McCleery vs. Equity

4. That your orator is informed and so charges that the said judgment was confessed as aforesaid for the purpose of indemnifying the said McSherry as surety for said Jenkins on the aforesaid indebtedness to your orator.

5. That on the said 12th day of March, 1896 the said James McSherry had an execution issued "To lie" on the said judgment confessed as aforesaid, by which means he obtained a lien on all the personal property of the said Jenkins, which said execution was and kept alive at the next ensuing May term, to-wit:- on the 14th day of August, 1896. a Levy was made thereunder by the Sheriff of County on all the personal property of the said Jenkins consisting of horses, hacks, carriages, buggies, wagons, harness &c. as will more fully appear by reference to a Certified Copy of said Levy herewith filed marked Exhibit No. 3.

6. That prior to the confession of the judgment and the issuing of the execution aforesaid, to-wit: on the 26th day of February, 1896. the said Jenkins executed a Bill of sale to Isaac E. Cramer of said County and State, on said personal property, for the sum of $193.40. and that although said bill of sale is absolutely in form it is and was in reality a Chattel Mortgage to secure said Cramer for money loaned to the said Jenkins and that the sum of of $100.00. was paid on account of said indebtedness on the 18th day of December, 1896. and your orator files herewith a Certified Copy of said bill of sale marked Exhibit No. 4.

7. That by reason of the said Jenkins having only an equitable interest in the personal property so as aforesaid levied upon, because of the incumbrance of said bill of sale, the said Sheriff has not been able to proceed to make sale of the said personal property, and has made return of that fact to the Court as will appear by a Certified Copy of said return herewith filed marked Exhibit No. 5.

8. That your orator is informed, and so charges the deputation fee fee by the said McSherry was kept in Equity the same were to the benefit that it is entitled to the benefit of your orator, and especially so because the value of the property levied upon is more than sufficient to pay off the incumbrance of the Bill of sale aforesaid.

9. That the said Robert Jenkins is also the owner in fee of a small lot of land, with improvements thereon situated in Liberty District in Frederick County