

**Knox Vs. Smith**

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**Court :** US Supreme Court

**Decided On :** 1846

**Appeal No. :** 45 U.S. 298

**Appellant :** Knox

**Respondent :** Smith

**Judgement :**

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**Knox v. Smith**

**45 U.S. (4 How.) 298**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF WEST TENNESSEE*

## **SYLLABUS**

A bill in chancery which recites that the complainants had recovered a judgment at law in a court of the United States upon which an execution had issued and been levied upon certain property by the marshal; that another person, claiming to hold

the property levied upon by virtue of some fraudulent deed of trust, had obtained a process from a state court, by which the sheriff had taken the property out of the hands of the marshal, and praying that the property might be sold, cannot be sustained.

If the object had been to set aside the deed of trust as fraudulent, the fraud, with the facts connected with it, should have been alleged in the bill.

There exists a plain remedy at law. The marshal might have brought trespass against the sheriff, or applied to the court of the United States for an attachment.

No relief can be given by a court of equity unless the complainant, by his allegations and proof, has shown that he is entitled to relief.

This was an appeal from the Circuit Court of the United States for the District of West Tennessee, sitting as a court of equity. The appellants had filed a bill against the defendants, which bill was dismissed by the circuit court.

The facts in the case were these.

On 23 March, 1839, Probert P. Collier, of the County of Tipton and State of Tennessee, executed to Peyton Smith, of the same state, a deed of trust, reciting the indebtedness of Collier to sundry persons, and proceeding as follows:

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"Now the above-named creditors, to-wit, Robert B. Clarkson, Jordan Brown, Isaac Killough, Stephen Smith, James D. Holmes, Samuel A. Holmes, Joseph T. Collier, and Forsythe, Goodwin & Co., merchants of New Orleans, being willing to wait and give the further indulgence of eighteen months longer from the date of this indenture with the said Probert P. Collier, upon having their debts and the interest accruing thereon, and the said Probert P. Collier being willing to give them a certain assurance that their money shall be paid at the expiration of eighteen months from this date, and the said Probert P. Collier being extremely desirous to save harmless and secure from all liabilities his endorsers as above described on

the several notes already specified in this indenture as such endorsers."

"Now therefore, this indenture witnesseth, that the said Probert P. Collier, as well in consideration of securing the said Robert B. Clarkson, Jordan Brown, Isaac Killough, Stephen Smith, James D. Holmes, Samuel A. Holmes, Joseph T. Collier, and Forsythe, Goodwin & Co., merchants of New Orleans, in the faithful payment of their debts and interest as aforesaid, and securing and saving harmless his endorsers as aforesaid, as also the sum of one dollar to him the said Probert P. Collier in hand paid by the said Peyton Smith, the receipt whereof is hereby acknowledged, hath this day granted, bargained, sold, transferred, assigned, and set over, and by these presents doth grant, bargain, sell, transfer, assign, and set over unto the said Peyton Smith the following real estate and personal property, to-wit, as hereafter described, to-wit:"

"[The deed then enumerated several tracts of land, some slaves, horses, mules, and furniture, and proceeded as follows:]"

"And each and every of them to the said Peyton Smith, his heirs and assigns, to the proper use and behoof of the said Peyton Smith, his heirs and assigns, forever."

"In trust, however, and to the intent and purpose, that if the said three notes, payable to the said Robert B. Clarkson, for six hundred and twenty-five dollars each, dates as above described; also the note, payable to Jordan Brown, for one hundred and eighty-two dollars, on which said note there has a judgment been obtained before Robert J. Mitchell, justice for said county; also the note, payable at the Memphis Bank, endorsed by Joseph T. Collier, James D. Holmes, and Samuel A. Holmes, for five hundred and forty-four dollars, now in judgment in the Tipton Circuit Court; the one payable to Forsythe, Goodwin & Co., commission merchants of New Orleans, for five hundred and sixty-one dollars, now in a judgment as above described; also the note, payable to Isaac Killough, for four hundred and twenty-one dollars, now in a judgment as before described; the one payable to Randolph Merchants' Association, for two hundred dollars, endorsed by Gabriel Smither, James D. Holmes,

and Samuel Glass, dates as above described; the one payable to Stephen Smith, for nine hundred dollars, dates not recollected; the one payable to the Branch Bank of the State of Tennessee, at Sommerville, for five hundred and eighty-one dollars, dates not recollected, endorsed by Joseph T. Collier and James Hudley; the one, payable to James D. Holmes, and Samuel A. Holmes, merchants, for three hundred and fifty dollars, due and payable 1 January, 1839; the note, payable to Joseph T. Collier, for the sum of four hundred dollars, dates not recollected. All of the above notes not well and truly paid, with all lawful interest accruing thereon; and if each of his endorsers, as appear on the several notes described in this indenture, are not entirely secure from each and all of their liabilities by him, the said Probert P. Collier, or some other person for him, before the expiration of eighteen months from this date; then and in that case the said Peyton Smith, in executing this trust, hereby taken upon himself, advertise the said real and personal property for the space of twenty days, in a paper printed at Randolph Tennessee, and by written advertisements, at four of the most public places in the county, one of which shall be at the courthouse door of the county aforesaid, that he will expose to the highest bidder the said land and negroes, horses, mules, household furniture, and kitchen furniture, spinning machine and loom, the barouche and harness, wagon and gear, and blacksmith's tools; one of the said lots in the Town of Covington, the one on which the said Probert P. Collier resides, on a particular day, for ready money, and if the money be not still paid on that day, designated as aforesaid, then the said Peyton Smith shall proceed to sell the above described real and personal property for ready money to the highest bidder, and after such sale, to make good and sufficient deeds and bills of sale in fee for said property, conveying all the right and title the said Probert P. Collier or his heirs may have in and to the same."

"And this indenture further witnesseth, that the said Probert P. Collier is to still keep and retain the said land and personal property as above described in his own possession, subject for all losses which the said property may sustain, until the expiration of eighteen months from this date, and provided nevertheless that if the

said money and interest should be paid before the day of sale herein mentioned, and his endorsers secure from liabilities as aforesaid, then this indenture to be wholly void and of no effect, either in law or equity."

"In witness whereof, the said Probert P. Collier hereunto sets his hand and seal, this 23 March, 1839."

"PROBERT P. COLLIER [SEAL]"

"PEYTON SMITH [SEAL]"

"Witnessed by"

"J. P. FARRINGTON"

"F. M. GREEN "

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On 4 December, 1839, Knox, Boggs & Co., citizens of Pennsylvania, brought a suit in the district court of the United States, possessing circuit court jurisdiction, and sitting for the District of West Tennessee, against Thomas Eckford and Probert P. Collier, as endorsers of sundry promissory notes held by Knox, Boggs & Co.

On 8 April, 1840, a judgment was rendered against these defendants in the above court, for the sum of \$3,562.20.

On 24 April, 1840, a writ of *feri facias*, founded on the foregoing judgment, was issued, and the execution levied on seventeen negroes and four mules, as the property of P. P. Collier, being a part of the property included within the deed to Peyton Smith.

A forthcoming bond was taken, with the following condition:

"Now if the said P. P. Collier shall deliver the property at Covington, on 21 September, 1840, then and there to be sold to satisfy said judgment and cost, then

this obligation to be void; else, to remain in full force."

"P. P. COLLIER [SEAL]"

"M. BRYAN [SEAL]"

"HY. FEEZER [SEAL]"

"FRED. R. SMITH [SEAL]"

About this time, although the record does not say precisely when, Smith, the trustee, applied to the judge of the district court for an injunction to restrain the sale, upon the ground that the property belonged to him and not to Collier, but the judge declined to grant it. He then applied to the chancery court at Brownsville (a state court of Tennessee), and, upon filing his bill for relief, obtained an injunction.

On 21 September, 1840, when the property was to be delivered under the forthcoming bond, the marshal made the following return.

"Bond forfeited, and sale of the negroes and mules levied on enjoined by order of the Chancery Court at Brownsville, 21 Sept., 1840."

"ROB'T J. CHESTER, *Mar. West Tenn* "

On 27 October, 1840, an alias *feri facias* was issued upon the judgment in the district court, and placed in the hands of the marshal, who levied it, on 6 November, upon the same negroes and mules which were the subjects of the former execution. Another forthcoming bond was given for the delivery of the property on 5 December, 1840.

On 20 November, 1840, the Chancery Court at Brownsville issued the following order.

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"STATE OF TENNESSEE: "

"To the Sheriff of Tipton County, greeting: "

"Whereas it hath been represented unto the chancellor, in our Chancery Court at Brownsville, in the Western Division of the State of Tennessee aforesaid, on the part of Peyton Smith, trustee &c.;, complainant, that he has lately exhibited his amended bill of complaint in our said chancery court against Knox, Boggs & Co., P. P. Collier, and Robert J. Chester, defendants, to be relieved touching the matters therein complained of, in which said bill it is, among other matters, set forth, that the said defendants are combining and confederating to injure the complainant touching the matters set forth in said bill, and that their actings and doings in that behalf are contrary to equity and good conscience."

"We therefore, in consideration of the premises, do strictly command you, the said Sheriff of Tipton County, Tennessee, that you do absolutely seize and take into your possession, immediately and forthwith, at all hazards, the following negro slaves, to-wit: Jack, Jim, Jane, Marcella, Zilpha, Washington, Margaret, Doll, Bryant, Toney, Catharine, Cully, Cynthia, Sam, John, Clara, and Lucinda, heretofore levied on by the marshal of West Tennessee, as the property of said Collier, to satisfy a judgment in favor of said Knox, Boggs & Co.; and do you safely and securely keep said slaves, so that you have them forthcoming to abide the further order of our said chancery court; and this you shall in no wise omit, under the penalty prescribed by law."

"Witness, Sheppard M. Ashe, clerk and master of our said court, at office, in Brownsville, this second Monday in November, 1840, and in the 65th year of American independence."

"SHEPPARD M. ASHE, *Clerk and Master* "

On 5 December, 1840, when the second forthcoming bond was due, the sheriff, acting under the order of the chancery court of the state, and the marshal, acting under the execution issued by the district court of the United States, both made returns.

The sheriff's return was as follows:

"Levied this attachment on all the within-named negroes, except Jim, who was not found, nor was he levied on by the Marshal of Tennessee."

"J. HORNE, *Sheriff Tipton County* "

"Dec. 5, 1840"

The marshal's return was as follows:

"The property executed, delivered according to bond; and then arrested from me by the Sheriff of Tipton, under an order of the Chancery Court at Brownsville; bill filed; see enclosed."

"ROB. J. CHESTER, *Mar.* "

"5 Dec., 1840 "

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On 8 April, 1841, Knox, Boggs & Co. filed a bill in the district court of the United States (the same court in which they had obtained their judgment), reciting all the circumstances of the case, stating that Smith claimed under a fraudulent deed of trust, and alleging that a state court had no right, power, or jurisdiction to enjoin the process issued from the district court; that Collier and the securities upon the delivery bond combined and confederated with Peyton Smith to prevent the sale of the property levied upon, and so defeat the execution of the complainants, who had now no adequate and complete remedy at law. The bill prayed that Collier and Smith and all the securities might be made defendants to answer, and that the property might be sold to pay the judgment obtained by the complainants.

Some of the defendants demurred to the bill, but the demurrers were overruled, and they were ordered to answer.

On 10 November, 1841, the Chancery Court at Brownsville passed the following decree in the case of the bill which had been filed by Peyton Smith, and in which he had obtained an injunction, as before stated.

"Be it remembered, that this cause came on to be heard on this, the tenth day of November, eighteen hundred and forty-one, before the Hon. A. McCampbell chancellor, upon the orders *pro confesso* against said defendants. And it appearing to the satisfaction of the court that in March, eighteen hundred and thirty-nine, defendant Collier made a deed conveying to complainant, amongst other things, the following negro slaves, to-wit: Jack, Jim, Washington, Margaret, Doll, Marcella, Zilpha, Bryan, Toney, Catharine, Cully, Chloe, Phillis, Sam, John, Lucinda, and Cynthia, which said deed was executed by said Collier to complainant in trust to secure the payment of certain debts in the same specified; and by the terms of said deed said Collier was to remain in possession of the property conveyed in the same for the space of eighteen months from and after the execution of said deed, and in the event that the debts specified in said deed were not paid on or before the expiration of the eighteen months from the time of the execution of said deed, the property specified in the same was to be sold by complainant, and the proceeds arising from said sale to be applied by him to the liquidation and settlement of the debts set forth in said deed."

"And it further appearing, that said deed was duly proven and registered, and that the debts specified in said deed are *bona fide*, and due and owing, with the exception of about five hundred dollars, which has been paid by said Collier since the execution of said deed, and that said deed was executed in good faith, and there is no fraud in the same."

"And it further appearing to the satisfaction of the court, that after

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the execution, probate, and registration of said deed, defendants Knox, Boggs & Co. recovered a judgment in the District Court of the United States, in the Eighth Circuit, for the State of Tennessee, at Jackson, for about the sum of three thousand four hundred and sixty-two dollars and twenty cents; upon which said judgment a writ of *feri facias* issued to defendant Chester; who, by virtue of said writ of *feri facias*, seized and took into his possession said negro slaves, Jack, Jim, Washington, Doll, Marcella, Zilpha, Bryant, Toney, Catharine, Cully, Chloe,

Phillis, Cynthia, Sam, John, and Lucinda, and that defendant Chester was about to sell and dispose of said negroes slaves."

"And it further appearing to the satisfaction of the court, that defendants acquired no lien on any of said several negroes slaves by virtue of their said judgment and execution, and that said slaves ought not to be appropriated in satisfaction of the same."

"It is therefore ordered, adjudged, and decreed by the court, that the injunction heretofore awarded in this cause be made perpetual, and that said defendants Knox, Boggs & Co., and said Robert J. Chester, be, and are hereby, restrained perpetually from selling or otherwise controlling either of said slaves under and by virtue of said judgment and execution."

"It is further ordered, that the Sheriff of Tipton County deliver said negroes over to complainant; that complainant pay all costs herein expended, for which execution may issue. And that complainant recover of defendants Knox, Boggs & Co., and Robert J. Chester, the costs of suit herein expended, and that defendant Collier recover of complainant the cost by him about this suit expended, for which executions may issue."

In April, 1842, the respondents answered the bill filed by Knox, Boggs & Co. in the district court. It will only be necessary to refer to the answers of Smith and Collier. Smith denied that the deed of trust made to him was fraudulent as against creditors, but averred that the same was made in good faith; that he was governed by no other feeling or desire than a wish to discharge his duty as trustee; that the *cestui que trust* looked to him to protect the property; denied all combination and confederation with any person &c.; Collier admitted the truth of the facts as they are set forth in the preceding part of this statement, denied that the deed to Smith was fraudulent, but averred that it was made in good faith &c.;

In May, 1842, a general replication was filed by the complainants.

On 5 August, 1842, interrogatories were filed on the part of the complainants and the depositions of four person taken. Chester, the marshal, was asked to state the

value of the property conveyed by the deed of trust, to which he answered as follows.

" *Answer.* I believe, from the ages &c., of the negroes mentioned

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in the deed of trust and what I saw of them when delivered to me that they were worth, at the date of conveyance, seven to eight thousand dollars; I do not know what the mules and horses are worth, nor am I acquainted with the value of the land or the town lots."

Harris and Smith answered as follows.

" *Answer.* I, J. W. Harris have examined the deed referred to in said interrogatory, and suppose the negroes, judging from their age and size, as stated in said deed of trust, to have been worth, at the date of said deed, seven thousand six hundred and fifty dollars; not being personally acquainted with but few of them, can only state their value from what appears to be their ages in the deed. Horses and mules supposed to be worth four hundred dollars; household and kitchen furniture supposed to be worth four hundred and eleven dollars, including spinning machine, barouche, blacksmith's tools, and loom. As to the land, I have no idea what it was worth, never having been upon it that I know of, and not being acquainted with the value of land."

"I, A. W. Smith, answer and say that I am acquainted with the property conveyed in the deed mentioned in the above interrogatory, and believe it to have been worth, at the date of the said deed, ten thousand three hundred and sixty-six dollars."

Clarkson was interrogated as to the amount which Collier owed to him, to which he responded, that it was a balance of eleven or twelve hundred dollars.

On 16 October, 1843, the cause came on to be heard on bill, answers, replication, and proof, when the bill was dismissed with costs. From which decree an appeal brought the case up to this Court.

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

In their bill, the complainants state that they recovered a judgment in the circuit court against Thomas Eckford and Probert P. Collier, for the sum of three thousand four hundred and sixty-two dollars and twenty cents &c.;, and that execution was issued 24 April, 1840, which, about 18 July ensuing, was levied on seventeen negroes and four mules, and that the marshal took a delivery bond and security, under the statute of Tennessee.

That one Peyton Smith, a citizen of the State of Tennessee, pretending to claim said property levied upon by virtue of some fraudulent deed of trust executed by Probert P. Collier to him, filed a bill, which prayed for an injunction, in the circuit court, and which was refused. That the delivery bond being forfeited, an execution was issued on it, against the principals and sureties, which was levied upon the same negroes and mules, upon which execution the marshal returned that "the property levied on had been taken from him by the Sheriff of Tipton County, under the order of the Chancery Court at Brownsville, 5 December, 1840." The bill alleges that the negroes and mules belonged to Collier, and it prays that they may be sold in satisfaction of the judgment.

There is no allegation in this bill which authorizes a court of equity to take jurisdiction of the case. Fraud is not charged, nor is anything stated going to show that the remedy at law is not complete. It is stated that Peyton Smith, pretending to claim the property, after the first levy by virtue of some fraudulent deed of trust executed to him by Collier, applied to the circuit court by bill for an injunction, which was refused. The present bill was not filed by the complainants until after execution was issued on the delivery bond and levied, and the property was taken, as returned by the marshal, under state process.

Now if the object had been to set aside the deed of trust as fraudulent, the fraud, with the facts connected with it, should have been alleged in the bill. Or if the negroes and mules were about to be taken out of the state and beyond the

jurisdiction of the court unless restrained by an injunction, such fact should have been stated. But the principal allegation in the bill is that under the state authority, the sheriff had no right to take the negroes &c.; If this be admitted, it does not follow that the remedy of the complainants is in a court of equity. On the contrary, from the showing in the bill, there is a plain remedy at law. The marshal might

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have brought trespass against the sheriff or applied to the circuit court for an attachment.

Out of the answer which sets up the deed of trust, the complainants insist they are entitled to relief. Now no relief can be given by a court of equity, except a proper case be made in the bill. The inquiry is not only whether the defendant, from his own showing or by proof, has acted unjustly and inequitably, but also whether the complainants, by their allegations and proof, have shown that they are entitled to relief.

*The decree of the circuit court is affirmed with costs.*

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