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examination of them, because our judgment proceeds upon a single point, and will, in no event, prejudice the merits of the plaintiff's claim.

By the common law, the exclusive right to entertain jurisdiction over wills of personal estate, belongs to the ecclesiastical courts; and before any testamentary paper of personalty can be admitted in evidence, it must receive probate in those courts. Lord KENYON, in the *King v. Inhabitants of Netherseal*, 4 T. R. 258, said, "we cannot receive any other evidence of there being a will in this case, than such as would be sufficient, in all other cases, where titles *are derived under a will; and nothing but the probate or letters of administration, with the will annexed, are legal [*176 evidence of the will, in all questions respecting personalty." This principle of the common law is supposed to be in force in Maryland, from which this part of the District of Columbia derives its jurisprudence; and the probate of wills of personalty to belong exclusively to the proper orphans' court here, exercising ecclesiastical jurisdiction. If this be so, and nothing has been shown which leads us to a different conclusion, then it is indispensable to the plaintiff's title, to procure, in the first instance, a regular probate of this testamentary paper, in the orphans' court of this district, and to set forth that fact in his bill. The treaty stipulations, the act of congress, and the principles of the law of France, which have been cited at the argument, attributing to them the full force which that argument supposes to establish the validity of the instrument, do not change the *forum* which is entitled, by the local jurisprudence, to pronounce upon it as a testamentary paper, and to grant a probate. It is one thing, to possess proofs, which may be sufficient to establish that a testamentary instrument had been executed in a foreign country, under circumstances which ought to give it legal effect here; and quite a different thing, to ascertain what is the proper tribunal here, by which those proofs may be examined, for the purpose of pronouncing a judicial sentence thereon.

For this reason, the decree of the court below is to be affirmed, but without prejudice, so that the instrument may be submitted to the decision of the proper probate court.

Decree affirmed.

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Lien of judgment.

The lien of a judgment on the lands of the debtor, created by statute, and limited to a certain period of time, is unaffected by the circumstance of the plaintiff not proceeding upon it (during that period), until a subsequent lien has been obtained, and carried into execution.

Universal principle, that a prior lien is entitled to prior satisfaction out of the thing it binds, unless the lien be intrinsically defective, or is displaced by some act of the party holding it, which shall postpone him at law or in equity. Mere delay in proceeding to execution is not such an act.

Distinction created by statute, as to executions against personal chattels, and reasons on which it is founded.

ERROR to the District Court of Missouri. This was an action of eject-

¹ See *Armstrong v. Lear*, 8 Pet. 52.

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ment, brought in the court below, by the defendant in error, Scott, to recover the possession of a house and lot, in the town of St. Louis.

At the trial, a special verdict was found, stating, that in the year 1816, John Little married Marie Antoinette Labadie, who was then seised in fee of the house and lot in question. She died without issue, leaving the husband seised in fee of a moiety of the premises. He soon afterwards died, without issue, and intestate. In April 1821, judgment was rendered in the circuit court of the county where the premises lay, against the administrator of Little, in favor of Schatzell and another, for \$2747.19. In March following, another judgment was rendered against the same, in favor of B. Pratte, for \$1241. Execution was immediately issued upon the latter judgment, and the premises in question sold under it to Scott, the plaintiff in ejectment; and soon afterwards, another execution issued upon the first judgment, and the same premises were sold to Schatzell, one of the defendants below, and conveyed to him by the sheriff's deed. Rankin, who was tenant to Little, *178] in his lifetime, remained in possession of the premises, after his death, *and attorned to Schatzell.

The question raised upon these facts was, whether the sale by the sheriff, under the second judgment and first execution, divested the lien of the first judgment? The court below determined it in the affirmative; and the cause was brought, by writ of error, before this court.

January 15th, 1827. *Benton*, for the plaintiffs in error, relied upon the express provisions of the statute of Missouri, to show that the local law made the first judgment a lien upon the land, for the term of five years, within which time it was enforced, and Shatzell purchased under it. *Geyer's Dig. Laws Missouri*, 264, 267. For the general effect of a judgment lien, he cited 1 Johns. Cas. 224; 13 Johns. 463, 533; 1 Dall. 481, 486; 4 Ibid. 450.

Talbot, contra, cited 1 T. R. 729; 1 Ld. Raym. 251; 1 Burr. 20; 8 Co. 171; Cro. Eliz. 181; 1 Salk. 320.

January 23d. MARSHALL, Ch. J., delivered the opinion of the court, and after stating the case, proceeded as follows:—The act of the then territorial government of Missouri, on which this question depends, is in these words: "Judgments obtained in the general court shall be a lien on the lands and tenements of the person or persons against whom the same has been entered, situate in any part of this territory; and judgments obtained in a court of common pleas of any district, shall be a lien on the lands and tenements of the person against whom the same has been entered, situate in such district." The act contains a proviso, "that no judgment hereafter entered in any court of record within this territory, shall continue a lien on the lands and tenements against whom the same has been entered, during a longer term than five years from the first return-day of the term of which such judgment may be entered, unless the same shall have been revived by *scire* *179] *facias*," &c. *Since the territory of Missouri was erected into a state, the general court has received the appellation of the superior court, and the court of common pleas for the district has been denominated the circuit court for the county.

The execution on the first judgment was issued within a short time after

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it was rendered, and while the lien it created was in full force, unless it was removed by the execution and sale under the second judgment. There is no expression in the law of Missouri which can suggest a doubt on this subject. By that law, judgments are to be a lien on all the lands of the debtor. This lien commences with the judgment, and continues for five years. The principle is believed to be universal, that a prior lien gives a prior claim, which is entitled to prior satisfaction, out of the subject it binds, unless the lien be intrinsically defective, or be displaced by some act of the party holding it, which shall postpone him, in a court of law or equity, to a subsequent claimant. The single circumstance of not proceeding on it, until a subsequent lien has been obtained and carried into execution, has never been considered as such an act. Take the common case of mortgages. It has never been supposed, that a subsequent mortgage could, by obtaining and executing a decree for the sale of the mortgaged property, obtain precedence over a prior mortgage, in which all the requisites of the law had been observed. If such a decree should be made, without preserving the rights of the prior mortgagee, the property would remain subject to those rights in the hands of the purchaser. So, in cases of judgment, where an *elegit* may be sued out against the lands of the debtor. The implied lien created by the first judgment, retains the preference over the lien created by a second judgment, so long as an *elegit* can issue on the first. A statutory lien is as binding as a mortgage, and has the same capacity to hold the land, so long as the statute preserves it in force.

The cases cited of executions against personal property, do not, we think, apply. In those cases, the lien is not created by the judgment, or by any matter of record. The purchaser of the goods cannot suppose that the officer has committed any impropriety in the performance of his duty, *and this circumstance has induced parliament to secure him. It is [180 stated by ASHHURST, Justice, in 1 T. R. 731, that this was the sole object of that part of the statute of frauds which relates to this subject. In the case at bar, the judgment is notice to the purchaser of the prior lien, and there is no act of the legislature to protect the purchaser from that lien.

We think, then, that the deed made by the sheriff to the purchaser, under the first judgment, conveyed the legal title to the premises; and that the judgment on the special verdict ought to have been in favor of the plaintiff.

Judgment reversed.