

Case No. 4,660. FARMERS' BANK v. BOBBINS. "
[2 Cranch. C. C. 471.]¹

Circuit Court, District of Columbia.

May Term, 1824.

JUDGMENT LIEN—EFFECT OF RELIEF UNDER IN SOLVENT ACTS.

The judgment-lien upon the lands, of an insolvent debtor is not destroyed by the 5th section of the insolvent act [of 1803 (2 Stat. 237)], although there is no process of execution thereupon, in the hands of the marshal, at the time of the debtor's application for relief, under the act.

Upon the motion of the Farmers' Bank of Alexandria, a rule was granted them against Isaac Bobbins, trustee of Amos Alexander, an insolvent debtor, to show cause why he should not pay to that bank, out of the moneys arising from the sales of the real estate of the said Amos Alexander, in his hands, as trustee, the balance due to the bank upon a judgment obtained against him by the bank, and which was in full force and effect when he took the oath of insolvency. By the 5th section of the insolvent act of 1803 it is provided, "That the product of the insolvent's estate, after satisfying all incumbrances and liens, shall be divided among the creditors, in proportion to their respective claims; and that no process against the real or personal estate of the debtor, shall have any effect or operation, except process of execution and attachments in the nature of executions, which shall have been put into the hands of the marshal antecedent to the application, that is, the application for relief under the act"

Mr. Taylor, for the defendant, in showing cause, contended, that liens and incumbrances are of two kinds. 1st Specific, attaching on certain designated portions of property, and arising from contract either expressed or implied from the usage of trade known to the parties, and therefore still deriving their origin from contract; such are mortgages, deeds of trust pledges or pawns of personal property, claims of workmen for

FARMERS' BANK v. BOBBINS. "

work done on personal property remaining in their hands, advances by factors or agents, &c. 2d. Liens, not forming a subject of stipulation or agreement between the parties, and not deriving their origin from express or implied contract, but given by law, as incidental to contracts under certain circumstances. These are mostly, if not always, general, affecting all a debtor's property, or all of a particular class. These are remedies to enforce the performance of a duty, and not strictly rights. As to the first class of liens, deriving their force from the voluntary and legal contract of the parties, it would, on principle, have been incorrect for congress to have interfered with them, so as to impair their obligation. But as to the second class, which were given by the legislature as a remedy, it was certainly competent for the legislature, when public expediency required it, to take them away, either wholly or partially, by a general, or partial repeal of the law by which they were given, as in its wisdom it might think right. The 5th section of the act seems to have done so in the case of insolvency and application for relief under that act. Although congress has not defined the liens and incumbrances which are to be paid, it has clearly defined those which shall not be paid. No process against the real or personal property of the debtor is to have any effect, &c. If there be no process to enforce the lien by judgment, there is an end of it. The liens which are protected by the act are the specific liens arising directly from contract. The liens erected against the estate, generally, by judgment or execution, are lost by insolvency. *Thellusson v. Smith*, 2 Wheat [15 U. S.] 396, 423; *Sturges v. Crowninshield*, 4 Wheat. [17 U. S.] 121.

Mr. Swann, *contra*, contended that the 5th section of the act did not destroy the lien of judgments, and only modified the remedy by which the benefit of the lien is to be obtained, by substituting a sale by the trustee, in place of a sale by the marshal, under an execution, in all cases where there was not an execution in the hands of the marshal at the time of the insolvent's application for relief under the act. The trustee is to sell the whole property, and distribute the proceeds among the creditors, having respect to all liens and incumbrances.

THE COURT (*nem. con.*) was of opinion that the lien of the judgment was not destroyed; that the insolvent act only substituted the trustee for the marshal, as to the sale, and that in the distribution of the proceeds of the sale of the real estate, he should have regard to the judgment, as a lien.

¹ [Reported by Hon. William Cranch, Chief Judge.]