

Webb Vs. Sharp

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Court : US Supreme Court

Decided On : 1871

Appeal No. : 80 U.S. 14

Appellant : Webb

Respondent : Sharp

Judgement :

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Webb v. Sharp

80 U.S. (13 Wall.) 14

ERROR TO THE SUPREME COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

In the District of Columbia, a landlord has a tacit lien for his rent on the chattels of his tenant on the demised premises from the time the chattels are placed therein until the expiration of three months after the rent becomes due, which lien has

priority over a mortgage on the chattels given after they are placed on the premises. But it seems that a *bona fide* sale or removal of the goods would discharge them from the lien.

By the Act of Congress passed February 22, 1867, [[Footnote 1](#)] the right of distress for rent in the District of Columbia was abolished, and instead thereof, it was enacted

"That the landlord shall have a tacit lien upon such of the tenant's personal chattels upon the premises as are subject to execution for debt, to commence with the tenancy and continue for three months after the rent is due, and until the termination of any action for such rent brought within said three months."

And under the act, this lien may be enforced:

(1) By attachment, to be issued upon affidavit that the rent is due and unpaid; or, if not due, that the defendant is about to remove or sell all, or some, of said chattels; or,

(2) By judgment against the tenant and execution, to be levied on said chattels, or any of them, in whosoever hands they may be found; or,

(3) By action against any purchaser of any of said chattels, with notice of the lien.

This act of Congress being in force, one Polkinhorn, owner of a house in Washington City, leased it to Snow *et al.* for a printing office, and they afterwards bought and placed a printing press therein. Subsequently, on the 11th of December, 1867, they borrowed money and executed to one Webb a deed of trust to secure the repayment of the loan, the press, however, still remaining on the premises leased.

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The loan, though it became due, was never paid. And the tenants falling behind in payment of their rent also, Polkinhorn, their landlord, attached the printing press; the rent for which the attachment was made having accrued in 1869, within three

months prior to the issuing of the attachment. Judgment being perfected on the attachment, a writ of *feri facias* was issued to the marshal of the District, who levied on the press, then still remaining upon the premises. Hereupon Webb, the trustee under the deed of trust, issued a replevin against the marshal in the court below. That court adjudged that the plaintiff should take nothing by his suit and that the marshal have a return of the printing-press. From this judgment Webb brought the case here.

MR. JUSTICE BRADLEY delivered the opinion of the Court.

The question is whether the lien of the landlord is or is not superior to that of the trustee. The Supreme Court of the District decided that it is, and in that opinion we concur.

It will be seen by reference to the Act of Congress passed February 22, 1867, and which governs the subject, that it is clear and explicit that the landlord shall have a lien upon the tenant's chattels on the premises (liable to execution) "to commence with the tenancy and continue for three months after the rent is due." It also points out how, within the three months, the lien is to be enforced -- namely by attachment &c.; In this case, the chattel was on the premises, it was attached within three months after the rent accrued, the suit on the attachment was regularly prosecuted to judgment, and the marshal took the chattel in execution.

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The case is strictly within the language of the act unless the press was not "such a chattel of the tenant as is subject to execution."

The plaintiff in error contends that the deed of trust being a valid instrument, the property became vested in the trustee and the press was not liable to be taken in execution for the debts of the tenant, and therefore that the act does not give the landlord a lien because the lien given by the act is only upon such chattels of the tenant as are subject to execution.

The deed of trust was, in effect and purpose, nothing but a mortgage. It was given to secure the payment of a loan. It was an express lien created by deed to secure the performance of a contract. The landlord's lien is an implied or tacit lien, created by law to secure the performance of another contract and, of the two, the landlord's is the prior lien, and cannot be displaced by the other. The landlord's lien attached to the printing press the moment it was placed upon the demised premises, before the mortgage was given, and as long as it remained on the premises, the lien continued until each installment of rent became due and for three months afterwards, and then ceased as to that installment. Had the tenant made an absolute and *bona fide* sale of the press, the case would have been a different one. The law protects *bona fide* purchasers without notice of the landlord's lien. Goods sold in the ordinary course of trade undoubtedly become discharged from the lien; otherwise business could not be safely carried on. This was so decided by the Supreme Court of Iowa in giving construction to a similar law of that state. [[Footnote 2](#)] But neither the words nor the reason of the law call for a postponement of the landlord's lien to that of a subsequent mortgage or execution creditor so long as the goods remain on the demised premises and continue to be the property of the tenant.

As to the suggestion that this press was not subject to execution, we apprehend that a deed of trust does not protect

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goods from sale by execution. The owner has still an interest, or equity of redemption in them, which is subject to sale, and a purchaser at an execution sale would be entitled to redeem the goods from the deed of trust by paying the debt secured thereby. When the law imposes the lien only upon such goods of the tenant upon the premises *as are subject to execution*, it means to exclude goods which are exempt from execution by some general or special law, such as those which a man is entitled to retain, against all executions, for the use of his family or the practice of his trade.

Judgment affirmed.

[[Footnote 1](#)]

14 Stat. at Large 404 § 12.

[[Footnote 2](#)]

Grant v. Whitwell, 9 Ia. 156.

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