

**United States Vs. Morrison**

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**Court :** US Supreme Court

**Decided On :** 1830

**Appeal No. :** 29 U.S. 124

**Appellant :** United States

**Respondent :** Morrison

**Judgement :**

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U.S. Supreme Court United States v. Morrison, 29 U.S. 4 Pet. 124 124 (1830)

**United States v. Morrison**

**29 U.S. (4 Pet.) 124**

*APPEAL FROM THE CIRCUIT COURT*

*FOR THE DISTRICT OF EAST VIRGINIA*

## **SYLLABUS**

There is no statute in Virginia which expressly makes a judgment a lien upon the lands of the debtor. As in England, the lien is the consequence of a right to take out an *elegit*. During the existence of this, the lien is universally acknowledged.

Different, opinions seem at different times to have been entertained of the effect of any suspension of this right.

Soon after this case was decided in the Circuit Court for the District of East Virginia, a case was decided in the Court of Appeals of the state, in which this question on the execution law of the State of Virginia was elaborately argued, and deliberately decided. That decision is that the right to take out an *elegit* is not suspended by suing out a writ of fieri facial, and consequently, that the lien of the judgment continues pending the proceedings on that writ. This Court, according to its uniform course, adopts the construction of the act which is made by the highest court of the state.

In the circuit court, the United States filed a bill the object of which was to make certain real property, assigned on 22 October, 1823 by John Morrison to Robert G. Ward, subject to a judgment obtained in their favor in the Western District of Virginia, in October, 1819. The assignment made by Morrison to Ward was general, of all his property, in trust for the payment of his debts to sundry persons. The deed of trust referred to certain previous deeds of trust which Morrison had executed, conveying a large portion of the same property to secure particular debts. The previous deeds were all executed subsequent to the rendition of the judgment in favor of the United States in October, 1819, *viz.*, on 14 February, 1823, 21 February, 1823, 9 March, 1823. Divers creditors of Morrison had issued their executions of *fieri facias* against the property of John Morrison, which had been duly levied upon the same, before the execution of the general assignment of October, 1823.

On the day the judgment was obtained by the United States, in 1819, a part of the same was enjoined and an execution

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was issued for the remainder, which was levied on the property of Morrison and Roberts, and a forthcoming bond was given by John Morrison, Roberts and their sureties, and the debt not being paid, an execution was awarded against Morrison,

Roberts and one of the sureties, and issued in April, 1822. While it was in the hands of the marshal, and before it was levied, the agent of the Treasury, at the instance of the defendants, instructed the marshal to forbear levying it, on condition of the defendants' paying the costs, and the costs being paid, the marshal did not make a levy, and made a return within the year 1822, that all further proceedings were suspended in pursuance of the said instructions. A second *fiery facias* was issued on 5 February, 1825, on which the marshal returned "no effects found, not conveyed by deed of trust."

In the bills filed by the United States, they asserted their claim to the payment of their judgment against Morrison in preference to all the other creditors, out of the property assigned to Ward, this claim extending over the property conveyed in the deeds executed prior to the assignment, and also to the proceeds of other real property levied on by executions issued by creditors. The claim was asserted upon two distinct grounds. 1. Upon the sixth-fifth section of the Act of Congress of 1799, ch. 128, which declares that in all cases of insolvency or where any estate in the hands of executors, administrators and assignees shall be insufficient to pay all the debts due from the deceased, the debt due to the United States, &c.;, shall be first satisfied, &c.; 2. Upon the ground that their judgment against Morrison gave them a lien upon the land which, under the facts of the case, they allege was a subsisting one, to overreach the liens created by the deeds executed by Morrison.

The circuit court was of opinion that the deed of October, 1823, was a general assignment, and that the United States was entitled to priority out of the subject contained in that deed; that nothing was to be considered as effectually conveyed by that deed which had been embraced by the previous deeds, or levied upon by executions previous to that deed; that the United States had no claim, either by virtue

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of their statutory priority or judgment, to the property contained in the previous deeds, and levied upon by the previous executions, except to any surpluses which might remain, and proceeded to decree in favor of the United States for the value

of all the property in the deed of October, 1823, not embraced by the previous deeds and executions, there being no surplus, and dismissed their bill, so far as it asserted a claim to charge the property conveyed by said prior deeds, or covered by the executions.

From so much of the decree as dismissed their bill to the extent stated, the United States appealed to this Court.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

The single question in this case is whether the United States, or certain other creditors of the defendant, John Morrison, have the prior lien on lands of the said Morrison which have been conveyed to those creditors.

In October, 1819, the United States obtained a judgment against John Morrison in the District Court of Virginia, on

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which a *fiery facias* issued. The goods taken in execution were restored to the debtor according to the law of Virginia, and a bond taken with a condition to have them forthcoming on the day and place of sale. This bond being forfeited, an execution was awarded thereon by the judgment of the district court on 2 April, 1822. A *fiery facias* was issued on the second judgment, the return on which was that the costs were made, and all further proceedings suspended by order of the agent of the Treasury Department. The conveyances under which the defendants claim were dated in February and March, 1823. The United States contend that the judgment of April, 1822, created a lien on these lands which overreaches these conveyances.

There is no statute in Virginia which, in express terms, makes a judgment a lien upon the lands of the debtor. As in England, the lien is the consequence of a right to take out an *elegit*. During the existence of this right, the lien is universally

acknowledged. Different opinions seem at different times to have been entertained of the effect of any suspension of the right.

The statute concerning executions enacts that

"All persons who have recovered or shall hereafter recover any debt, damages, or costs in any court of record may at their election prosecute writs of  *fieri facias*,  *elegit*, and  *capias ad satisfaciendum* within the year for taking the goods, lands, and body of the debtor."

The third section provides that when any writ of execution shall issue, and the party at whose suit the same is issued shall afterwards desire to take out another writ of execution at his own proper costs and charges, the clerk may issue the same if the first be not returned and executed, and where upon a  *capias ad satisfaciendum* the sheriff shall return that the defendant is not found, the clerk may issue a  *fieri facias*, and he shall return that the party hath no goods or that only part of the debt is levied, in such case it shall be lawful to issue a  *capias ad satisfaciendum* on the same judgment, and where part of a debt shall be levied upon an  *elegit*, a new  *elegit* shall issue for the residue, and where  *nihil* shall be returned upon any writ of  *elegit*, a  *capias ad satisfaciendum* or  *fieri facias* may issue, and so  *vice versa*.

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By the construction put by the circuit court on this section, the party who had sued out a  *fieri facias* could not resort to an  *elegit*, until the remedy on the  *fieri facias* was shown by the return to be exhausted. The United States had sued out a  *fieri facias* on the judgment of April, 1822, and the remedy on that writ was not exhausted in February and March, 1823, when the deeds of trust under which the defendants' claim were executed. In the opinion of that court, the United States could not, at the date of those deeds, have sued out an  *elegit*. As the lien is the mere consequence of the right to take out an  *elegit*, that court was of opinion that it did not overreach a conveyance made when this right was suspended.

A case was soon afterwards decided in the court of appeals, in which this question on the execution law of the state was elaborately argued and deliberately decided. That decision is that the right to take out an *elegit* is not suspended by suing out a writ of *feri facias*, and consequently that the lien of the judgment continues pending the proceedings on that writ. This Court, according to its uniform course, adopts that construction of the act which is made by the highest court of the state. The decree therefore is to be reversed and annulled and the cause remanded to the circuit court, that its decree may be reformed as is required by this opinion.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Fifth Circuit and District of East Virginia, and was argued by counsel, on consideration whereof this Court is of opinion that the claim of the United States to the lands conveyed by the deeds of February and March, 1823, under the lien created by their judgment of April, 1822, ought to have been sustained, and that so much of the decree of the said circuit court as dismisses the original and amended bill of the plaintiffs, so far as it claims to charge the property conveyed by the deed of trust of 14 February in the year 1823, from John Morrison to James A. Lane and William Ward, and by the deed of 21 February in

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the year 1823, from John Morrison to James W. Ford, and by the deed of 9 March in the year 1823, from the said Morrison to Inman Horner, is erroneous and ought to be reversed. This Court doth therefore

*Reverse the said decree as to so much thereof, and doth remand the cause to the Court of the United States for the Fifth Circuit and District of Virginia with directions to reform the said decree so far as it is hereby declared to be erroneous and to affirm the lien of the United States on the lands in the said deed mentioned. All which is ordered and decreed accordingly.*