

UNITED STATES V. DUNCAN ET AL.

[4 McLean, 207.]¹

Circuit Court, D. Illinois.

June Term, 1847.

LIENS—APPLICATION OF PROCEEDS.

Where there are two liens on the same land, one being paramount to the other, which also covers other lands in the state, the court will order the lands to be sold, reserving the application of the proceeds for the order of the court.

Mr. Butterfield, for the United States.

Mr. McClure, for defendants.

OPINION OF THE COURT. Judgments were obtained in this court in 1841, which are a lien on the lands of the ancestor of the defendants, throughout the state. In 1846, there was a decree against the same, in favor of the plaintiffs, for forty-nine thousand dollars. Certain judgments have been subsequently entered against the same person, in Morgan county state court, for about six hundred dollars, which create a lien upon the lands in that county. Executions have been issued on the judgments of the United States, and a motion is now made to direct the other lands of Duncan's heirs in the state, to be sold, in satisfaction of the judgments and decrees above stated. 1 Paige, 185; 19 Johns. 493; 1 Stat. 515.

The court order, that should the land in Morgan county sell for more than the amount of the judgments of the United States, entered in 1841, the solicitor or agent of the United States, shall retain in his own hands such surplus, subject to the order of this court. Or, should such lands sell for less than the balance of said judgments, and the other lands subject to the decree shall sell for more money than the amount of such decree, the surplus shall be held by the

solicitor and agent of the United States, subject to the disposition of the court.

{See Case No. 15,003.}

¹ [Reported by Hon. John McLean, Circuit Justice.]

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