

RICHARD W. GILL,
TRUSTEE OF
ELIZA McK. DUNCAN & ANN McK. HANDY,
JOHN M. DUNCAN,
AND THE SAID ELIZA, HIS WIFE, AND
SAML. J. K. HANDY, AND THE SAID ANN, HIS WIFE
VS.
ISRAEL GRIFFITH AND WILLIAM SCHLEY.

MARCH TERM, 1848.

[VACATING DEED OF CHATTELS—REGISTRATION OF MORTGAGE—ACTS OF ASSEMBLY.]

S., on the 22d of March, 1845, mortgaged all his personal estate to G., to secure the latter against a liability of \$6000, incurred on his account. G. did not record this mortgage, but at the request of S. and in order to gratify him in the desire to avoid the discovery of his temporary embarrassments, kept it from record, and caused it to be renewed from time to time, at periods usually within 20 days, until the 4th of June, 1846, when hearing of the extent of S's liabilities, and believing the enrollment thereof necessary for his security, he caused the last renewal to be recorded on the 18th of the same month in which it was executed. During this time, S. remained in possession of the property, and no new consideration passed from G. to him after the 4th of September, 1845. Between the 3d of January, and the 25th of November, 1845, S., as trustee of the female complainants, received large sums of the trust funds, of which \$12,000, were received by him in the months of October and November, 1845. This money not having been invested, and S. failing to bring the same into court in compliance with an order passed on the 29th of June, 1846, another trustee was appointed in his place, who, on the 24th of July, following, caused writs of *feri facias* to be issued upon said order against S., which were defeated by the above mentioned mortgage. The complainants then filed their bill to vacate this deed as either fraudulent in fact, or as void constructively, by reason of the provisions of the registration acts, HELD—

That a party cannot be permitted to take a bill of sale, or mortgage of chattels from another, for his own security, leave the mortgagor in possession, and ostensibly the owner, and at his request, and to keep the public from a knowledge of its existence, withhold it from record for an indefinite period, renewing it periodically, and then receive the benefit of it by placing the last renewal upon record, to the prejudice of others, whom the possession and ostensible ownership of that very property by the mortgagor, have induced to confide in him.

That, as no new consideration passed between the parties since the mortgage of the 4th of September, 1845, all the mortgages executed since then, are mere renewals or continuations of the one executed on that day, and viewed in this light, the registration, on the 18th of June, 1846, was not in time. This mortgage, therefore, falls within the express terms, as well as spirit of the act of 1729, ch. 8.