

**Bank of Alexandria Vs. Herbert**

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**SooperKanoon Citation :** [sooperkanoon.com/78607](http://sooperkanoon.com/78607)

**Court :** US Supreme Court

**Decided On :** 1814

**Appeal No. :** 12 U.S. 36

**Appellant :** Bank of Alexandria

**Respondent :** Herbert

**Judgement :**

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**Bank of Alexandria v. Herbert**

**12 U.S. (8 Cranch) 36**

*APPEAL FROM THE CIRCUIT COURT FOR*

*THE DISTRICT OF COLUMBIA AT ALEXANDRIA*

## **SYLLABUS**

The trustee of an insolvent debtor in the District of Columbia represents the creditors of the insolvent, and can take advantage of a defect in a mortgage of which the insolvent himself could not.

A bill in chancery was brought by W. Herbert, Jr., trustee for the creditors of John Potts, an insolvent debtor under the act of Congress for the relief of insolvent debtors within the District of Columbia against the Bank of Alexandria to recover the proceeds of a tract of land, the property of Potts, which had been sold by consent and the money deposited in the bank. This land had been conveyed by Potts to Ludwell Lee in trust to secure the payment of money borrowed of the bank by Potts, but the deed of mortgage had not been recorded within the time limited by the law of Virginia, which governs this case and which declares that all deeds of mortgage whatsoever, although good between the parties, shall be void as to creditors and subsequent purchasers without notice unless they be recorded within eight months after their date.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

In this case, a bill was brought in the Circuit Court for the County of Alexandria by William Herbert, Jr., trustee for the creditors of John Potts, an insolvent debtor, against the Bank of Alexandria to recover the proceeds of a tract of land, the property of Potts, which had been sold by consent and the money deposited in bank.

This land had been conveyed by Potts to the bank to secure the payment of a sum of money borrowed by him, but the deed of mortgage had not been recorded until eight months after its date had elapsed. The law of Virginia, which governs this case, declares all deeds of mortgage whatsoever, though good between the parties, to be void as to creditors and subsequent purchasers without notice unless they be recorded within eight months from the date.

The question is whether this mortgage can be set up in favor of the bank against the trustee for the creditors.

The circuit court decreed in favor of the trustee, and from that decree there is an appeal to this Court.

For the appellant it is contended that the trustee may be assimilated to the assignees of a bankrupt, and he has adduced some cases from the books showing that in England a deed declared to be void in law has been supported against the assignees in favor of the particular creditor who holds a lien upon it.

The resemblance between the trustee for the estate of an insolvent debtor in the District of Columbia and the assignees of a bankrupt is admitted, yet a clear distinction exists between the cases cited at bar and

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that before the Court. In those cases, the deed was declared void without any view to creditors. In this case, the deed is declared void for the particular benefit of creditors. To set up this deed against the creditors would be to defeat the very object for which the law was made.

The counsel for the appellant is well apprised of this distinction, and though he claims for his clients the benefit of this deed against the trustee, he admits that it could not be sustained against the creditors suing in their own names.

In reason, there can be no difference between this suit, which asserts the right of the creditors in the mode prescribed by law, and an assertion of that right in their own names. Nor does the law distinguish between them. The cases cited did not turn on any distinction between the rights of the assignee and the creditors, but on the preference which ought to be given to him who has trusted on the credit of the particular fund over those who had trusted the general fund.

*The decree is affirmed with costs.*