

most important one in the cause, relates to the relative rights of the creditors, claiming the benefit of these mortgage securities.

It is contended on the part of the defendants, Winn and Ross, trustees of Jones, that as the latter received the notes of Hancock and Mann, with knowledge of the existence of the mortgage executed for their security, and as the plaintiffs took the acceptances held by them, in ignorance of the mortgage, that the claim of the former to the benefit of the security, must prevail over the latter.

It is supposed that Jones, knowing of the mortgage, entered into the arrangement, by which his paper was to be exchanged for the paper of Hancock and Mann, with direct reference to it; and therefore his equity must override the equity of a party, who contracted for a security merely personal, but who discovers the existence of a collateral pledge, of which he was in ignorance at the time.

It is certainly not unworthy of remark, that if the defendant Jones did know of the existence of the mortgage of the 31st of July, 1845, he also knew it was unrecorded, and the list of the notes of the mortgagors, filed by his trustees, shows, that but a very inconsiderable proportion, of the large amount of the papers of these parties received by him, was so received, after the time limited by law for the registration of such instruments had gone by. He knew the mortgaged premises were in possession of the mortgagors, and that they were the ostensible owners thereof, unaffected by this mortgage, so far as the public could be informed, because it was not recorded; and then, when a question arises, between him, and a party trusting a mortgagor, subsequently he claims to stand upon a stronger equity, because he knew of the unregistered mortgage, and the other party did not. Such a pretension is in conflict with the act of 1785, ch. 72, section 11.

But is it true that the plaintiffs in this case occupy less eligible ground, than they would have occupied, if instead of taking acceptance, secured by a mortgage, they had taken an assignment of the mortgage itself?