tion involves, in my view, a contradiction which I am wholly unwilling to adopt.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this
*141] court, that the judgment *of the said Circuit Court in this cause 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, with directions to award a *venire facias de novo*.

BENNET R. TRULY, COMPLAINANT AND APPELLANT, *v.* MOSES WANZER, JABEZ HARRISON, AND JOHN R. NICHOLSON.[1]

The preceding case of *Rowan and Harris* v. *Runnels* reviewed and confirmed.

The general principle with regard to injunctions after a judgment at law is this,—that any fact which proves it to be against conscience to execute such judgment, and of which the party could not have availed himself in a court of law, or of which he might have availed himself at law, but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will authorize a court of equity to interfere by injunction to restrain the adverse party from availing himself of such judgment.[2]

[1] See further decision in this case, 17 How., 584.

[2] RELIED ON. *Humphreys* v. *Leggett*, 9 How., 313. CITED. *Crim* v. *Handley*, 4 Otto, 658. See also *Moore* v. *Clopton*, 22 Ark., 125, 128; *The Elmira*, 16 Fed. Rep., 138.

The person praying for an injunction against the enforcement of a judgment, must show a clear case of diligence on his part, and that the judgment was not the result of his inattention. *Robuck* v. *Harkins*, 38 Ga., 174; *Bateman* v. *Willoe*, 1 Sch. & L., 201; *Slack* v. *Wood*, 8 Gratt. (Va.), 40; *Stilwell* v. *Carpenter*, 59 N. Y., 414. The object of the injunction is to prevent the person having obtained the judgment from taking the benefit of an unfair advantage, resulting from accident, fraud, mistake, or otherwise, the enforcement of which is against conscience. *Little* v. *Price*, 1 Md. Ch., 182; *Stanton* v. *Embry*, 46 Conn., 595; *Pearce* v. *Olney*, 20 Conn., 544; *Wingate* v. *Haywood*, 40 N. H., 437; *Wright* v. *Eaton*, 7 Wis., 595; *Marine Ins. Co.* v. *Hodgson*, 7 Cranch, 332; *Ableman* v. *Roth*, 12 Wis., 81; *McCann* v. *Otoe*, 9 Neb., 324; *Bently* v. *Dillard*, 6 Ark., 79; *Conway* v. *Ellison*, 14 Ark., 460.

A judgment to which there is no good defence, or that is not contrary to equity or against conscience, will not be enjoined. *Hazletine* v. *Reusch*, 50 Mo., 50; *Ableman* v. *Roth*, 12 Wis., 81.

An injunction to a judgment at law for the purchase-money of land, on the ground of the difficulty of obtaining a title from the infant heirs of the vendor, cannot be supported if the purchaser neglected to pay the money in the lifetime of the vendor, and to demand a conveyance from him, and if the heirs are not made parties to the bill. *Prout* v. *Gibson*, 1 Cranch, C. C., 389. If the vendor is unable to

Hence, where a party had remained for ten years in the undisturbed enjoyment of the property which he purchased, it was no ground for an injunction to stay proceedings for the recovery of the purchase money, to say that the original purchase was void by the laws of the State, but that he had neglected to urge that defence at law, or to say that he had heard that some persons unknown might possibly at some future time assert a title to the property.

Such an injunction, if granted, must be dissolved.

THIS was an appeal from the Circuit Court of the United States for the Southern District of Mississippi.

The facts in the case are sufficiently set forth in the opinion of the court.

The case was argued by *Mr. Crittenden*, for the appellant, and *Mr. Coxe*, for the appellees.

Mr. Justice GRIER delivered the opinion of the court.

It is not easy to apprehend or appreciate the grounds upon which the complainant in this case has invoked the aid of a court of chancery.

He purchased some negroes from one Herbert, in 1836, to whom he gave two notes in payment. On one of these, suit was brought and a judgment obtained, which has been paid and satisfied. The other remains unpaid, but the complainant has been summoned as garnishee of Herbert in a suit by Wanzer and Harrison, in which a judgment has also been obtained, and an execution issued; and he now asks the interposition of a court of equity, not only to protect him from the judgment and execution, but also to restore to him that portion of the consideration which has been recovered by due course of law.

The reasons alleged for this request are, first, because the negroes purchased by him were brought into the State of Mississippi for sale contrary to the provisions of the constitution of the State; and therefore the contract was illegal and void. And, *secondly, because he has been informed that the vender had not a good title to the negroes, [*142 but held them as guardian for his infant brothers and sisters, "and ran them off to the State of Mississippi." As the complainant still retains the undisturbed possession of the property without even a threat of molestation, this allegation would

convey, it is unconscionable in him to enforce the payment of the purchase-money until he is able to convey, and such an inability is good ground for the vendee to apply to Chancery to enjoin the vendor from enforcing payment. *Fishback* v. *Williams*, 3 Bibb, (Ky.), 342; *Hilleary* v. *Crow*, 1 Har. & J. (Md.), 549; *Buchanan* v. *Lorman*, 3 Gill (Md.), 51; *Stroder* v. *Patton*, 1 Marsh. Dec., 228.

seem to have been inserted in the bill not as containing in itself different grounds for an injunction, but rather to give some plausibility to the charge of fraud and thus veil the naked deformity of his case.

That a note, given for the purchase of negroes brought into the State of Mississippi after 1833 (when the constitution was adopted), and before 1837 (when the legislature imposed penalties to enforce the constitutional prohibition), was not void, has been decided by this court in the case of *Groves* v. *Slaughter*, 15 Pet., 449, and again at the present term in the case of *Rowan & Harris* v. *Runnels*.

But even if the alleged illegality of the contract would have constituted an available defence to the payment of note, it would be a strange abuse of the functions of a court of equity to grant an injunction against the recovery of a judgment at law, because a purchaser with a full knowledge of his defence had omitted or was ashamed to urge it.

It may be stated as a general principle, with regard to injunctions after a judgment at law, that any fact which proves it to be against conscience to execute such judgment, and of which the party could not have availed himself in a court of law, or of which he might have availed himself at law, but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will authorize a court of equity to interfere by injunction to restrain the adverse party from availing himself of such judgment. See 2 Story, Eq. Jur., § 887.

It is too plain for argument that none of these conditions can be predicated of the present case.

The complainant has had the undisturbed enjoyment of his purchase, without challenge of its title, for ten years; and it is with a bad grace that he now invokes the aid of a court of equity to shield him from the payment of the consideration, on the allegation that he had neglected to urge an unconscionable defence, or that he had heard that some persons unknown might possibly at some future time assert a claim to the property. It is in vain to search the annals of equity jurisprudence for a precedent of an injunction granted on such bald pretences.

"There is no power, the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in a doubtful case, than the issuing an injunction. It is the strong arm of equity, that never ought to be extended, unless to cases of great injury, where courts of law cannot afford an adequate and commensurate

remedy in damages. The right must *be clear, the injury impending, and threatened so as to be averted only by the protecting preventive process of injunction." Baldw., 218. It never should be permitted to issue where it is even suspected that it will be prostituted to the unworthy purpose of delaying, vexing, and harassing suitors at law in the prosecution of their just demands. [*143

Let the judgment of the Circuit Court be affirmed.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and was argued by counsel. On consideration whereof, it is now here ordered and decreed by this court that the decree of the said Circuit Court in this cause be and the same is hereby affirmed, with costs.

CHRISTOPHER FORD, APPELLANT, *v.* ARCHIBALD DOUGLAS, MAXWELL W. BLAND, AND EMELINE, HIS WIFE, APPELLEES.

By the laws of Louisiana, where there has been a judicial sale of the succession by a probate judge, a creditor of the estate, who obtains a judgment, cannot levy an execution upon the property so transferred, upon the ground that the sale was fraudulent and void. He should first bring an action to set the sale aside.[1]

The purchaser under the judicial sale having filed a bill and obtained an injunction upon the creditor to stay the execution, it was an irregular mode of raising the question of fraud for the creditor to file an answer setting it forth, and alleging the sale to be void upon that ground. He should have filed a cross bill. Exceptions to the answer upon this account were properly sustained by the court below.

But if the court below should perpetuate the injunction, upon the defendants' refusal to answer further, the injunction should be free from doubt, in leaving the creditor to pursue other property under his judgment, and also at liberty to file a cross bill. If the injunction does not clearly reserve these rights to the creditor it goes too far, and the judgment of the court below must be reversed.

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[1] For a similar statement of the law, as applicable to Louisiana, see *Tufts* v. *Tufts*, 3 Wood. & M., 456, 494. The well-known rule is that property fraudulently conveyed may be levied upon under an execution and sold. *Mandlove* v. *Benton*, 1 Ind., 39; *Harrison* v. *Krammer*, 3 Iowa, 543; *Clark* v. *Chamberlain*, 13 Allen (Mass.), 257; *Trask* v. *Green*, 9 Mich., 358; *Gorham* v. *Wing*, 10 Mich., 486; *Stancill* v. *Branch*, Phill. (N. C.) L., 306. So the proceeds of a fraudulent assignment may be levied upon. *Carville* v. *Stout*, 10 Ala., 796; *contra*, *Henderson* v. *Hoke*, 1 Dev. & B. (N. C.) Eq., 119.