

Browder v. McArthur.

Were it then completely settled, that the vendor retains his lien against the assignees of a bankrupt, it *would not follow, that he would retain it against creditors holding under a *bonâ fide* conveyance from the vendee. To establish this principle, on the authority of adjudged cases, the court would require cases in which the very point is decided. We have seen no such cases. We have seen no case in which this lien has been supported against a judgment-creditor, against a mortgagee, or even against a creditor charging an heir on the bond of his ancestor, in which he was bound. The weight of authority is, we think, the other way. The lien of the vendor, if in the nature of a trust, is a secret trust; and although to be preferred to any other subsequent equal equity, unconnected with a legal advantage, or equitable advantage which gives a superior claim to the legal estate, will be postponed to a subsequent equal equity, connected with such advantage. This principle is laid down in Hargrave and Butler's notes to Co. Litt. 290 *b*; and the case of *Stanhope v. Earl Verney*, decided in chancery, in 1761, is quoted in support of it. (2 Eden 81.) That was the case of an equitable mortgage, founded on the deposit of a deed for a term of years, to attend the inheritance, with a declaration of the trust. This is a much stronger case. It is an actual conveyance of the legal estate. [*57]

In the United States, the claims of creditors stand on high ground. There is not perhaps a state in the Union, the laws of which do not make all conveyances, not recorded, and all secret trusts, void as to creditors, as well as subsequent purchasers without notice. To support the secret lien of the vendor *against a creditor who is a mortgagee, would be to counteract the spirit of these laws. [*58]

Decree affirmed, with costs.

BROWDER v. McARTHUR.

Rehearing.

This court will not grant a rehearing in an equity cause, after it has been remitted to the court below, to carry into effect the decree of this court, according to its mandate.

February 21st, 1822. *Doddridge*, for the appellant, Browder, moved for a rehearing in this cause, which is the same case that was determined at the last term, and remitted to the court below to carry into effect the decree of this court. (4 Wheat. 488.) It was now again brought before this court, upon an appeal from the decree of the court below, entered according to the mandate from this court. The appellant's counsel now moved for a rehearing upon the merits. (a)

THE COURT denied the motion, being of opinion, that it was too late to grant a rehearing in a cause, after it had been remitted to the court below, to carry into effect the decree of this court, according to its mandate; and that a subsequent appeal from the circuit court, for supposed error in carrying into *effect such mandate, brought up only the proceedings subsequent to the mandate, and did not authorize an inquiry into the merits of the original decree. [*59]

Motion denied.

(a) He cited 2 Madd. Chan. 390; 3 P. Wms. 8; 2 Atk. 439.