq. 536; *Sayre v. Hewes*, 32 N. J. Eq. 655. At the time that Pfaff informed the second mortgagees of the existing mortgage, he informed them that such mortgage was a fraudulent and void one. The mortgagees, under these circumstances, were not justified in relying upon Pfaff's explanation of the existence of the complainant's mortgage. They are chargeable with such representations as were against his interest, but they cannot avail themselves of communications in his own favor. Except as to such of the property as was not included in the prior mortgage, the decree will be for the complainant. The expenses incurred by the defendants in taking possession of the property must be borne by them.

PAXSON et al. v. BROWN et al.

(Circuit Court of Appeals, Eighth Circuit. May 7, 1894.)

No. 261.

1. APPEAL—OBJECTIONS NOT RAISED BELOW—SECONDARY EVIDENCE.

Errors assigned in admission of secondary evidence cannot be considered on appeal where the only objection made at the trial was to an entire deposition, part of which was admissible, and there was no exception to the ruling thereon.

2. VENDOR AND PURCHASER—RECORD AS NOTICE—DESTRUCTION OF RECORD.

Mansf. Dig. Ark. §§ 670, 671, provides that the record of a deed as required by law shall be constructive notice "from the time the same is filed for record;" that the recorder shall indorse on every such deed the time "when the same is filed for record;" and that no deed for conveyance of real estate shall be valid against a subsequent purchaser for a valuable consideration, without actual notice thereof, unless such deed "shall be filed for record," as prescribed. *Held*, that proof of the existence of the recorder's certificate of filing, indorsed on a deed afterwards burned, is sufficient evidence that it had been "filed for record," and the burning of the record does not detract from the effect of such filing as notice to subsequent purchasers.

3. ASSIGNMENT FOR BENEFIT OF CREDITORS—PROPERTY CONVEYED—PARTNERSHIP REAL ESTATE.

An assignment by copartners for benefit of creditors granted "all the copartnership estate, property, assets, and effects, choses in action, claims, and demands," of the firm, and contained a covenant by them to execute and deliver such further instruments as might be lawful for accomplishing the objects expressed; and the schedule of assets attached included certain land in another state, which had been bought and paid for by the firm, and deeds thereof taken to one partner for convenience. *Held*, that all the legal title and equitable interest of such partner in the land were conveyed, and the covenant estopped him from ever claiming them.

4. ESTOPPEL IN PAIS — ACQUIESCENCE IN ASSIGNMENT FOR BENEFIT OF CREDITORS.

Such assignment was acquiesced in by the partner in whose name the deeds for the land were taken, for many years, during which the trust was fully executed, large sums having been expended by the assignees in protecting the title to the land, and it was purchased and paid for by third parties on the faith of the assignment, and the proceeds applied to