

*CHARLES KING, Appellant, v. JOSIAH THOMPSON and others,
Heirs-at-law of GEORGE KING, deceased, Appellees.

Decedents' estates.

A bill was filed claiming specific performance of an alleged contract to convey a house and lot in Georgetown, for the benefit of the wife of the complainant, the latter having expended a large sum of money in improving the property, in the expectation that it would be conveyed as required by the bill. The court not considering that sufficient evidence of an agreement to convey the property was given, ordered that it should be sold, and out of the proceeds, that the advances made by the complainant should be repaid; the property sold for a sum far less than the amount expended: *Held*, that the balance unpaid, after the sale, was not a debt due by the estate of the father of the wife, and could not be claimed of his representatives.

APPEAL from the Circuit Court of the District of Columbia, for the county of Washington. In December 1822, the appellant filed in the circuit court, a creditor's bill, in the usual form, against the appellees, praying for the sale of the real estate of George King, deceased, in aid of his personal estate. It appeared, that George King had died intestate and insolvent, in 1820; and with the assent of the defendants, a decree of sale of his real estate was made, in January 1823. Under this decree, sales were made, reported and confirmed; and in March 1831, a final sale of all the real estate was made, except a house and lot on Civil alley, in Georgetown, which sale, on the claim of Josiah Thompson and wife, was set aside in April 1831. As the sales were made, audits of the accounts of the estate and the claims were made, from March 1827 to March 1836. On the last report of the auditor coming before the court, Alexandria Caldwell, administrator of Josiah Thompson, then deceased, exhibited to the circuit court a claim against George King for a dividend out of the assets of his estate; and on his motion, the auditor's report was recommitted.

The record made the case of George King's heirs and others, appellants, v. Josiah Thompson and wife (9 Pet. 204), a part of this case. Josiah Thompson and wife, in the case referred to, had claimed of the heirs of George King, that the house and lot on Civil alley, in Georgetown, should be conveyed to them, alleging that an agreement to that effect had been made with them, in his lifetime, by George King—Josiah Thompson having married the daughter of George King; and in consideration of this agreement, Josiah Thompson had laid out \$4000 in buildings and improvements on the lot. The court not being satisfied, upon the evidence, that a decree for the conveyance of the property should be directed, ordered that a sale thereof should be made, and that the proceeds should be first applied to repay to Josiah Thompson the sum of \$4000 laid out on the same, and that the balance should be paid over for the benefit of the creditors of George King. *129] Under this decree, the property was sold, and it produced the sum of \$827, leaving of the sum expended by Josiah Thompson \$3173, unpaid.

In April 1837, the administrator of Josiah Thompson claimed from the estate of George King a dividend on the sum of \$4000, the amount laid out on the house and lot, being \$2626, less the sum of \$827, the proceeds of the house and lot. This claim was made on the allegation that Josiah Thompson was a creditor of George King to the amount of \$4000, by the expendi-

King v. Thompson.

ture of that sum on the house and lot ; and that he was entitled to come in and have, on that amount, an equal dividend with the other creditors of the estate of George King, deducting the proceeds of the property in Georgetown.

The circuit court made a decree allowing to the administrator of Josiah Thompson the amount claimed by him ; and the defendants prosecuted this appeal.

The case was argued by *Clement Cox*, for the appellant ; and by *Coxe*, for the appellees.

Cox, for the appellant, insisted : 1. That the decree in 9 Pet. 204, does not operate as an estoppel of the exceptions, the issues in this case being different. 1 Stark. on Evid. 202 ; *Collinson v. Ownes*, 6 Gill & Johns. 4, 11. 2. That otherwise, the exceptions in the circuit court were well taken, and ought to have been allowed. He cited, in support of the 1st exception taken below, 9 Pet. 204 ; *Briscoe v. King*, Cro. Jac. 281 : and in support of 2d exception, *Strike v. McDonald*, 2 Har. & Gill 181 ; *Harwood v. Rawling's Heirs*, 4 Har. & Johns. 126 ; *Duvall v. Green*, Ibid. 270.

As to the first point. The parties in this case are different from those before this court in the case in 9 Peters. These are creditors of George King ; and as that was a proceeding for a specific performance of an alleged contract with George King, to which these creditors could not be parties, the decree of the court could not be an estoppel. In that case, no claim of indebtedness was raised or presented against the estate of George King. It was commenced and prosecuted, on the allegation, that the property on which the money had been expended, had been promised to the wife of Josiah Thompson, the daughter of George King ; and its sole purpose was to obtain a conveyance of the property. There was no contract made with George King, upon which the money was expended by Josiah Thompson, for the benefit of George King ; and this court will not see in the case any thing to found a contract of this nature. The whole object of the proceeding in the case in 9 Peters has been obtained. The complainant in that case *has drained the whole of the proceeds of the sale of the house [*130 and lot.

The claim of Josiah Thompson was complete, such as it was, at the death of George King in 1820 ; and until 1837, no assertion is made by Josiah Thompson, or by any one for him, that the estate of George King was indebted to him. In his lifetime, Josiah Thompson made no claim ; it was left to his administrator to present and assert it. It is at an end, by force of the statute of limitations.

A mortgage does not imply a personal obligation for the payment of any portion of the debt which the property mortgaged may not produce by a sale. The saving in a mortgage is for the benefit of the mortgagor. *Briscoe v. King*, Cro. Jac. 281.

Coxe, for the appellees, contended, that the decree of the circuit court was right. It was founded on the report of the auditor, who is to be presumed had full evidence of the facts on which the report is founded. The lien on the house and lot for advances made by Josiah Thompson, was established by the decree of the court in the case in 9 Peters. The balance,

King v. Thompson.

beyond what the house and lot would produce by a sale, was a debt due by the estate of George King. The claim of the administrator of Josiah Thompson is in full accordance with the principles established by this court, in its decision in 9 Peters.

CATRON, Justice, delivered the opinion of the court.—In 1812, Thompson married the daughter of King, who, being a man of considerable estate, offered to give Thompson a house and lot in Georgetown, then in a dilapidated state, if Thompson would repair the premises, so as to make them a comfortable residence; King saying, he intended the property for his daughter, the wife of Thompson. Thompson accepted the offer, went into possession, and expended in repairs and improvements, \$4000.

About 1816, Thompson claimed to have the property conveyed to him by King, who refused; but offered to vest the title in trust for Thompson's wife. Thompson made several alternative propositions; one amongst others, that the house and lot should be valued as of the date when it was put into his possession; and that he would pay the amount over to King, and take a title; which proposition the latter accepted: or, offered to convey a part of the lot, including the house, to Thompson, and another part to Thompson's wife. Under these circumstances, Thompson continued to occupy the premises for a time, and afterwards removed from, and rented them—King setting up no claim to have the property returned to him. In 1820, he died, and the title descended on his heirs. King, at his death, was largely indebted, say \$36,000, and much over the means of payment; his creditors filed a bill to have satisfaction *of their demands out of the real as well as *131] personal estate; and the trustee appointed by the circuit court to sell the property, amongst other lands, sold that claimed by Thompson. The latter filed his bill to avoid the sale, and for a specific performance, against King's heirs, the trustees of the creditors, &c.; the record in which cause, as reported in 9 Peters reports, is, by the exceptions and an agreement, made a part of this proceeding.

The creditors denied the existence of the title set up by Thompson; claiming the house and lot as subject to King's debts, and went to issue. The court below decreed specific performance, from which the defendants appealed to this court, where the decree below was reversed. But Thompson having an alternative prayer in his bill, claiming priority of the general creditors of King, in the form of a lien on the property, to the value of the improvements he had put upon it; this court held, that although there was not sufficient evidence to authorize a decree for title, still Thompson had, by the rules of a court of equity, a lien for the money expended on the improvements; and the cause was remanded, with a mandate that the property should be advertised and sold, and the proceeds of the sale be applied: first, to the satisfaction of the money expended by Thompson in making the improvements; "and the balance, if any, to be paid over for the benefit of the creditors of King." The property was accordingly sold, and brought little more than \$800, leaving upwards of \$3000 unsatisfied.

The trustee of the creditors of King's estate, from time to time, made various sales and reports; and at April term 1837, reported, that Alexander Caldwell, the administrator of Thompson (then deceased), had presented as a debt due from the estate, the balance not refunded to Thompson by the

United States v. Arredondo.

sale of the house and lot. The other creditors resisted the claim, as forming no demand on the estate; and insisted, Thompson's remedy extended only to the property improved and fixed with the lien, by the decree of the supreme court. But the circuit court overruled the exception, and adjudged that Thompson's administrator should come in for an equal dividend with the general creditors. From this order, the creditors appealed.

Thompson, by his bill to subject the house and lot, claimed a priority of lien, and had it allowed to him, in exclusion of the general creditors; he proceeded against the thing, and did not set up any personal demand extending beyond the lien, against the other estate of the King; and we are clearly of opinion, none exists. And therefore order, that so much of the proceeding in the circuit court, as allowed the administrator of Thompson to come in with the general creditors of King, to receive a dividend founded on said claim, be reversed; and that the cause be remanded for further proceedings.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, *holden in and for the county of Washington, and was argued by counsel: [*132 On consideration whereof, it is adjudged and decreed by this court, that so much of the decree of the said circuit court in this cause, as allowed the administrator of Thompson to come in with the general creditors of King, to receive a dividend, founded on his claim, be and the same is hereby reversed, with costs; and that this cause be and the same is hereby remanded to the said circuit court, for further proceedings to be had therein, in conformity to the opinion of this court.

*UNITED STATES, Appellants, v. The HEIRS OF F. M. ARREDONDO, [*133 and others, Appellees.

Florida land-claims.

A concession of 38,000 acres of land was made in 1817, by the governor of East Florida, to F. M. Arredondo, in consideration of services to the crown of Spain; the petition to the governor, asking for the grant, described the situation of the land; and asked, as the survey could not be made, for want of surveyors, and the surveyor appointed by the government, having other occupations, could not attend, that the issuing of the title should be suspended, until the plot of the land could be obtained; but that in the meantime, the decree of the governor on the petition should serve the petitioner as the title; to this application, the assent of the governor was given, by a decree ordering a concession in conformity with the petition. No survey was made under the concession, while Florida remained under the dominion of Spain, nor at any time after the cession of the territory to the United States. The court held, that want of a survey does not interfere with the title of a grantee; the land granted must be taken, as near as may be, in the place described in the petition, and cannot be taken elsewhere; and if it cannot be found there, the grantee has no claim to an equivalent; if it shall be found to interfere with previous grants to third persons, the concession will be lessened in quantity, according to the extent of the rights of third persons; and an equivalent for such diminution cannot be surveyed elsewhere.

The acts of congress for ascertaining claims and titles to lands in Florida, whilst they recognise patents, grants, concessions, or orders of survey, as evidence of title, when lawfully made, do not permit, in case of a deficiency in the quantity, from any cause whatever, the survey to be extended on other land.

APPEAL from the Superior Court of East Florida.