right, permitting them to come in at any time before actual distribution, or even afterwards, for a contribution where there was no serious neglect or culpable laches. This is, undoubtedly, the general rule of our federal courts of equity, proceeding to administer their own equitable remedies. *Williams* v. *Gibbes*, 17 How. 239, 255; *Myers* v. *Fenn*, 5 Wall. 205; *In re Howard*, 9 Wall. 175, 184; *Wabash Canal Co.* v. *Beers*, 2 Black, 448; *Johnson* v. *Waters*, 111 U. S. 640; S. C. 4 Sup. Ct. Rep. 619; *Hurley* v. *Murrell*, 2 Tenn. Ch. 620, 626; 2 Daniell, Ch. Pr. (5th Ed.) 1205. On the doctrine of these cases, it would be proper to permit the other creditors to come in at any time before distribution, or, under some circumstances, even afterwards, and share in the fund. But we are not, in this case, proceeding altogether under the general principles of a court of equity, which govern our federal courts in their chancery practice, to administer this fund under the ordinary bill of a judgment creditor with a *nulla bona* return, but under a bill commenced in the state court and removed here to have the benefit of these Tennessee statutes, giving creditors an enlarged and purely statutory remedy; which remedy the federal courts will administer according to their own practice, it is true, but none the less to enforce the liens given by these statutes, and in accordance therewith, and in obedience thereto, (*Clark* v. *Smith*, 13 Pet. 202; *Ex parte McNiel*, 13 Wall. 243; *Broderick's Will*, 21 Wall. 520; *Reynolds* v. *First Nat. Bank*, (1884,) 5 Sup. Ct. Rep. 213, 216;) besides, by the very terms of the removal acts, we are required to preserve all the liens and rights of the parties as they existed in the state courts. Rev. St. 646; Act March 3, 1875, *c.* 173, § 4, (18 St. 471;) *Whittenton Manuf'g Co.* v. *Packet Co.* 19 FED. REP. 273, 279.

Whether the lien given from the filing of the bill by section 4286 of the Tennessee Code is to be confined to bills filed under section 4283, or applies as well to bills under section 4288, above quoted, is immaterial, because, certainly, these plaintiffs acquired a specific lien under section 4289 when their attachment was levied. *August* v. *Seeskind*, 6 Coldw. 166; *House* v. *Swanson*, 7 Heisk. 32; *Greene* v. *Starnes*, 1 Heisk. 182; *Cowan* v. *Dunn*, 1 Lea, 68; *McCrasly* v. *Hasslock*, 4 Baxt. 2; *Brooks* v. *Gibson*, 7 Lea, 271; *Armstrong* v. *Croft*, 3 Lea, 193; *Tarbox* v. *Tonder*, 1 Tenn. Ch. 163. This lien cannot be disturbed by permitting others to displace it, in whole or in part, without a compliance with the statutory prerequisites which entitle other creditors to come in and share the fund. These are set forth in the next section (4290) as follows:

"If the bill is filed by one creditor for himself and others, the other creditors may make themselves parties at any time before final decree by petition, agreeing to join in the bonds required in the case, and giving bond, with good security, to the original complainant, and in sufficient penalty, to pay their proportional part of the recovery on such bonds." Tenn. Code, § 4290.

The doubt I have had on this section is whether it is a mere rule of practice prescribed for the state courts, and therefore not binding on the

federal court when the case has been removed,—for certainly we do not follow the state practice in removed cases, but proceed in our own way, —or is an essential element of the equitable right, which enters into the statutory lien and becomes a part of it. Under the general equity practice governing us, as I have shown, creditors who may share in the fund to be recovered are allowed to come in at any time before distribution, and, in certain cases, even afterwards. They may be admitted by petition, or by proving their claims before the master, and the time may be enlarged by the court, which takes care, however, to require them to pay such costs as they should pay under the circumstances. This state statute evidently prescribes an analogous rule of practice, but modifies it by requiring the creditors to come in *before* final decree, and only upon agreeing to join in the bonds, and executing a bond to the original plaintiff for the performance of that agreement. I should think that this was a mere rule of practice of the state court that, on removal, would be superseded by the federal practice in equity, which accomplishes the same result as to costs in another way, but is more liberal as to time allowed to file claims, if this were a suit to enforce an equitable right common to both courts; a bill, for example, by a judgment creditor with an unsatisfied execution, to set aside a fraudulent conveyance which obstructed that exetion, and to share in which other judgment creditors with like execution might be admitted. But this is not such a bill, and the judgments and executions are wholly unimportant under sections 4288 and 4291. All creditors stand alike under those sections, and this is an *enlarged* right wholly unknown to general equity practice like ours, and dependent entirely upon the statute for its force and effect. The legislature, therefore, in granting this valuable equitable right to general creditors without judgments, may attach precisely such conditions to its existence as its wisdom may suggest. And while the federal courts, upon removal, will enforce this new equitable right, unknown to them, in favor of general creditors, the case comes here burdened with all the essential conditions attached to the right by the statute, and we cannot further enlarge it simply to save our rules of practice. We will enforce it in our own way, but we must not change its character and give the creditor a better or different right than he would have in the state court, particularly if, in doing this, we thereby impair the lien given by the same statute to the original plaintiff, which our own removal acts command us to protect.

The general creditors, therefore, should have come in before the final decree and given the required bond, or they cannot share in the fund and displace the priority acquired by the original plaintiff; and, after all, this is not a harsh rule, for almost any one would be willing to stand outside, and, after a recovery, come in and prove his claim; while the timid and the selfish would prefer this to sharing the perils of the litigation, as this statute requires they shall.

It is further urged that, because the debtor Wilkerson made a gen-

eral assignment of *all* his property for the benefit of *all* his creditors a few days after the sale to Hopper, the property conveyed to Hopper passed under the assignment, and must be, under the provisions of the act of April 6, 1881, *c.* 121, (Acts 1881, p. 154,) distributed *pro rata* among all the creditors. This point was substantially disposed of at the hearing. *Flash* v. *Wilkerson*, 20 FED. REP. 257; *Ordway* v. *Montgomery*, 10 Lea, 514. It may be further remarked that when this bill was filed an attachment issued, by which the plaintiffs acquired a lien before the assignment, and there is nothing in the act referred to which displaces this lien. It does displace any mortgage, deed of trust, or other conveyance of a portion of the debtor's property for the benefit of any particular creditor, or any confession of judgment, or judgment by default or collusion within three months preceding the assignment; but, plainly, this does not include a lien acquired under sections 4288 and 4291 of the Code. The case of *Ordway* v. *Montgomery*, *supra*, is conclusive of this, as the principle of *noscitur a sociis* clearly applies to exempt both the sale to Hopper and the lien of the creditors, under this bill, from the operation of that act. The principle is the same as that on which the case of *Love* v. *Pamplin*, 21 FED. REP. 755, 760, was recently decided in this court by Mr. Justice MATTHEWS.

The report of the master must be modified in accordance with this opinion. Decree accordingly.

KERBS *v.* EWING.

(Circuit Court, W. D. Missouri, W. D. 1884.)

ASSIGNMENT FOR BENEFIT OF CREDITORS—MISSOURI STATUTE—DEED OF TRUST FOR BENEFIT OF CERTAIN CREDITORS.

No matter what the form of the instrument, where a debtor in Missouri, being insolvent, conveys all of his property, to a third party to pay one or more creditors, to the exclusion of others, such a conveyance will be construed to be an assignment for the benefit of all his creditors; the preference being in contravention of the assignment laws of the state.

Demurrer to Bill of Complaint.

Scott & Taylor, for plaintiffs.

Karnes & Ess and *Adams & Stuebenrauch*, for defendants.

MCCRARY, J. This case is not different in principle from the case of *Martin* v. *Hausman*, 14 FED. REP. 160. It is true that in *Martin* v. *Hausman* the technical deed of trust, which was construed to be an assignment for the benefit of creditors, was defective as a deed of trust, in having no defeasance clause attached thereto. In this case, the instrument is a deed of trust in proper form. This, however, can make no difference. No matter what the form of the instrument, where