he will have made his election, but it is another thing for him to provide an office for himself and charge them as using and occupying it with a *quantum vitebat*. They are only permitted to expend $1500 on the office. The charge for rental in the present case far exceeds the rate of interest on that sum which the court can allow and it is only during the last year that more than $1,000 could be expended for this purpose.

I think the rule must be made absolute.

Per cur.—Rule absolute.

Scoble v. Henson.

Covenant—Chattel mortgage given without consideration to defraud creditors—Not void between the covenantor and covenantee.

Declaration on a covenant made by the defendant to the plaintiff whereby he covenanted to pay the plaintiff £37 10s and interest.

Defendant pleaded that the covenant was contained in a chattel mortgage made by him at the plaintiff's request, and to hinder, defeat and defraud his creditors, and without consideration. Upon demurrer, *held*, that a covenant executed as above is only void as against third parties, and not between the parties to it, and that the plaintiff, therefore, was entitled to judgment.

(H. T., 25 Vic., 1862.)

Third count.—For that the defendant by deed bearing date the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, covenanted to pay the plaintiff the sum of thirty-seven pounds ten shillings, with legal interest for the same from the date of the said deed, on or before twelve months from the date of the said deed, but hath not paid the same or any part thereof, or the interest or any part thereof.

And the defendant, for a plea on equitable grounds to the third count of the plaintiff's declaration says:

That the deed in the said count mentioned is a chattel mortgage, which was executed by the defendant to the plaintiff, at the desire, instance, and request of the plaintiff, and to hinder, delay, and defraud the creditors of the said defendant, and without any consideration for the making thereof, whereby the said defendant mortgaged and conveyed the said goods and chattels in the said deed mentioned to the plaintiff, who then accepted the same with intent to hinder, delay, and defraud the creditors of the said defendant from recovering their debts, and to protect the same from seizure by the creditors of the said defendant, and that the said deed was executed for no other purpose or consideration whatever, and that there is now nothing due thereon, and that the same was and is fraudulent and void.

To which plea the plaintiff demurred on the grounds,

1. That the defendant admitted the making of the deed in the said count mentioned, and did not avoid the same.

2. That the defendant was estopped by his deed from disputing the consideration alleged in the deed.

3. That the defendant did not shew that at the time he executed the deed to the plaintiff he (defendant) was a person in insolvent circumstances or unable to pay his debts in full, or one knowing himself to be on the eve of insolvency.

4. That if even the said deed was given under the circumstances stated by the defendant, the same would not be void as against the defendant, but only as against the creditors of the defendant.

5. That the said deed according to the declaration was executed on the twenty-fifth day of November, 1857, and the statute upon which the defendant apparently relies did not come into force till 1859.

R. A. Harrison, for the demurrer, cited *Hawes* v. *Leader*, Cro. Jac 270; *Robinson* v. *McDonnell*, 2 B. & Ald 134; *Bessey* v. *Windham*, 6 Q. B. 166; *Doe Newman* v. *Rusham*, 17 Q. B. 123; *Huggins* v. *Pitt*, 4 Ex. 312; Broom's Legal Maxims, 648.

Douglas, contra, cited *Huggins* v. *Pitt*, 4 Ex. 312.

Draper, C. J.—The third count in the declaration stated that the defendant by deed dated 25th November, 1857, covenanted to pay the plaintiff £37 10s. with legal interest, within twelve months from the date of the deed. The defendant on equitable grounds pleads that the deed is a chattel mortgage, which was executed by the defendant to the plaintiff at the request of the plaintiff, and to hinder, delay, and defraud the creditors of the defendant, and without any consideration for the making thereof, whereby the defendant mortgaged the said goods and chattels in the deed mentioned to the plaintiff, who accepted the same with intent to hinder, delay, and defraud the creditors of the defendant from recovering their debts and to protect such goods, and that the deed was executed for no other purpose, and that there is nothing due thereon. The defendant does not pretend that he was induced to enter into the covenant or to execute the deed which contains it, by any fraud practised on himself; his position, on his own shewing, is that of a party combining with another to defraud his creditors, and in that respect he brings himself within the language of Lord Mansfield, in *Montefiori* v. *Montefiori*, 1 W. Bl. 361: "no man shall set up his own iniquity as a defence any more than as a cause of action." This principle is also recognized in equity, and in *Watts* v. *Brooks*, 3 Ves. 612, the Lord Chancellor says: "A man cannot set up an illegal act of his own in order to avoid his own deed." It may be observed however, that in the latter case the court was only asked to decree an account of transactions which had taken place contrary to the provisions of an Act of Parliament, and not to enforce the contract out of which those transactions arose; and in *Montefiore* v. *Montefiori*, a marriage had taken place upon the faith of the promissory note which the defendant gave to the plaintiff to make his actual fortune appear larger than it really was.

The case of *Hawes* v. *Leader*, Cro. Jac 270, cited by Mr. Harrison, appears to me, however, an express authority in the plaintiff's favour, and it is cited with approval by Holroyd, J., in *Doe* v. *Roberts*, 2 B. & A. 369. The ground of that decision is one which applies equally at law as in equity; that the defendant is not enabled by the statute of Eliz. ch. 5, to set up this defence, for that Act only makes the deed void against creditors, not against the party himself.

Judgment for plaintiff.

Barber v. Daniell.

Fi. fa., endorsement of, for larger amount than due—Damage thereby—Pleading malice—Allegation of.

Defendant being the attorney of several persons who registered a judgment against the plaintiff caused a writ of *fi. fa.* to be issued, endorsed to levy a much larger sum than actually remained due on the said judgment so recovered as aforesaid, the said judgment debtor (the now plaintiff) having paid a large sum on account thereof which he (the plaintiff herein) alleged the defendant herein well knew.

The second count in the declaration set out the above facts but did not shew that any damage resulted to the plaintiff by reason of such endorsement on said writ.

On demurrer, *held*, That the endorsement for a larger amount than was actually due was not *per se* an injury to the plaintiff if not being shewn that more goods were seized than was necessary to satisfy the amount actually due.

2nd. That the declaration should contain an allegation that the acts complained of were done maliciously and without reasonable and probable cause.

(H. T., 25 Vic. 1862.)

The declaration contained two counts, the second of which is demurred to. The statement of the plaintiff's cause of action is that certain persons recovered a judgment against him; that he paid a large part of the amount so recovered, leaving only a small sum due; that the defendant was attorney for the parties who recovered the judgment, and that well knowing the premises, he caused a *fi. fa.* on this judgment to be issued, and wrongfully caused it to be endorsed for the full amount recovered by the judgment, and wrongfully and injuriously delivered the same to the sheriff, and caused him to levy and seize the goods of the plaintiff, whereby the plaintiff was injured in his credit.

Demurrer, because the *fi. fa.* appears to have been rightly placed in the sheriff's hands, and it is not shewn that it was wrongfully proceeded on.

S. M. Jarvis, in support of the declaration, cited *Saxton* v. *Castle*, 6 A. & E. 652; *Leyland* v. *Tancred*, 10 Q. B. 664; *Reid* v. *Ball*, 15 U. C. Q. B. 568.

John Read, contra.

Draper, C. J.—I am of opinion that the count is not sufficient. The judgment was for as large a sum as the execution was issued for, and though part of it was paid, the endorsing for a larger sum than remained due after such payment, thus claiming more than was due, was not an injury *per se* to the plaintiff, and there is nothing to show that in making a seizure for the sum (whatever it was) which remained due, any more goods were seized than was necessary or reasonable to satisfy what was really due. But I think, moreover, that the declaration should have contained a statement as in *Reid* v. *Ball*, 15 U. C. Q. B. 568, that the acts complained of were done maliciously and without reasonable or