free from that embarrassment. Could that court entertain jurisdiction of the case, and violate this requirement?

It is said by claimant that the case did not come into that court under that resolution, but was brought there by his own petition. But, however it may have come there, the rule prescribed by Congress adheres to it, if Congress had the right to prescribe it. Entertaining no doubt of the power of the legislative body to define the terms on which judgments may be rendered against the government as to classes of cases, or as to individual cases, we think the Court of Claims was bound to accept the resolution of February, 1861, as the law of the case in that court. The effect of this resolution on the award, if it should ever come in question in a court not limited by the restrictions which govern that court, we need not decide.

As we can only consider here, what judgment that court should have rendered, we conclude that its judgment was right, and it is therefore

AFFIRMED.

NICHOLS *v.* LEVY.

1. Where a State court,—interpreting a statute of its own State, which gave such court jurisdiction to subject legal and equitable interests in real estate to the claim of creditors,—decided that the statute embraced trusts like one in question (which judgment creditors were seeking to set aside), and that it exempted the property embraced by the trust from liability to such creditors—this court followed that construction of the statute and sustained the trust, though they remarked that if the question had been to be treated by them on general principles of jurisprudence, and independently of the State decision on the statute, the judgment would necessarily have been the other way.
2. An estate in vested remainder is liable to debts the same as one in possession. *Hence*, where creditors seek to subject, by bill in equity, to their claims an estate in such vested remainder, and it is decided that they cannot do it, the matter will be considered as *res adjudicata*, if they afterwards try to levy, by execution, on the same property, when, by the death of the tenant for life, it has become an estate in possession.

THIS was an appeal from the Circuit Court of the United States for the Middle District of Tennessee.

In that court, James Beal Nichol and John Nichol, Jr

filed a bill for an injunction to restrain Levy and *thirty-six* others, different mercantile houses, from selling, under executions at law, which these houses had obtained against them, certain lands in which they, the said J. B. and J. Nichol, were interested; the ground of the bill being, that the said lands were not liable to be sold to satisfy the judgments in question. The court refused to grant the injunction, and this appeal was taken.

The questions made in the case were:

1st. Whether the matter of the liability of said lands was not *res adjudicata* in favor of the Nichols in a certain other proceeding hereinafter mentioned, in which they were defendants? and

2d. Whether, as an original question, they had any such estate in the lands as was liable to execution at law?

The case was thus:

The appellants were grandsons of one Beal Basley, and having been engaged in mercantile business, and failing in it, had become heavily, if not hopelessly, indebted. Their grandfather, desiring to provide for his grandsons, these young men, but unwilling that his bounty should go simply to pay their debts, executed, in 1849, a deed, conveying certain lands (including one tract of 308⅜ acres) to one John Nichol, Sr., upon trusts that the trustees should permit the said Beal Basley to occupy and enjoy the lands, &c., during his life—

"And after his death that the said John Nichol, Sr., will *permit* the said J. B. Nichol and John Nichol, Jr., jointly or in severalty, according to any division into two equal parts that may hereafter be made between them, to *have, possess, use, occupy,* and *enjoy* the said property, and receive the rents, issues, and profits thereof, *so that* neither the said *property* nor the *rents, issues, and profits thereof shall ever be liable for any of the present now existing debts,* whether due or not due, or *now existing contracts* of the said J. B. Nichol or John Nichol, Jr., or either of them, or to *any incumbrance, liability, or lien that they or either of them or their property are now subject to for said debts or contracts, or by any acts, defaults, or transactions of their own, whereby they*

may attempt to make the same liable for said debts or contracts, and after the present debts and liabilities of the said J. B. Nichol and John Nichol, Jr., shall have been extinguished and they entirely discharged therefrom, then the said John Nichol, Sr., shall hold said property, and every part thereof, in trust, *to convey* the same to the said J. B. Nichol and John Nichol, Jr., in fee and absolutely, either as tenants in common or in severalty, and in such manner as may be agreed on by and between the said J. B. Nichol and John Nichol, Jr."

John Nichol, Sr., the trustee, died, and the legal estate in the lands descended to his nine children, two of whom were James Beal Nichol and John Nichol, Jr.

Subsequently, and during the lifetime of the grandfather, in August, 1854, *certain* creditors (in number *thirty*) of the two grandsons having obtained judgments upon debts existing after the conveyance was made, filed bills in chancery against them and the heirs of the deceased trustee, in Tennessee, praying a sale of their interest in the lands so conveyed. These suits were consolidated and tried together. The bills having set forth the deed, judgments, and the case of the creditors on them, concluded:

"From the foregoing statement of facts your honor will readily perceive that said James B. and John Nichol, Jr., are invested with at least a remainder interest in fee in said tract of 308⅝ acres allotted to them as aforesaid; that the legal title to said tract being in John Nichol, Sr., or his heirs, the same is not subject to execution at law."

The prayer was, that the premises being considered, and as the complainants had no remedy at law, the "interest" of the two grandsons Nichol in the property should be sold, and the proceeds applied to the payment of the judgments.

The chancellor decreed that the property could not be thus applied, either under the general jurisdiction of the court, or under an act of the legislature of Tennessee by which it was sought to render it liable, notwithstanding the terms of the deed. And the Supreme Court of Tennessee affirmed this decree.

The statute of Tennessee referred to, authorized certain proceedings to subject equitable interests to the payment of judgments obtained against the defendant, at law. It declared:

"*Section* 1. That a bill might be filed 'to compel the discovery of any bank stock, or other kind of stock, or any property, or thing in action, held in trust for him, and to prevent the transfer of any such stock, property, money, thing in action, or the payment or delivery thereof to the defendant, except where such trust has been created by, or the fund has proceeded from, some person other than the defendant himself, and is declared by will duly recorded, or by deed duly proved and registered.'

"*Section* 2. That the court might decree payment of the judgment out of 'any property, stock, money, or things in action, belonging to the defendant or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery.'

"*Section* 4. That when service could not be made at law, and a judgment obtained, and also where the demand was of a purely equitable nature, a court of equity should have jurisdiction to subject legal and equitable interests in every species of stock and other property, with the exception hereinbefore stated, and also in real estate."

In March, 1861, the two grandsons made partition of the land by deed, and in April, 1860, sold portions of it.

In May, 1860, the grandfather, Beal Basley, died, and immediately thereafter the same thirty judgment creditors above-mentioned, and *seven others, who had not joined in the former proceedings*, caused executions to be levied upon the entire tract of land in question, and it was accordingly advertised for sale. Whereupon in August, 1860, James Beal Nichol, and John Nichol, Jr., the grandsons provided for as above mentioned, filed a bill in the Circuit Court of the United States, for an injunction to prevent the sale, setting forth the proceedings hereinbefore mentioned by which they contended the creditors were estopped, and also relying upon the exemption of the property, according to the terms and conditions of the trust under which they held.

Upon final hearing, in 1864, the court being of opinion that the defendants were not estopped by the decree of the Supreme Court, and "that the terms of exclusion of the donees' creditors not amounting to a limitation of the estate, can no more repel the creditors than a restraint upon alienation can in the hands of the donee himself," dissolved the injunction and dismissed the bill. From this decree the present appeal was taken to this court.

Messrs. Carlisle and McPherson, for J. B. and J. Nichol, appellants:

I. *The decree of the Supreme Court of Tennessee estops the parties to the proceedings in which it was rendered, as to the matter in question.*

The subject-matter was the same in both cases. The only difference was that caused by the death of the tenant for life, Beal Basley. When the decree was rendered, these appellants had a vested remainder in the lands, after the death of Beal Basley. No change took place after this decree and before the executions were issued, except that by his death the remainder vested in possession. But his death did not change the case. A remainder is as much liable for the satisfaction of judgments as an estate in possession; for a legal estate in remainder may be sold under execution, and an equitable remainder may be subjected, by proceedings in equity, to be sold for debt.

The suit in the Chancery Court was between the same parties. It is true that not all the defendants in this cause were parties to the cause in the Chancery Court (thirty of the thirty-seven being parties), but this latter suit was upon a creditor's bill, to which all had a right to be made parties upon motion, and are, consequently, bound by the decision. If this be not so, still those who were parties are bound.

II. *If the appellees are not estopped, and the question is to be treated as an original one in this suit, still the estate of the appellants in the lands was not subject to be taken in execution.*

On this question the decision of the Supreme Court of Tennessee, if not an estoppel, is a controlling authority, be-

ing a decision upon the construction of a statute of that State, and laying down a rule of real property therein.

The intent and legal effect of the deed was to vest the legal estate in the trustee until the debts of the *cestui que trust* should be paid, and upon the happening of that event to convey the lands to the *cestui que trust*, and in the meantime the lands should be enjoyed by those persons described in the deed. During the continuance of the trust it was made the duty of the trustee to protect the possession of the lands against a specified class of persons, and to defeat any attempt on the part of the *cestui que trust* to apply the property or its proceeds to a certain specified and prohibited object. It was clearly the requirement of the donor that the trustee should in certain contingencies interfere actively in the execution of his intentions—to eject, for instance, former creditors, to whom the *cestui que trust* should have conveyed the land in satisfaction of a then existing debt, or even the purchasers who might buy at sheriff's sale, under the executions which it is now sought to enjoin. Moreover, the trustee was to ascertain when a certain event had occurred—the final extinguishment of certain debts of the *cestui que trust*—and upon the happening of that event he was to make a conveyance in one or the other of the two modes prescribed by the deed of gift. These provisions and conditions, *if valid*, constitute a *special trus* .*

These provisions and conditions were valid, and especially that providing for a future conveyance of the land.†

These positions do not conflict with the authorities which hold that all a debtor's property must be liable to his debts. But the remedy is in equity, where the interest of the debtor *under the trust* can be reached—not by execution at law, whereby the trust is destroyed.‡

The trust in this case being executory, and the trusts im-

* Mott *v.* Buxton, 7 Vesey, 201.

† *As to liability for debts*, see Fisher *v.* Taylor, 2 Rawle, 33; Vaux *v.* Park, 7 Watts & Sergeant, 19; Braman *v.* Stiles, 2 Pickering, 460. *As to future conveyance*, see Bank *v.* Forney, 2 Iredell's Equity, 181.

‡ Mebane *v.* Mebane, 4 Iredell's Equity, 131; Dick *v.* Pitchford, 1 Devereux & Battle's Eq. 480.

perfectly declared, equity will carry the intentions of the parties into effect.

Messrs. Bradley and Wilson, contra:

I. *The decree of the Supreme Court of Tennessee is not an estoppel.*

The essential qualities of an estoppel are that the judgment shall be between the same parties, upon the same subject-matter, and this must appear by the record, or be proved, and is not to be inferred by argument.*

The parties are not the same.

We have here thirty-seven creditors as parties. In the suit in the State court of Tennessee there were but thirty. If the decree is a bar, it is a bar only as to the parties to the suit in the State court. The matter must be passed on here for the remaining seven.

It was not on the same subject-matter.

In those cases an effort was made by certain judgment creditors to create a lien in equity upon and subject to sale certain property in which it was alleged the defendants had an equitable interest. The court decided in substance that they had no estate at *that time* cognizable in a court of equity.

It was a bare possibility. The donees took no interest *in presenti*. It was to depend on their surviving the donor. He reserved a life estate to himself, and after his death a use to the donees for their lives, to be enlarged upon a certain contingency into a fee. It was a use for life limited upon a use for life and dependent on their surviving the donor. It was an interest too remote, depending on a possibility only, and did not vest any estate in the donee. It was not an estate or interest in the donees which could pass by assignment, whether voluntary or involuntary. It could not pass even

* Duchess of Kingston's case, 20 State Trials, 355; Hitchin *v.* Campbell, 2 W. Blackstone, 830; Martin *v.* Kennedy, 2 Bosanquet & Puller, 70; Robinson's case, 5 Reports, 32; Outram *v.* Morewood, 3 East, 346.

by will, because no estate could arise on which the devise could operate.*

The Supreme Court therefore was right in the decision which it made in the *then* condition of the title.

But on the death of the donor, the donees surviving, the interest of the donees becomes a vested interest, subject to the disposition of a court of equity and subject to execution at law.

II. *As an original question.*

This being a voluntary conveyance by the donor in trust for the donees to "have, possess, use, occupy, and enjoy said property, and receive the rents, issues and profits thereof," upon the termination of the life estate of the donor they became seized in fee of the lands, and by virtue of the statute of 29 Charles II, the same became liable to levy and sale upon execution.

The condition annexed to the estate made it inalienable except on a contingency, which was too remote and uncertain and against public policy. It was a contingency which not only might never happen, but which was so uncertain that it could not control the enjoyment and transferable character of the estate.

There is no restraint of alienation in the deed of trust, nor any limitation over to defeat the estate in the event of a conveyance by the *cestui que trust* before the payment of the debts provided against by the said deed. If then the *cestui que trust* had united with the trustee after the death of the grandfather in a conveyance of the property in fee, before execution levied, the purchaser would have taken unincumbered title. It follows that the *cestui que trust* took the full interest and estate as the land, subject only to the outstanding legal title, and such estate and interest was necessarily subject to sale under execution.

Where a grant or devise is made of the rents, issues and profits of an estate, the legal estate being vested in a trustee, with a condition annexed, that they shall not be subject to

* Preston on Estates, 75.

present or future debts, whether the estate granted or devised be an estate for life or in fee, the condition is void as against public policy.*

This is not a special trust. The trustee had nothing to do but to *hold* the legal title, *permit* the parties to occupy, and when the trust was ended, *convey* the legal title to them in such manner as *they* might determine. A more passive trustee can hardly be conceived of.

Mr. Justice SWAYNE delivered the opinion of the court.

If the determination of this case depended upon the general principles of jurisprudence, the result must necessarily be in favor of the appellees. It is a settled rule of law that the beneficial interest of the *cestui que trust*, whatever it may be, is liable for the payment of his debts. It cannot be so fenced about by inhibitions and restrictions as to secure to it the inconsistent characteristics of right and enjoyment to the beneficiary and immunity from his creditors. A condition precedent that the provision shall not vest until his debts are paid, and a condition subsequent that it shall be divested and forfeited by his insolvency, with a limitation over to another person, are valid, and the law will give them full effect. Beyond this, protection from the claims of creditors is not allowed to go.*

According to these principles the restrictions in the deed of Beal Basley as to the creditors of the appellants are wholly void.

But the case does not turn upon these considerations.

Two other questions are presented, and our judgment must be determined by their solution.

One of these questions is, whether the appellees, who were complainants in the bills filed to reach the interests of the

* Graves *v.* Dolphin, 1 Simon, 66; Mebane *v.* Mebane, 4 Iredell's Eq., 131; Bank *v.* Forney, 2 Id. 181, 184; Snowden *v.* Dales, 6 Simon, 524; Foley *v.* Burnell, 1 Brown's Ch. 247; Brandon *v.* Robinson, 18 Vesey, Jr., 429; Piercy *v.* Roberts, 1 Milne & Keene, 4; Dick *v.* Pitchford, 1 Devereux & Battell's Eq. 484; 2 Story's Eq., § 974.

appellants in the property in question, are not concluded by the decree rendered in those cases by the Supreme Court of Tennessee. The cases were consolidated in that court, and decided together. The bills were filed in the Chancery Court of Davidson County, and addressed to the presiding chancellor. They contained this averment:

"From the foregoing statement of facts your honor will readily perceive that said James B. and John Nichol, Jr., are invested with at least a remainder interest in fee in said tract of 308⅜ acres allotted to them as aforesaid; that the legal title to said tract being in John Nichol, Sr., or his heirs, the same is not subject to execution at law."

Hence the aid of a court of equity was invoked. The prayer of the bills was that the "interest" of the appellants in the property should be sold, and the proceeds applied to the payment of the judgments.

The chancellor decreed against the complainants, upon the grounds, that the restriction in the trust as to the liability of the property for the debts of James B. and John Nichol was valid; that the creditors could not compel the conveyance of the legal title when the beneficiaries themselves were not in a condition to demand it; and that "the provisions of the deed were within the purview of the act of 1832;" and the property thus protected from the claims of the creditors.

The complainants appealed to the Supreme Court. That court held "that said property is not liable for such debts and judgments of the complainants, and that the same may not be subjected to the payment and satisfaction of said debts and judgments," and the decree of the chancellor was affirmed. As regards the complainants in that case, who are defendants in this, the parties were the same, and the question to be determined was the same. But it is said that Beal Basley was living when that litigation was begun, and dead when this bill was filed. That Basley was living could have made no difference in the result of the former suits, and cannot affect the bar arising from them in this suit. As averred in the bill, the beneficiaries had a vested re-

mainder in fee. Their right to the property was as perfect then as it is now. Their estate was an equitable one, but alienable and descendible, and subject to be conveyed by the same instruments as a legal estate. It was not then vested in possession. The time of possession was dependent upon the termination of the life estate of Beal Basley. But this only lessened its value for the time being. Its liability to their creditors was not in the least affected. It is impossible that the Supreme Court of Tennessee should have held otherwise, and the decree have proceeded upon a different view of the subject. The language of the decree repels the suggestion. We cannot give any weight to an objection which assumes as its basis such a reflection upon that enlightened tribunal. The decree as to the property and questions here in controversy is *res judicata*, and it has every element of conclusiveness as to those who were parties to it.

Several defendants in this suit were not parties to that litigation, and hence are not bound by the decree.

This brings us to examine the second question presented for our consideration. It relates to the effect of the act of 1832, referred to by the chancellor in his decree.

The Supreme Court of Tennessee held that it had no power to subject stocks, choses in actions, or equitable interests, to the payment of judgments at law. The legislature of the State thereupon passed the act in question.*

The first section declares that a bill may be filed "to compel the discovery of any bank stock, or other kind of stock, or any property, or thing in action, held in trust for him" (the defendant), "and to prevent the transfer of any such stock, property, money, thing in action, or the payment or delivery thereof to the defendant, except where such trust has been created by, or the fund has proceeded from, some person other than the defendant himself, and is declared by will duly recorded, or by deed duly proved and registered."

The second section authorizes the court to decree payment of the judgment out of "any property, stock, money,

* Session laws of 1832, p. 22; Ewing *v.* Cantrell, Meigs, 364.

or things in action, belonging to the defendant or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery."

The fourth section provides that when service cannot be made at law, and a judgment cannot be obtained, and also where the demand is of a purely equitable nature, "a court of equity shall have jurisdiction to subject legal and equitable interests in every species of stock and other property, with the exception hereinbefore stated, and also in real estate."

The Supreme Court of the State decided, in the suits referred to, that this statute embraces trusts of real estate, and that it exempted the property in question from liability to the judgment creditors. There can be no doubt of the power of the legislature to pass the statute. Its wisdom and policy are considerations with which we have nothing to do. Being a local statute and involving a rule of property, we adopt the construction which has been given to it by the highest judicial tribunal of the State.

This is decisive of the case as to those of the appellees who were not parties to the former suits.

The decree of the Circuit Court is REVERSED, and the cause will be remanded to that court with directions to enter a decree

IN CONFORMITY TO THIS OPINION.

UNITED STATES v. ARMIJO ET AL.

1. The motives which may actuate parties intervening in a California land case to appeal, or the fact that an inconsiderable interest in the grant is represented by them, can have no influence upon the decision of the matter presented. The holder of the slightest interest, if properly before the court, has the right to insist upon a fair location of the quantity granted, however much such location may clash with the wishes of his co-owners.

2 Where two grants in California, made by the Mexican government, were both for specific quantities without designation of location or bounds,