

**MORTGAGE, MORTGAGOR AND MORTGAGEE—Continued.**

June, 1846. This, also, not having been recorded in time, with respect to the personality, a third mortgage, embracing the same, and some additional personal property, was executed to the same parties on the 16th, and recorded on the 17th of June, 1846, as a further security, and confirming the preceding one of the 11th of April. Notes to a large amount, drawn and indorsed according to the provisions of these mortgages, were discounted by various parties, and both drawers and indorsers became insolvent. Upon a bill to subject the property to the payment of the debts secured by these mortgages, according to the rights of the respective parties, the contest being between the plaintiffs, who had discounted the acceptances of H. & M., made subsequent to the second, and in ignorance of the existence of the prior unrecorded mortgage, and the defendants, Winn & Ross, trustees of Samuel Jones, Jr., an insolvent, who had taken these notes, dated both before and after the date of the recorded, but with knowledge of the existence of the prior, mortgage, in exchange for his own notes, which were negotiated for account of H. & M. It was

**HELD—**

- 1st. That three bills of exchange, dated the 2nd, 7th and 14th of May, 1846, drawn by L. S. N., one of the firm of D. & N., on H. & M., payable to the order of D. & N., and accepted by H. & M., having been previously indorsed by said L. S. N., in the name of the firm of D. & N., and which were discounted by the plaintiffs, were within the tenor of these deeds of mortgage and secured by them.
- 2nd. That the unrecorded mortgage of the 31st of July, 1845, is invalid against the plaintiffs, and others holding acceptances secured by the recorded mortgage of the 11th of April, 1846, and that the notes held by Winn & Ross, dated prior to the date of this mortgage, are not entitled to the benefit of the security, and must be excluded from any participation in the fund raised by the sale of the mortgaged property. *Ohio Life Ins. & Trust Co. vs. Ross & Winn*, 25.
2. Where a party has trusted a mortgagor, knowing of the existence of a prior unrecorded mortgage, claims to stand upon a stronger equity than a party subsequently trusting the mortgagor, because the former knew of the unregistered mortgage, and the latter did not, such pretension is in conflict with the act of 1785, ch. 72, sec. 11. *Ib.*
3. The assignment of a debt secured by a mortgage, carries the latter with it, whether the mortgage is mentioned in the assignment or not; and the plaintiffs in this case are to be regarded as assignees of the mortgage executed to protect the acceptances held by them, though they did not know of its existence when the acceptances were taken. *Ib.*
4. A subsequent purchaser who has actual notice at the time of his purchase of a prior unregistered mortgage cannot avail himself of his purchase against the prior conveyance. This doctrine rests upon the ground of fraud, and is subject to the qualification that the prior un-