WEBB, TRUSTEE, *v.* SHARP, MARSHAL.

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 *bonâ fide* sale or removal of the goods would discharge them from the lien.

ERROR to the Supreme Court of the District of Columbia; the case being this:

By the act of Congress, passed February 22d, 1867,* 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 whosesoever 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.

* 14 Stat. at Large, 404, § 12.

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 *fieri 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. S. S. Hencle, for the plaintiff in error:

The deed of trust conveyed the printing-press completely out of Snow et al., and vested it completely in Webb, as trustee. It was no longer "the tenant's personal chattels on the premises, subject to execution for debt." Yet it is only on *such* chattels that the lien is given by the statute.

Mr. W. F. Mattingly, contra.

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 22d, 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.

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 instalment of rent became due and for three months afterwards, and then ceased as to that instalment. Had the tenant made an absolute and *bonâ fide* sale of the press, the case would have been a different one. The law protects *bonâ 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.* 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 pro-

* Grant *v.* Whitwell, 9 Iowa, 156.

tect 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 execu tions, for the use of his family or the practice of his trade.

JUDGMENT AFFIRMED.

BOYDEN ET AL. *v.* UNITED STATES.

1. A receiver of public moneys of the United States does not stand in the position of an ordinary bailee; he is bound to higher responsibility. Upon a suit, therefore, on a bond "for the faithful discharge of his trust," such a receiver cannot discharge himself by showing that he was suddenly beset in his office, thrown down, bound, gagged, and that against all the defence he could make the money was violently and without his fault taken from him.
2. Though statutes oblige receivers to pay over when required by the Secretary of the Treasury, a declaration, stating that the receiver had been often requested to pay is enough after verdict, there having been general regulations in force at the time the bond here sued on was given, requiring receivers to pay at stated times.

IN error to the Circuit Court for the District of Wisconsin.

The United States sued Boyden and his sureties on his official bond as receiver of public moneys for the district of lands subject to sale at Eau Claire, in the State of Wisconsin. The bond was given pursuant to the 6th section of the act of May 10th, 1800.* The section enacts:

"The receiver of public moneys shall, before he enters upon the duties of his office, give bond with approved security *for the faithful discharge of his trust.*"

* 2 Stat. at Large, 75.