THOMAS WILLIAMS, ADMINISTRATOR OF BENJAMIN J. BALDWIN, DECEASED, APPELLANT, *v.* JOHN W. AND WILLIAM BENEDICT, TRADING UNDER THE FIRM AND STYLE OF BENEDICT & BENEDICT.

The laws of Mississippi direct that, where the insolvency of the estate of a deceased person shall be reported to the Orphans' Court, that court shall order a sale of the property, and distribute the proceeds thereof amongst the creditors *pro rata*, and that in the mean time no execution shall issue upon a judgment obtained against such insolvent estate.

A judgment obtained against the administrator *before* the declaration by the Orphans' Court of the insolvency of the estate, is not, upon that account, entitled to a preference; but must share in the general distribution.[1]

But this court expresses no opinion as to the right of state legislation to compel foreign creditors, in *all* cases, to seek their remedy against the estates of decedents in the state courts alone, to the exclusion of the jurisdiction of the courts of the United States.[2]

THIS was an appeal from the District Court of the United States, for the Northern District of Mississippi, sitting as a court of equity.

The appellant, Thomas Williams, was complainant below, in a bill setting forth, that letters of administration on the estate of Benjamin J. Baldwin, deceased, were granted to him in October, 1838. That at the time he entered upon said administration and made an inventory of the estate, he confidently believed that his intestate's estate would be amply sufficient to satisfy all his creditors. That at November term, 1839, the respondents obtained a judgment against him in the District Court of the United States, for a debt due to them by the intestate. That the complainant, having then discovered that the estate would not be sufficient to pay the debts of the deceased, suggested its insolvency to the Probate Court on the first Monday of December following; whereupon *108] the court adjudged *the estate insolvent, and appointed commissioners to receive and audit the claims. That, to the great wrong of the intestate's other creditors, an execution has been since issued on the judgment of *Benedict & Benedict*, and levied by the marshal on a large portion of the most valuable property of the intestate, thereby preventing the sale of

[1] APPLIED. *Pulliam* v. *Osborne*, 17 How., 475. DISTINGUISHED. *Black* v. *Scott*, 9 Fed. Rep., 190. FOLLOWED. *Peale* v. *Phipps et al.*, 14 How., 375; *Taylor et al.* v. *Carryl*, 20 Id., 596; *Yonley* v. *Lavender*, 21 Wall., 281. REVIEWED. *Burt et al.* v. *Keyes et al.*, 1 Flipp., 67. CITED. *Union Bank of Tennessee* v. *Jolly's Adm'rs*, 18 How., 507; *Hay* v. *Railroad Co.*, 4 Hughes, 352.

[2] EXPLAINED. *Yonley* v. *Lavender*, 21 Wall., 281. CITED. *Green's Adm'r* v. *Creighton et al.*, 23 How., 107.

it by the administrator under the order of the Probate Court. Wherefore he prays the court to grant him a writ of *audita querela*, and to order a writ of *supersedeas* to issue to the marshal, to stay the execution, and for further relief.

On this bill, the judge ordered an injunction to issue. The respondents afterwards appeared and demurred to the bill for want of equity, and afterwards, at June term, 1845, upon hearing, the court decreed that defendants' demurrer to plaintiff's bill of complaint be sustained, and the bill dismissed. At the same term, it was ordered that the final decree be enrolled, and an appeal allowed to this court. A writ of error was also issued.

The 80th section of the statute of Mississippi concerning the estates of decedents (Howard & Hutchinson, 409) provides that "when the estate both real and personal of any person deceased shall be insolvent, or insufficient to pay all the just debts which the deceased owed, the said estate, both real and personal, shall be distributed to and among the creditors, in proportion to the sums to them respectively due and owing; and the executor or administrator shall exhibit to the Orphans' Court an account and statement, &c. And if it appear to the said Orphans' Court that such estate is insolvent, then, after ordering the lands, tenements, &c. of the testator or intestate to be sold, they shall appoint two or more persons to be commissioners, with full power to receive and examine all claims of the several creditors of such estate," &c., &c. And the court are afterwards required to make distribution *pro rata* among the creditors, after paying the funeral expenses, &c.

The 98th section provides, that no execution shall issue on any judgment obtained against any such insolvent estate, but it shall and may be filed as a claim against it, &c.

The case was argued by *Mr. Frederick P. Stanton*, for the appellant, and *Mr. Featherston*, for the appellees.

Mr Stanton said that the equity of this case was dependent upon the peculiar statutes of the state of Mississippi, which require the assets of insolvent estates to be divided among the creditors, in proportion to their respective demands. See Hutchinson's Miss. Code, ch. 49, § 103, p. 667.

This law creates a lien in favor of the creditors from [*109
the time of *the debtor's decease; and a judgment by any creditor, against the administrator or executor, cannot affect the right of the other creditors to their due proportion of the estate. Same Code, p. 673.

The supreme court of the state has given an authoritative exposition of these several provisions, in the case of *Dye's Administrator* v. *Bartlett*, 7 How. (Miss.), 227.

Mr. Featherston, for the appellees.

It is contended for the appellees, Benedict & Benedict, that the court below did not err in sustaining the demurrer to the appellant's bill of injunction. It is rather a matter of surprise that said bill should have been granted by the district judge. Appellant shows, by the allegations and admissions in his bill, that the estate of his intestate was rendered insolvent by his own negligence and maladministration. The largest debt due the estate of said Baldwin, to wit, a note drawn by Henry A. Fowlkes, of Alabama, for seven thousand dollars, was lost to the estate by the refusal of the administrator to sue on it. Other acts of maladministration are apparent on the face of the bill.

Appellant has not, therefore, made out such a case as would entitle him to relief in a court of equity. Administrators are bound to exercise such prudence, diligence, and caution in the administration of estates, as a prudent man, looking to his own interests, would exercise in the management of his own affairs. See *Bailey et al.* v. *Dilworth*, 10 Sm. & M. (Miss.), 404.

They are also required by the statutes of Mississippi, to be prompt in reporting the insolvency of the estates of their intestates. See *Bramlet* v. *Webb et al.*, 11 Sm. & M.(Miss.), 439.

But it is said by the solicitor for the appellant, that "the equity of this case is dependent upon the peculiar statutes of the state of Mississippi, which require the assets of insolvent estates to be divided among the creditors in proportion to their respective demands." See Hutch. Miss. Code, ch. 49, § 103, p. 667.

It is equally true that the statutes of Mississippi give judgment creditors a lien on all the property of defendants from the rendition of the judgment. See Hutch. Miss. Code, 881, 882, 885, 890, 891, 894; *Dye's Administrator* v. *Bartlett*, 7 How. (Miss.), 226.

Benedict & Benedict acquired a lien on all the property of Benjamin J. Baldwin, deceased, in the hands of Thomas Williams, his administrator, from the rendition of their judgment
*110] in November, 1839. This lien could not be defeated by any *act of the defendant Williams. The plaintiffs in the court below could alone by their acts raise their lien. See 1 Bland. (Md.), 449, 452.

Nothing subsequent could divest plaintiffs' lien without their consent. This judgment was rendered before the appellant

declared the estate insolvent. The other creditors, who had not obtained judgments, acquired a lien (if at all) from the time the Court of Probates declared the estate insolvent, and not from the death of the intestate, as insisted by counsel for appellant. See Hutchinson's Code, 673.

The plaintiffs, therefore, in the court below, acquired by their judgment a prior lien on the estate of Baldwin over the other creditors. A prior lien gives a prior right to satisfaction. See *Andrews* v. *Wilkes*, 6 How. (Miss.), 554.

This judgment was entitled to satisfaction, to the exclusion of all other creditors. Nor will it do injustice to other creditors to give it such preference.

The case would not be altered if Baldwin were alive; it would still be a prior lien. It is an advantage gained over other creditors by the superior vigilance of the appellees in the prosecution of their claim to final judgment,—an advantage recognized and sustained by the law.

There is no provision of the statutes of Mississippi which operated *per se* as a stay of execution on this judgment in the court below. Nor is there any, it is believed, which would by any fair or rational construction authorize the district judge in enjoining it.

Section 103 of Hutchinson's Mississippi Code, pages 667, 668, relied on by appellant's counsel, provides that no suit shall be commenced against an administrator after his intestate's estate has been declared insolvent, &c., &c. This section can have no bearing on this case, because the judgment was obtained and the suit ended before the estate was reported or decreed insolvent.

Section 1, art. 2, of the same code, p. 673, is also relied on. This section provides, that, when suits are pending against administrators, and undetermined at the time the estates of their intestates are decreed insolvent, execution shall be stayed after judgment, &c. This provision is equally inapplicable to this case. This suit was determined, and judgment rendered, before appellant reported the estate of Baldwin insolvent.

Would not a decision, bringing this case within the meaning of the above sections, (and they are the only statutes relied on,) be an act of a legislative rather than a judicial character?

The decree of the district judge dismissing the bill of injunction *must therefore be sustained. No injustice will be done to the other creditors. They have their remedy against the administrator and his securities on his official bond, for all acts of maladministration, &c. See *Edmundson* v. *Roberts*, 2 How. (Miss.), 822; *Lerhr* v. *Tarball*, 2 Id., 905; *Prosser* v. *Yerby*, 1 Id., 87. [*111

Mr. Justice GRIER delivered the opinion of the court.

The only question raised in this case depends on the construction of the peculiar statutes of Mississippi. It is, whether a plaintiff who has obtained a judgment against the administrator of an intestate's estate, before it has been declared insolvent, has such a prior lien on the same as will entitle him to issue an execution and satisfy his judgment out of the assets, after the estate has been declared insolvent by the Orphans' or Probate Court, and commissioners appointed for the purpose of distributing the assets equally among all the creditors.

The process, both mesne and final, in the District and Circuit Courts of the United States, being conformed to those of the different states in which they have jurisdiction, the lien of judgments on property within the limits of that jurisdiction depends, also, upon the state law, where Congress has not legislated on the subject.[1] In some of the states, a judgment is not a lien on lands; in others, there is a lien coextensive with the jurisdiction of the court. In Mississippi, a judgment obtained in his lifetime is a lien, from the time of its rendition, on all the defendant's property; and the property of a decedent becomes liable for his debts from the time of his death. (See *Dye* v. *Bartlett*, 7 How. (Miss.), 224.) Consequently, the lien of a judgment obtained before defendant's death cannot be affected by a declaration of insolvency subsequently made by his administrator. But if, at the time of the death, the fund from which each of the creditors has an equal right to claim satisfaction is insufficient to pay all, equity requires that one should not be permitted, by a mere race of diligence, to seize satisfaction of his whole debt, at the expense of another. Hence, a declaration of insolvency must relate back to the death, in order that this equitable principle may have its effect. Such appears to be the policy of the legislation of Mississippi on this subject, apparent in her statutes and the decisions of her courts.

The case of *Parker* v. *Whiting*, 6 How. (Miss.), 352, decided in the High Court of Errors and Appeals of that state, presented the same point in a case parallel with the present.

In that case, as in this, it was contended that an administrator cannot report an estate insolvent after nine months, *112] that *being the period within which he cannot be sued; and that a judgment obtained after that time became a lien on all the property of the deceased, which cannot be destroyed, raised, or superseded by the subsequent report of insolvency,

[1] CITED. *Brown* v. *Pierce*, 7 Wall., 217; *Baker* v. *Morton*, 12 Id., 158.

especially when it appeared that this insolvency might have been caused by the maladministration of the defendant.

But that court decided that the estate of a deceased person may be reported insolvent after the expiration of nine months from the grant of letters of administration; and that, when an estate is so reported, the lien of a judgment previously obtained against the administrator is held in abeyance, and must give way to the general and equal lien of all the creditors which existed at the time of the death, and to which the declaration of insolvency must relate. Also, that the action of the Probate Court on a report of insolvency cannot be collaterally impeached; and if the insolvency has been caused by maladministration, the remedy is by action for a devastavit, or on the administration bond.

In this exposition of the statutes of Mississippi, as given by her courts, we fully concur; and it is conclusive of the question now under consideration.

As, therefore, the judgment obtained by the plaintiffs in the court below did not entitle them to a prior lien, or a right of satisfaction in preference to the other creditors of the insolvent estate, they have no right to take in execution the property of the deceased which the Probate Court has ordered to be sold for the purpose of an equal distribution among all the creditors. The jurisdiction of that court has attached to the assets; they are *in gremio legis*. And if the marshal were permitted to seize them under an execution, it would not only cause manifest injustice to be done to the rights of others, but be the occasion of an unpleasant conflict between courts of separate and independent jurisdiction. But we wish it to be understood, that we do not intend to express any opinion as to the right of state legislation to compel foreign creditors, in *all* cases, to seek their remedy against the estates of decedents in the state courts alone, to the exclusion of the jurisdiction of the courts of the United States. That will present an entirely different question from the present.

The decree of the court below dismissing the bill must be reversed, and a decree entered in favor of complainant continuing the injunction.

Order.

This cause came on to be heard on the transcript of the record *from the District Court of the United States [*113
for the Northern 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 District 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 District Court, with directions to enter a decree in favor of the complainant, continuing the injunction in this cause, and for such further proceedings, in conformity to the opinion of this court, as to law and justice may appertain.

The United States, Appellants, *v.* The Heirs of Boisdoré.

Same, Appellants, *v.* The Heirs of Powers.

Same, Appellants, *v.* The Heirs of Turner.

In 1824, Congress passed an act (4 Stat. at L., 52), entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims."

The second section provided that, in "all cases, the party against whom the judgment or decree of the said District Court may be finally given, shall be entitled to an appeal, within one year from the time of its rendition, to the Supreme Court of the United States"; and the fifth section enacted that any claim which shall not be brought by petition before the said courts within two years from the passing of the act, or which, after being brought before the said courts, shall, on account of the neglect or delay of the claimant, not be prosecuted to a final decision within three years, shall be forever barred.

In 1844, Congress passed another act (5 Stat. at L., 676), entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama, south of the thirty-first degree of north latitude, and between the Mississippi and Perdido Rivers."

It enacted, "that so much of the expired act of 1824 as related to the State of Missouri be, and is hereby, revived and reënacted, and continued in force for the term of five years, and no longer; and the provisions of that part of the aforesaid act hereby revived and reënacted shall be, and hereby are, extended to the States of Louisiana and Arkansas, and to so much of the States of Mississippi and Alabama as is included in the district of country south of the thirty-first degree of north latitude, and between the Mississippi and Perdido Rivers."

The act of 1824, revived and reënacted by the act of 1844, did not expire in five years from the passage of the act of 1844, so far as regards appeals from the District Court to this court. It will continue in force until all the appeals regularly brought up from the District Courts shall be finally disposed of.[1]

The first two of these cases were appeals from the District Court of Mississippi. One of them, viz., *The United States* **v.** *The Heirs of Boisdoré*, was the same case in which a motion

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[1] Cited. *United States* v. *Porche*, 12 How., 432.