

## \*SEAMAN FIELD and others, Plaintiffs in error, v. UNITED STATES.

*Priority of the United States.*

L. E. Brown, a debtor to the United States on bond, became insolvent, and under the insolvent laws of Louisiana, made an assignment of his property for the benefit of his creditors; and syndics were appointed, who took possession of his estate, real and personal, and sold the same, part for cash, and part on credit of one, two and three years. The United States instituted suits on the bonds, against L. E. B., and obtained judgments in the district court of the United States for the district of Louisiana; the effects of the insolvent were administered by the syndics, according to the laws of Louisiana; the United States took no part in these proceedings, but a notice of the debts due by B. to the United States, was given to the syndics, before any distribution was made of any of the proceeds of the estate in their hands; and a suit for the amount of the debts of B. to the United States, under the law giving a right to priority of payment, was commenced against them, before the tableau of distribution of the first instalment of the insolvent's estate, was confirmed by the parish court of New Orleans. The whole proceeds of the estate exceeded \$40,000; the mortgages were about \$27,000; and when all the notes taken by the syndics were paid, there would be sufficient to discharge these mortgages, and all the debts due to the United States; a large amount of the proceeds were not to be received, until after the judgments were obtained in favor of the United States; one moiety of the amount of sales being payable after the suit against the syndics was commenced, and the other, after the judgment against them was rendered.

The court held, that the syndics were not liable to the United States for the debts due to them, unless funds had actually come into their hands; the notes for the sales may all be good; yet as one moiety of them was not paid, at the time of the judgment of the United States against them, it does not judicially appear, that, even at that time, they had funds on which the United States were entitled to judgment; if the remaining moiety of the notes has since been paid, the United States will then have a legal claim thereon for their debts.

The United States were not parties to the proceedings in the parish court, nor were they bound to appear and become parties therein; the local laws of the state could and did not bind them in their rights; they could not create a priority in favor of other creditors, in cases of insolvency, which should supersede that of the United States.

As the cause was not tried by a jury, the exception to the admission of evidence was not properly the subject of a bill of exceptions.

The priority of the United States attached, by the laws of the United States, in virtue of the assignment and notice to the syndics; and it was the duty of the syndics, to have made known these debts, in their tableau of distribution, as having had priority. The mortgages upon particular estates sold, must be first paid out of those estates; but if there be any deficiency in the proceeds of any particular estate, to pay the mortgages \*thereon, the mortgagees thereof cannot come in upon the funds and proceeds of the sales of the other estates, except as [\*183 general creditors.

The bill of exceptions stated, that during the trial of the cause in the district court, the counsel for the marshal stated, that he had made a seizure or given notice that he seized in the hands of the defendants, the syndics, any funds in their hands, to a sufficient amount to satisfy the judgment obtained in the case of the United States v. John Brown, sen., and Lewis E. Brown. This testimony was objected to, as being contrary to the statement of facts in the case, in which it was stated, that a return of *nulla bona* had been made by the marshal; and because the act was done in a case to which the defendants were not parties, and because the best evidence was the notice or true and proved copies of it; the return of the marshal in the case of the United States v. John Brown, sen., and Lewis E. Brown, was also offered, and was objected to. The evidence was properly admitted, as notice to the syndics of the debts due to the United States.<sup>1</sup>

ERROR to the District Court for the Eastern District of Louisiana. In the district court, on the 30th of March 1831, the attorney of the district filed a petition of complaint, on behalf of the United States, against Seaman Field, Samuel J. Peters and Thomas Tobey, residing in the city of

<sup>1</sup> See United States v. Clark, 1 Paine 629; United States v. Duncan, 4 McLean 607.

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New Orleans, syndics of L. E. Brown ; stating that one Lewis E. Brown, of the city of New Orleans, on the 27th of October 1829, executed a certain bond to the United States, in the sum of \$1366.20 ; and suit having been brought on the said bond, judgment in favor of the United States was obtained on it, on the 22d of December 1830, for the amount thereof, to be satisfied with the payment of \$632.10, with interest, &c. That the said Lewis E. Brown failed and became insolvent, and made a voluntary assignment of all his property to his creditors, on or about the 30th of April 1830, under the laws of Louisiana. That Seaman Field, Samuel J. Peters and Thomas Tobey were appointed syndics, or assignees of his creditors; and in that capacity, had received and taken possession of all the property, real and personal, of the insolvent, and had sold and disposed of the same to an amount far exceeding the debts due by him to the United States. That at the time of their receiving and taking possession of the said property as aforesaid, they well knew of the existence of the debts due to the United States by Lewis E. Brown ; and that an amicable demand had been \*184] made of them by the United States, for the amount of the said judgment and of the costs, but they had neglected or refused to pay the same, or any part thereof. The petition prayed a citation to the defendants, to answer the same ; and that after due proceeding, they be condemned, jointly and severally, to pay the amount due to the United States.

Citations issued to the several defendants, who appeared, respectively, and on the 17th of May 1831, filed separate answers to the petition.

The answers admitted, that the respondents had, in the capacity of syndics, taken possession of the property of L. E. Brown, by him assigned for the benefit of, and distribution among, his creditors ; and that they acted in the said capacity, in virtue of certain judicial proceedings in the parish court for the parish and city of New Orleans, to which proceedings the answers referred ; and an exemplification of which proceedings would in due time be exhibited, and which were to be considered as part of the said answer. That in virtue of said proceedings, under the local laws of Louisiana, the said property, so assigned, was sold by said syndics on a credit of one, two and three years ; that out of the proceeds of sale, when the same shall be received, were to be paid certain privileged and mortgaged creditors, who were preferred to the United States. The answers further stated, that the respondents had no funds in their hands belonging to the estate of L. E. Brown ; the property having been so sold, on a credit, for promissory notes not yet due or paid. They denied all other obligations in the petition, or that the respondents, as syndics, had done anything to render them responsible, under the laws of the United States, or liable in any manner to the claim stated in the petition of the United States, and prayed a trial by jury. The answers further stated, that the said syndics sold the household furniture and other movables of the said L. E. Brown, at a credit of six months ; out of the proceeds of which, they had paid law-charges, house-rent and other privileged charges upon the estate, preferred to the United States ; of which a particular account was annexed to one of the separate answers filed in the case.

\*185] On the same 30th of March 1831, the district-attorney filed a petition in similar terms, stating that on a bond given by the said L. E.

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Brown to the United States, for \$1394, on the 3d of December 1829, a suit had been brought on the 3d of December 1830, and on the 22d of the same month, a judgment had been obtained for the amount, to be satisfied by the payment of \$697, with interest, &c., with the same allegations of responsibilities on the part of the defendants. Another petition was filed at the same time, stating that on a bond given by the said L. E. Brown, on the 28th of October 1829, for the sum of \$1264, a judgment had been obtained on the 22d of December 1830, for the said sum, to be satisfied by the payment of \$632, with interest, &c., and also stating a claim on the defendants. Another petition was filed at the same time, stating that on the 22d of December 1830, another judgment, on a bond given to the United States by L. E. Brown, was obtained for the sum of \$1060.91, to be satisfied by the payment of \$530.45, with interest, &c. ; and on the same day, another petition was filed, stating that another judgment had been obtained against L. E. Brown, on the 22d of December 1830, on a bond given by him, for the sum of \$1396, to be satisfied by the payment of \$698, with interest, &c. ; both petitions alleging the liabilities of the defendants. Other petitions were filed upon other judgments, on bonds of the same nature, and for different amounts. The whole amount of judgments stated in these several petitions, was \$11,264.10 ; and the real debt, claimed to be due to the United States on the same, amounted to \$5647.55, with interest, &c.

On the 2d of June 1831, in pursuance of an order of the district judge, a detailed statement of all the property received by the syndics or assignees of Lewis E. Brown, and the sales and dispositions they had made thereof, was filed in court. The sales of the real estate and slaves were made, the former at one, two and three years', and the latter at twelve months' credit ; for which notes were given, which would become due at different periods, amounting to \$39,000.63. The tableau of distribution of the first instalment of the estate, established by the parish court, in relation to the \*estate of Lewis E. Brown, referred to in the answers, dated on the 3d of December 1831, was also filed, and showed that the balance [\*186 of cash in the hands of the syndics, amounting to \$9536.70, had been paid as a dividend on \$27.055, to the mortgage-creditors of Lewis E. Brown. The amount of the moneys received and disbursed by the syndics, showing the balance of \$9536.70 for this distribution, was also filed.

On the 9th of March 1832, on motion of the district-attorney, it was ordered that all these suits be consolidated ; and by consent of parties, trial by jury being waived, the cause was submitted to the court, on a statement of facts prepared by the parties.

Statement of facts by the counsel of the United States and the defendants. Lewis E. Brown, at the time of failure and insolvency, to wit, the 26th of May 1830, was surety on certain bonds given to secure duties to the United States by John Brown, senior, viz : A bond dated 27th of October 1829, due 26th of August 1830, amount of duties \$632 ; a bond dated 27th of October 1829, due 26th of June 1830, amount of duties \$632.10 ; a bond dated 27th of October 1829, due 26th of October 1830, amount of duties \$632 ; a bond dated 3d of December 1829, due 2d of October 1830, amount of duties \$698 ; a bond dated 3d of December 1829, due 3d of December 1830, amount of duties \$698 ; a bond dated 3d of December 1829, due 2d of

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August 1830, amount of duties \$698 ; a bond dated 11th January 1830, due 9th of September 1830, amount of duties \$535.45 ; a bond dated 11th of January 1830, due 9th of November 1830, amount of duties \$531 ; a bond dated 11th of January 1830, due 9th of January 1831, amount of duties \$531 ; On all of which, with the exception of the last mentioned, judgment was rendered against L. E. Brown, on the 22d of December 1830, for the aforesaid amounts, with interest at six per cent., from the falling due of the \*187] bonds, until paid, with costs \*of suit; and on the last-mentioned bond a like judgment was rendered on the 22d of February 1831. On these judgments, writs of *feri facias* have issued against all the parties, on which the marshal has returned *nulla bona*, and nothing has been paid by any of the parties on account of the same.

John Brown, senior, failed and became insolvent, and applied for the benefit of the insolvent law of Louisiana, on the 10th day of June 1830. The sale of Lewis E. Brown's property was made by order of the syndics, at public auction, on the 30th of July 1830. The defendants, as syndics, in addition to the sums stated by them to have been received in the account herunto annexed, have received from the sale of the property of said Brown, indorsed promissory notes, secured by mortgage on the property sold, amounting to \$24,898.60 ; one-half of which fell due on the 31st of July 1832, and the other half on the 31st of July 1833. The note stated in the account of moneys received and disbursed by the syndics of Lewis E. Brown to have been paid to the United States, was indorsed by Charles Armstrong, and was paid at the Bank of the United States, where it was deposited for collection by Martin Gordon, and paid by the syndics. The United States have never, in any manner, appeared in the proceedings had in the parish court, in relation to the insolvency of Lewis E. Brown.

Lewis E. Brown failed and became insolvent, on the 29th of May 1830. On the 15th of July 1829, he mortgaged houses and lots in Canal street to J. H. Field & Co., to secure the payment of \$5359.76, with ten per cent. per annum interest from that date till paid. On the 12th of February 1829, Brown executed another mortgage to J. H. Field & Co., for \$5000, on the same property, with same interest as above. On the 18th of March 1830, L. E. Brown gave another mortgage to said Field & Co., for \$745.16, same property and same rate of interest. The first mortgage was recorded in the recorder of mortgages' office, on the 16th of July 1829 ; the second was recorded on the 13th of February 1829 ; and the third on the 20th of March 1830. On the 10th of March 1830, Lewis E. Brown mortgaged said prop- \*188] erty, and the rest of his real estate, to R. Ball & Co., \*for \$1000, which was recorded on the 17th of March 1830. On the 4th of February 1830, Brown mortgaged the houses and lots in Canal street, and lots Nos. 3 and 4, in suburb St. Mary, to Ogier Williams, for \$3300, which was recorded on the 11th of February 1830. On the 2d of March 1830, Brown mortgaged the houses and lots between Burgundy and Rampart streets, and the lots in Canal street, between Dauphine and Rampart, to Peters & Milliard, for \$7000, with ten per centum per annum interest from date till paid ; recorded on the 4th of March 1830. On the 19th of February 1830, this last property was mortgaged to Thompson & Grant for \$3000, as all the lots in Canal, between Burgundy and Dauphine streets, and recorded on the 20th of February 1830. There existed on the property of said Brown the following sums due on original purchase-money,

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and price of the property surrendered by him to his creditors, and for which said property was mortgaged, and other mortgages were duly recorded, being prior to his insolvency, to wit, the amount of a note in favor of the heirs of Jones, for the price of the lot between Burgundy and Rampart streets, in Canal street, including protests and interest, \$1055.97; ditto. to William McCawly, price of lots in Canal street, between Dauphine and Burgundy streets, \$650, dated in 1829; a note due to the United States for \$333.33, dated 1829, for a lot on New Levee street. Besides this, the syndics have paid other debts due by the estate of said Brown, as detailed in annexed record making part of this statement. On the 15th of December 1831, the tableau of distribution, including the list of sums paid as aforesaid, was finally confirmed by the parish court for the parish and city of New Orleans, after due proceedings having been previously had thereon."

On the 3d of December 1830, the marshal, acting under writs of *fiery facias*, issued on the several judgments against Lewis E. Brown, seized the funds and property in the possession of the syndics, or assignees of Lewis E. Brown; and gave notice to them, personally, of the seizure of said funds, in amount sufficient to satisfy the three several judgments. \*Job Wilson, the syndic of John Brown, sen., had under his control notes [\*189 and other assets to an amount exceeding the debt due by John Brown, sen., to the United States. Those notes were not yet due, but were considered good, and would be applicable, when paid, to the satisfaction of the judgments rendered against the said Brown. These notes were deposited with the district-attorney, who was also acting as the attorney of the said syndics, but had no authority to dispose of them to satisfy the United States.

On the 9th of January and 21st of February 1833, the causes came before the court, and were finally disposed of on the latter day. The counsel for the defendants, on the trial, tendered the following bill of exceptions, which was signed by the district judge.

"Be it remembered, that, during the trial of this cause, the counsel for the plaintiffs offered to prove, by the marshal, that he had made a seizure, or given notice that he seized, in the hands of the defendants, any funds in their hands, to a sufficient amount to satisfy the judgment obtained in the case of the United States v. John Brown, sen., and Lewis E. Brown. The counsel for the defendants objected to this testimony, as being contrary to the statement of facts made in this case, where it is stated, that a return of *nulla bona* had been made in said case, and because the act was done in a case to which the defendants were not parties, and because the best evidence was the notice itself, or true and proved copy thereof; because if any such seizure or notice was made or given, that it should appear from the official return of the marshal. The counsel for the plaintiffs then offered the return of the marshal in the said case of the United States v. John Brown, sen., and L. E. Brown. This the defendants' counsel objected to, because the writ which issued in that case was *ex parte*, and these defendants were not parties, directly or indirectly, to the said case of the United States v. John Brown, sen., and L. E. Brown, and that the same was otherwise illegal. These objections were overruled by the court, because the testimony was considered pertinent and legal; and also, because, previous to the introduction by the district-attorney of the testimony heretofore

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referred to, the defendants had been \*permitted to amend the statement of facts, by proof of matters not stated therein."

The court gave the following judgment for the United States. "The court having maturely considered these cases, doth now adjudge, order and decree, that judgment be entered up in favor of the United States against Samuel J. Peters, Seaman Field and Thomas Toby, jointly and severally, for the sum of \$5661.55, with interest thereon at the rate of six per centum per annum, from the following dates, to wit: on \$632.10, from the 26th of June 1830, until paid; on \$797, from the 2d of August 1830, until paid; on \$632, from the 26th of August 1830, until paid; on \$530, from the 9th of September 1830, until paid; on \$698, from the 2d of October 1830, until paid; on \$632, from the 26th of October 1830, until paid; on \$531, from the 9th of November 1830, until paid; on \$698, from the 3d of December 1830, until paid; on \$531, from the 9th of January 1831, until paid; together with all the costs which have accrued both before and since their consolidation."

The following is the material portion of the opinion of the district judge, read at the time of the rendition of the above final decree, and filed in the clerk's office of the eastern district of Louisiana.

"United States v. The Syndics of L. E. Brown.

"On the 30th of March 1831, the attorney of the United States instituted nine separate suits against S. Field, S. J. Peters and Thomas Toby, the syndics of L. E. Brown, founded on fourteen judgments previously obtained against John Brown and his sureties, of whom Lewis E. Brown was one, on custom-house bonds for duties. The suits against the syndics are instituted under the provisions of the 65th section of the duty act of 1799. The object of these actions is, to make them personally liable out of their own funds, to the United States, for the debt due to the latter by the insolvent, L. E. Brown, for having, as is alleged, improperly paid to others moneys, out of the estate of said Brown, which ought to have been paid to the United States, as a debt having priority. On the 17th of May \*191] 1831, the defendants, by their counsel, \*filed separate answers of the syndics to each of the petitions of the United States, all in substance the same, by which they admit that they are the syndics of L. E. Brown, and in that capacity have taken possession of his estate. The answers then state, that the defendants sold, as they had a right to do, under the laws of Louisiana, the property of the insolvent, on a credit of one, two and three years, which, when due, they allege they have a right to pay to certain privileged and mortgage creditors, as being preferred to the United States. They then say, they have no funds belonging to the estate of L. E. Brown; all the property ceded by him having been sold on a credit, and for which the notes taken are not due. They then admit, that they have sold the household furniture, and certain other movables of the estate of said Brown, for an amount not stated, which has been received and paid over in law-charges, house-rent, and other charges privileged upon said estate, and preferred to the United States, as stated in an account annexed. The remainder of the answers is a general denial of the allegations of the plaintiffs' petition, and of their personal liability to them.

"All these suits were consolidated, on the 9th of March 1833, and in

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that shape submitted to me for adjudication ; which, therefore, I shall treat as one action. The following facts have been stated and agreed upon by the parties : That judgments were obtained against L. E. Brown, on the custom-house bonds, on the 22d of December 1830, with interest thereon, at the rate of six per centum per annum from the date of their falling due ; that writs of *feri facias* were issued against all the parties, on which the marshal has returned *nulla bona*, and nothing has been paid by any of the parties ; that John Brown, the principal in these bonds, became insolvent, and applied for the benefit of the insolvent law of Louisiana on the 10th of June 1830 ; that the sale of Lewis E. Brown's property was made by order of the syndics, these defendants, on the 30th of July 1830 ; that the defendants, as syndics, in addition to the sums stated by them to have been received in the account-current annexed, have received, from the sale of the property of said Brown, indorsed promissory notes, secured by mortgage on the property sold, amounting to \$24,898.60, one-half of which was due on the 31st of July \*1832, and the other half will be due on the [ \*192 31st of July 1833 ; that the United States have never in any manner appeared in the proceedings had in the parish court, in relation to the insolvency of L. E. Brown ; that L. E. Brown became insolvent on the 29th of May 1830. On the 15th of July 1829, he mortgaged houses and lots in Canal street, to J. H. Field & Co., to secure the payment of the sum of \$3359.76 ; on the 12th of February 1829, he executed another mortgage to J. H. Field & Co., for \$5000 on the same property, with interest on both at the rate of ten per centum per annum ; on the 15th of March 1830, he gave another mortgage to said Field for \$745.16, on the same property, with the same rate of interest ; on the 10th of March 1830, he mortgaged said property and the rest of his real estate to R. Ball & Co. for \$1000 ; on the 4th of February 1830, he mortgaged the houses and lots in Canal street, and lots Nos. 3 and 4, in Suburb St. Mary, to Ogier and Williams for \$3300 ; on the 2d of March 1830, he mortgaged the houses and lots between Burgundy and Rampart, and the lots in Canal, between Dauphine and Rampart streets, to Peters & Milliard, for \$7000 ; on the 19th of February 1830, the last property was mortgaged to Thompson & Grant for \$3000. There existed on the property of said Brown, surrendered to his creditors, as the original purchase-money and price of the property, and due to individuals, about the sum of \$2000, for which his property had been mortgaged long before his insolvency. On the 15th December 1831, the tableau of distribution was finally confirmed by the parish court.

“ At the opening of this cause, the court permitted the defendants to add to the statement of facts, that the attorney of the United States, as counsel for the syndics of John Brown, has now in his possession good notes, sufficient to pay the debt of the United States ; and the court also permitted the district-attorney to prove by the marshal, that these defendants had due notice of the debt due to the United States by L. E. Brown, before making any payments to his creditors. The tableau of distribution exhibited shows that the syndics did not consider the United States as creditors of L. E. Brown, inasmuch as they are not put down as such upon it.

\*“ With these facts before me, I am called upon to adjudge, whether or not the defendants are personally liable to pay the debt [ \*193

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due to the United States. Both parties have chiefly relied upon the authority of the case of *Conard v. Atlantic Insurance Company*, decided by the supreme court of the United States, and reported in 1 Pet. 386. That case, however, differs materially from this. There, the dispute was, whether the property seized upon by the marshal belonged to the United States or to the insurance company. Here, there is no contest about the estate of Brown having passed to the syndics, and that it was his estate when so passed; but whether his syndics have so managed the trust confided to them as to render themselves individually liable to the United States. The case cited, however, establishes some doctrines applicable to this, and especially, one that is not denied by the attorney of the United States, that *bonâ fide* mortgages of property, executed before the insolvency of a debtor to the United States, divest the mortgagor of his property, and, as it has been decided that the United States must seek their pay out of the estate of the debtor, such property cannot be reached by them. According to this principle, there is apparently on the face of these proceedings a sum of about \$27,000 secured to mortgagees, and beyond the reach of the United States.

"But the district-attorney contends, that, as all these are special and not general mortgages, it was incumbent on the defendants to have shown how much each property mortgaged sold for, in order to ascertain whether any thing remained over and above for the United States. That the defendants have no right to add the amount of mortgage-debts together, and then say, the aggregate exceeds the debt due to the government: as, for instance, one man has a mortgage for \$15,000, and the property mortgaged sold for only \$10,000; another has a mortgage for \$10,000, and the property sold for \$15,000: on this supposition the aggregate of mortgages would be \$25,000, and the total amount of sales would also be \$25,000. In such a case, it would appear, that, as the whole of the sales of property was covered by privileged claims, nothing would remain for the United States. But he insists, that the fallacy consists in this, that, in the first case, the \*194] mortgagee must submit to a loss of \$5000, \*his mortgage not reaching any other property; and in the latter case, the mortgagee having his claim satisfied by the payment of \$10,000, the remaining sum of \$5000 must go to the United States, in preference to those holding special mortgages on other property. This position I take to be impregnable. But were it otherwise, how stand the facts of this case?

"It appears from the exhibits, that the defendants have sold property to the amount of upwards of \$40,000 belonging to the estate of L. E. Brown, and the mortgaged debts they have paid only amount to about \$27,000, leaving a balance of \$13,000, which is more than double the sum due to the United States, which they have paid to other creditors, on the ground, that these creditors had a privilege on the common fund, in virtue of the laws of this state, and as the decisions go to show that the United States had no lien for their debts, under the 65th section of the duty act, their priority of payment therein mentioned must yield to the privileges given by the laws of the state. It will not, I think, be denied, that acts of congress passed in pursuance of the constitution, when in conflict with state laws, must prevail. It has never been doubted, that the law under consideration is constitutional. Now, it says, 'in all cases of insolvency, or when any estate in the hands of

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the executors, administrators or assignees, shall be insufficient to pay all the debts due from the deceased or insolvent, as the case may be, the debt or debts due to the United States, on any such bond or bonds, shall be first satisfied, and any executor, administrator or assignee, or other person, who shall pay any debt due by the person or estate for whom or for which they are acting, previous to the debt or debts due to the United States from such person or estate being first duly satisfied and paid, shall become answerable in their person and estate for the debt or debts due to the United States, &c.' Now, here we have the case of an insolvent, who is unable to pay all of his debts, whose estate has gone into the hands of assignees, and who have not paid the debt due to the United States, but have paid others in preference.

"If the liens established by the laws of Louisiana to attach after insolvency, are to have a preference over the debts due to \*the United States, then the state legislature has deprived the general govern- [\*195 ment of nearly all the privileges secured to it by the act of 1799, and may by future legislation deprive it of all of them ; and all that may be done by a state which was not a member of the Union until thirteen years after congress so legislated. The doctrine of privilege in Louisiana may be very well, as between her own citizens and other individuals who may choose to come into her tribunals ; so far her legislation is valid, but she cannot conclude the general government, nor compel it to submit to the decisions of her courts, in a case like this, in which congress has specified the rights of the United States. The hardship of the case was much and ably insisted on in argument, but I do not view it in that light. Every citizen is bound to know the law of the land, and if state legislatures will pass laws which cannot be enforced as against the United States, and thereby entrap the citizen, he has himself and them to blame, but cannot censure the general government, which had previously told both them and him, that the interests of the whole are paramount to those of the individual, and especially in the collection of the very money which is indispensable to the existence of the general government.

"It was insisted also, that if the charges incident to the surrender of an insolvent's estate have not a first privilege, the officers of the courts would not render their services. Whatever necessary court charges are incurred in such cases, ought to be paid first ; and the United States must be postponed to such creditors, on the same principle that, out of the proceeds of a vessel forfeited to the United States, must first be paid seamen's wages and supplies furnished, because, without such aids, nothing probably would be saved to the government. But after an estate has passed into the hands of assignees, any debts they may pay, other than court-charges, and privileges existing antecedently to the failure, to the prejudice of the United States, are payments made in their own wrong. According to this view of the subject, a number of items charged as paid to individuals, in the tableau of distribution, have been wrongfully paid ; and, for the reasons assigned in a former part of this opinion, the application of the general fund to the payment of special mortgages was illegal : but it is sufficient, \*to entitle the United States to recover in this action, to show that [\*196 the syndics have, to the prejudice of the government, paid one dollar

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wrongfully ; for, by the statute, if such persons pay any debt improperly, they *ipso facto* render themselves liable to the United States for so much.

"If this case had been tried on the issue made by the answer of the defendants, it would have been incumbent on the United States, to have shown how much the syndics had wrongfully paid, previous to the institution of this suit, to enable them to recover that much, for they could not have been made liable in this action for anything done by them after its inception—that would have been the subject of another suit ; but the defendants, by their admission of facts, and by the documents they have voluntarily produced and made part of the pleadings or evidence, have put their whole proceedings, first and last, in issue, and the case is now prosecuted as if all the payments they have made, had been made before suit brought. Now, a bare inspection of the list of debts paid by them is conclusive against them, aided by all the force of the laws of Louisiana, for they have paid claims, to the exclusion of the United States, not recognised as liens, or privileged by these laws ; and they admit in their answer, that, previous to filing it, they had paid to creditors, other than mortgage-creditors, money out of the estate, but do not say how much.

"The defendants have, in no manner, acknowledged the debt of the United States as due from the estate of the insolvent. Knowing of its existence, as it is presumed they did, they ought, at least, to have put them on their tableau, even if they had afterwards disputed their right to priority of payment ; but the fact is, as that document shows, they have claims individually, adverse to the United States, and therefore, it was no part of their policy to admit the rights of the latter in any shape.

"In the course of this opinion, whatever *obiter dicta* I may have expressed *arguendo*, I wish to be explicitly understood, as affirming the law to be, that whatever legal liens may have attached to the property of the debtor of the United States, prior to his insolvency, whether they arise from mortgages, judgments, or from the operation of state laws (if properly set forth \*and pleaded), so far divests the debtor of his property *pro tanto*, \*197] as to exempt it from the claim of the United States. It is to the unincumbered estate of the insolvent, divested of any pre-existing lien, that they must look for priority of payment, for having no lien themselves on their debtor's property, while it is under his own control, they cannot reach it in the hands of others, who have an implied right to it, in case of the non-payment of the debt for which it is security, as in the case of mortgage, the mortgagee having the *jus in re*. But all liens incidentally attaching to an insolvent's estate, after his insolvency and surrender of it for the benefit of his creditors, except court-charges, or the expenses necessary to put it into the hands of assignees, must be postponed to the claim of the United States ; for whatever property exists, unincumbered by liens, at the time of insolvency, constitutes the estate of the insolvent, and is that "common fund" spoken of by the supreme court in *Conard v. Atlantic Insurance Company*, out of which all the creditors are to be paid, the United States having priority. If it should be thought, that I might have deduced this doctrine with less prolixity of expression, my answer is, that I have been thus tedious on this part of the case, for two reasons : first, because I have never seen any judicial discussion and decision on the main points involved in this case ; and secondly, cases of this kind are likely hereafter to arise, and on that account it is

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proper that my construction of the 65th section of the collection act should be known, and the reasons for it.

“The defendants’ counsel seemed to attach much importance to the fact, that the district-attorney has in his possession good notes, arising from the sale of John Brown’s estate (the principal in the custom-house bonds), more than sufficient to pay the debt due to the United States. The answers to this are : 1. That because the government may have another recourse for payment, it is no reason why she should relinquish any security she may have for her debt : and 2. If, through the diligence and vigilance of the district-attorney, acting in his private capacity, as the attorney of the syndics of John Brown, he has succeeded in wresting from a fraudulent grasp the only means by which these defendants may be ultimately reimbursed the amount of this judgment against them, they \*surely have no right to complain ; so that, under present circumstances, the question is [\*198 virtually one of costs ; for as to their liability to pay the debt sued for, little or no doubt can exist ; and so deeply impressed with that idea was the defendants’ counsel of record, that he labored to convince the court, that although costs usually follow a judgment, yet in this case they might not be taxed against his clients. His complaint is, that the attorney of the United States has unnecessarily multiplied costs, by bringing nine suits, when he ought to have brought but one ; and on that point, he relies upon the third section of the act of congress of the 22d of July 1813, which prohibits attorneys from unnecessarily and vexatiously increasing costs, on pain of being made liable themselves for any excess. It is true, if the district-attorney could have foreseen the defence which has been set up in these cases, it would have been his duty to have included all in one action ; but these suits were brought on separate judgments, each of which might have admitted of a distinct defence. To one, want of proper service of process on the original debtors, might have been pleaded ; to another, that the judgment was erroneously entered on the record ; to a third, that, under the rules of court, it had been prematurely signed, and therefore, no judgment ; to a fourth, *nul tiel record* ; and to the rest, other pleas, such as might have suggested themselves to the minds of ingenious counsel, might have been put in. If it had been the wish of the defendants’ counsel to diminish the costs, he ought to have applied to the court to consolidate the suits, before he added to the costs so much himself, by filing twenty-seven answers instead of one, and even when the suits were consolidated, the record shows that it was done on motion of the district-attorney ; no doubt, for the sake of more conveniently trying together a number of cases in which the issue in all was the same, and the language of the answers the same, *verbatim et literatim*, with the exception of the names of the defendants.

“On the whole, I can perceive no reason why judgment should not be given against the defendants for both debt and costs, and I shall accordingly direct judgment to be so entered.”

The defendants prosecuted a writ of error to this court.

\*The case was argued by *Key*, for the plaintiffs in error ; and by *Butler*, Attorney-General, for the United States. [\*199

*MARSHALL*, Ch. J., delivered the opinion of the court.—This is a writ of error from a judgment of the district court of the United States for the

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district of Louisiana, rendered on the petition of the United States against Seaman Field and others, the plaintiffs in error, as syndics or assignees of Lewis E. Brown, an insolvent debtor. The petition states, that Lewis E. Brown, being indebted to the United States on a certain bond, on which judgment had been obtained for a sum stated in the petition, became insolvent, on or about the 20th of April 1830, and made a voluntary assignment of all his property to his creditors, under the laws of Louisiana; and that the original defendants were appointed syndics or assignees of the creditors; and had received and taken possession of all the property of Brown, and sold and disposed of the same to an amount far exceeding the debt due to the United States; that the defendants, at the time of receiving and taking possession of the property aforesaid, well knew of the existence of the debt due to the United States; and though the same had been demanded of them, refused to pay it. Several other suits, of a similar nature, were brought for other debts, upon bonds due to the United States by Lewis E. Brown, which were afterwards consolidated with the present suit. Answers were duly put in by the defendants, which admitted the assignment, but denied that the syndics then had funds applicable to the debt. The cause was finally submitted to the court upon a statement of facts (which is in the case) prepared by the parties; the trial by jury being waived by their consent.

From this statement of facts, it appears, that Lewis E. Brown, at the time of his failure and insolvency, on the 26th of May 1830, was surety for one John Brown, on certain custom-house bonds, for duties due at various times between the 26th of August 1830, and the 9th of January 1831; upon all of which bonds judgments were rendered in favor of the United States, before the commencement of the present suit, which was in March 1831. On these judgments, writs of *feri facias* issued against all the parties, which were re-  
\*200] turned by the \*marshal *nulla bona*; and none of them have as yet been paid. John Brown failed and became insolvent; and applied for the benefit of the insolvent act of Louisiana, on the 10th of June 1830. The defendants made sale of Lewis E. Brown's property, on a credit of one, two and three years; and received promissory notes therefor. A part of these notes were paid before the 3d of December 1831; and the residue was secured by mortgage on the property, and amounted to \$24,898.60, one-half of which fell due on the 31st of July 1832, and the other half on the 31st of July 1833. The United States never, in any manner, appeared in the proceedings had in the parish court, under the laws of Louisiana, in relation to the insolvency of Lewis E. Brown. At the time of his failure, there were certain mortgages and privileged debts on his estate. A part of these, as well as some other debts, had been paid by the assignees, and were stated in the tableau of distribution; which was rendered to and confirmed by the parish court, on the 15th of December 1831, upon due proceedings had thereon. On the 30th of December 1830, the marshal, acting under the writs of *feri facias* on several of the judgments against Lewis E. Brown, seized the funds in the possession of the defendants as syndics, and gave notice to them of the seizure thereof to satisfy these judgments respectively. At the hearing of the cause, the court admitted certain evidence to prove that the marshal made a seizure, and gave notice to the defendants that he had seized any funds in their hands to satisfy the judgment on which the

present petition was founded; and an exception, by a bill of exceptions, was taken to such admission. And upon the final hearing, in February 1833, the court gave judgment for the United States, for the amount of all the bonds and the interest due thereon, and costs.

The claim of the United States to the payment of the debts due to them out of the funds in the hands of the syndics, is founded upon the priority given them by the 65th section of the duty collection act of 1799, ch. 128; which, in cases of a general insolvency and assignment, like the present, provides that the debts of the United States shall be first satisfied out of the funds in the hands of the assignees.

The first objection now taken by the plaintiffs in error, is, \*that [ \*201 the order of the parish court, confirming the tableau of distribution, was the judgment of a court of competent jurisdiction, in favor of each creditor whose debt was therein stated; and that the syndics were obliged to pay the proceeds of the sale to such creditors; and the United States not being named as creditors therein, can have no right to the fund against the other creditors. If, at the time of the confirmation of this tableau of distribution, no debts due to the United States had been known to the syndics, and they had, in ignorance thereof, made a distribution of the whole funds among the other creditors, that might have raised a very different question. But in point of fact, it has not been denied, that the syndics, long before that period, had notice of the existence of the debts due to the United States; and the present suit was commenced against them in the preceding March. The United States were, it is true, not parties to the proceedings in the parish court, nor were they bound to appear and become parties therein. The local laws of the state could not, and did not, bind them in their rights. They could not create a priority in favor of other creditors, in cases of insolvency, which should supersede that of the United States. The priority of the latter attached by the laws of the United States, in virtue of the assignment and notice to the syndics of their debts. And it was the duty of the syndics to have made known those debts in their tableau of distribution as having such priority.

There is no doubt, that the mortgages upon particular estates sold, must be first paid out of the proceeds of the sales of those estates. But if there be any deficiency of the proceeds of any particular estate, to pay the mortgages thereon, the mortgagees thereof cannot come in upon the funds and proceeds of the sales of the other estates, except as general creditors. The district judge was perfectly correct in the views taken by him in his opinion on this subject. It appears from the papers in the record, that the whole amount of the proceeds of all the sales exceeds \$40,000, and that the mortgages are about \$27,000; and making allowance for other privileged claims, if any, there will remain a balance in the hands of the syndics (when all the notes for the sales are paid) more than sufficient to pay all the debts due to the United States.

But the difficulty is, that the notes for a large amount of their proceeds, viz., \$24,898.60, \*did not become due until July 1832, and July [ \*202 1833 (a moiety in each year); the first being after the present suit was commenced, and the latter, after the present judgment was rendered. Now, the syndics are certainly not liable to the United States for the debts due to them, unless funds have actually come to their hands. The notes for

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the sales may all be good, but as one moiety thereof was not paid at the time of the judgment, it does not judicially appear, that, even at that time, they had funds out of which the United States were entitled to judgments. If the remaining moiety of the notes has been since paid, the United States will then have a legal claim thereon for their debts. For this reason, the judgment of the district court must be reversed; and the cause sent back for further proceedings.

In regard to the bill of exceptions, as the cause was, by consent, not tried by a jury, the exception to the admission of evidence was not properly the subject of a bill of exceptions. But if the district court improperly admitted the evidence, the only effect would be, that this court would reject that evidence, and proceed to decide the cause, as if it were not in the record. It would not, however, of itself, constitute any ground for a reversal of the judgment. But we are of opinion, that the evidence was properly admissible as proof positive to the syndics of the debts due to the United States; and if the fact was material, to enable the court to render suitable judgment on the statement of the parties, it is not easy to perceive, why it should have been objectionable. Without this evidence, there seems to be enough in the record, to show that the syndics had full notice of the debts due to the United States. They do not even set up in their answers, any want of notice, as a defence. But in the present state of the case, this matter is the less important, because they now have the most ample notice of the debts due to the United States; and these will, at all events, be payable out of the residue of the sales, when it is received.

With the question of costs, this court has nothing to do; and as the judgment is reversed for another cause, it becomes immaterial to be considered.

This cause came on to be heard, on the transcript of the record \*203] \*from the district court of the United States for the eastern district of Louisiana, and was argued by counsel: On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said district court in this cause be and the same is hereby reversed, and the cause is remanded to the said district court for further proceedings to be had therein, according to law and justice, and in conformity to the opinion of this court.(a)

\*204] \*GEORGE KING'S HEIRS, RAPHAEL SEMMES and others, Appellants,  
v. JOSIAH THOMPSON and ELIZABETH his wife.

*Fraudulent conveyances.—Equitable lien.*

A few days after the marriage of J. Thompson with the daughter of George King, in 1812, the latter, residing in Georgetown, in the district of Columbia, and having a large active capital, and a large real estate there, proposed to grant to J. T. a house and lot in Georgetown, then much out of repair, and untenable, provided he would repair the same, so as to make it a comfortable residence; and saying, that he intended the property for his daughter; this proposition was accepted by J. T., who repaired the property, expending upwards of \$4000 on the same; and he, with his wife, resided on it about four years. Before his removal from it, a correspondence

(a) This case was decided on the 21st of February 1834.