Field Vs. United States

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Appellant : Field

Respondent : United States

Judgement :

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Field v. United States

34 U.S. (9 Pet.) 182

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

Louisiana. L. E. Brown, a debtor to the United States on bond, became insolvent, and under the insolvent laws of Louisiana made an assignment of his property for the benefit of his creditors, and syndics were appointed, who took possession of

his estate, real and personal, and sold the same, part for cash, and part on credit, of one, two, and three years. The United States instituted suits on the bonds against L.E.B. and obtained judgments in the District Court of the United States for the District of Louisiana. The effects of the insolvent were administered by the syndics, according to the laws of Louisiana. The United States took no part in these proceedings, but a notice of the debts due by B. to the United States was given to the syndics before any distribution was made of any of the proceeds of the estate in their hands, and a suit for the amount of the debts of B. to the United States, under the law giving a right to priority of payment, was commenced against them before the tableau of distribution of the first installment of the insolvent's estate, was confirmed by the Parish Court of New Orleans. The whole proceeds of the estate exceeded $40,000, the mortgages were about $27,000, and when all the notes taken by the syndics were paid, there would be sufficient to discharge these mortgages, and all the debts due to the United States; a large amount of the proceeds were not to be received until after the judgments were obtained in favor of the United States, one moiety of the amount of sales being payable after the suit against the syndics was commenced, and the other after the judgment against them was rendered.

The court held that the syndics were not liable to the United States for the debts due to them unless funds had actually come into their hands. The notes for the, sales may all be good, yet as one moiety of them was not paid at the time of the judgment of the United States against them, it does not judicially appear that even at that time they had funds on which the United States was entitled to judgment. If the remaining moiety of the notes has since been paid, the United States will then have a legal claim thereon for its debts.

The United States was not party to the proceedings in the parish court, nor was it bound to appear and become a party therein. The local laws of the state could and did not bind it in its rights. It could not create a priority in favor of other creditors in cases of insolvency which should supersede that of the United States.

As the cause was not tried by a jury, the exception to the admission of evidence was not properly the subject of a bill of exceptions.

The priority of the United States attached, by the laws of the United States, in virtue of the assignment and notice to the syndics, and it was the duty of the syndics to have made known these debts in their tableau of distribution, as having had priority. The mortgages upon particular estates sold must be first paid out of those estates. But if there be any deficiency in the proceeds of any particular estate to pay the mortgages

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thereon, the mortgagees thereof cannot come in upon the funds and proceeds of the sales of the other estates except as general creditors.

The bill of exceptions stated that during the trial of the cause in the district court, the counsel for the marshal stated that he had made a seizure or given notice that he seized in the hands of the defendants, the syndics, any funds in their hands to a sufficient amount to satisfy the judgment obtained in the case of *United States v. John Brown, Sr. and Lewis E. Brown.* This testimony was objected to as being contrary to the statement of facts in the case, in which it was stated that a return of *nulla bona* had been made by the marshal, and because the act was done in a case to which the defendants were not parties and because the best evidence was the notice or true and proved copies of it. The return of the marshal in the case of *United States v. John Brown, Sr. and Lewis E. Brown* was also offered, and was objected to. By the Court: "The evidence was properly admitted as notice to the syndics of the debts due to the United States."

In the district Court of the United States on 30 March, 1831, the attorney of the district filed a petition of complaint on behalf of the United States against Seaman Field, Samuel J. Peters, and Thomas Toby, residing in the City of New Orleans, syndics of L. E. Brown, stating that one Lewis E. Brown, of the City of New Orleans, on 27 October, 1829, executed a certain bond to the United States in the sum of $1,366.20, and suit having been brought in the said bond, judgment in favor of the United States was obtained on it on 22 December, 1830, for the amount thereof, to be satisfied with the payment of $632.10, with interest, &c.; That the said Lewis E. Brown failed and became insolvent, and made a voluntary

assignment of all his property to his creditors on or about 30 April, 1830, under the laws of Louisiana. That Seaman Field, Samuel J. Peters, and Thomas Toby were appointed syndics, or assignees of his creditors, and in that capacity have received and taken possession of all the property, real and personal of the insolvent, and have sold and disposed of the same to an amount far exceeding the debts due by him to the United States. That at the time of their receiving and taking possession of the said property as aforesaid, they well knew of the existence of the debts due to the United States by Lewis E. Brown, and that an amicable demand had been made of them by the United States, for the amount of the said judgment

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and of the costs, but they have neglected or refused to pay the same, or any part thereof.

The petition prays a citation to the defendants to answer the same, and that after due proceeding they be condemned, jointly and severally, to pay the amount due to the United States.

Citations issued to the several defendants, who appeared respectively, and on 17 May, 1831, filed separate answers to the petition.

The answers admitted that the respondents had, in the capacity of syndics, taken possession of the property of L. E. Brown, by him assigned for the benefit of and distribution among his creditors, and that they acted in the said capacity in virtue of certain judicial proceedings in the Parish Court for the Parish and City of New Orleans, to which proceedings the answers referred, and an exemplification of which proceedings would in due time be exhibited, and which were to be considered as part of the said answer.

That in virtue of said proceedings, under the local laws of Louisiana, the said property so assigned was sold by said syndics on a credit of one, two, and three years; that out of the proceeds of sale, when the same shall be received, are to be paid certain privileged and mortgaged creditors, who are preferred to the United

States.

The answers further state that the respondents have no funds in their hands belonging to the estate of L. E. Brown, the property having been so sold, on a credit for promissory notes not yet due or paid. They deny all other allegations in the petition, or that the respondents, as syndics, have done anything to render them responsible under the laws of the United States or liable in any manner to the claim stated in the petition of the United States, and pray a trial by jury.

The answers further state that the said syndics sold the household furniture and other movables of the said L. E. Brown at a credit of six months, out of the proceeds of which they have paid law charges, house rent, and other privileged charges upon the estate preferred to the United States, of which a particular account is annexed to one of the separate answers filed in the case.

On the same 30 March, 1831, the district attorney filed

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a petition in similar terms, stating that on a bond given by the said L. E. Brown to the United States, for $1,394, on 3 December, 1829, a suit had been brought on 3 December, 1830, and on the 22d of the same month, a judgment had been obtained for the amount, to be satisfied by the payment of $697, with interest, &c.;, with the same allegations of responsibilities on the part of the defendants.

Another petition was filed at the same time, stating that on a bond given by the said L. E. Brown on 28 October, 1829, for the sum of $1,264 dollars, a judgment had been obtained on 22 December, 1830, for the said sum, to be satisfied by the payment of $632, with interest, &c.;, and also stating a claim on the defendants.

Another petition was filed at the same time, stating that on 22 December, 1830, another judgment, on a bond given to the United States by L. E. Brown, was obtained for the sum of $1,060.90, to be satisfied by the payment of $530.45, with interest, &c.;, and on the same day another petition was filed stating that another judgment had been obtained against L. E. Brown on 22 December, 1830, on a

bond given by him, for the sum of $1,396, to be satisfied by the payment of $698, with interest, &c.;, both petitions alleging the liabilities of the defendants. Other petitions were filed upon other judgments, on bonds of the same nature and for different amounts.

The whole amount of judgments stated in these several petitions was $11,264.10, and the real debt, claimed to be due to the United States on the same, amounted to $5,647.55, with interest, &c.;

On 2 June, 1831, in pursuance of an order of the district judge, a detailed statement of all the property received by the syndics or assignees of Lewis E. Brown, and the sales and dispositions they had made thereof, was filed in court.

The sales of the real estate and slaves were made, the former at one, two and three years and the latter at twelve months credit, for which notes were given which would become due at different periods, amounting to $39,000.63. The tableau of distribution of the first installment of the estate, established by the parish court, in relation to the

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estate of Lewis E. Brown, referred to in the answers, dated on 3 December, 1831, was also filed, and showed that the balance of cash in the hands of the syndics, amounting to $9,536.70, had been paid as a dividend on $27,055 to the mortgage creditors of Lewis E. Brown.

The amount of the moneys received and disbursed by the syndics, showing the balance of $9,536 for this distribution, was also filed.

On 9 March, 1832, on motion of the district attorney, it was ordered that all these suits be consolidated, and by consent of parties trial by jury being waved, the cause was submitted to the court on a statement of facts prepared by the parties.

"Statement of facts by the counsel of the United States and the defendants."

"Lewis E. Brown, at the time of failure and insolvency, to-wit, 26 May, 1830, was surety on certain bonds given to secure duties to the United States by John Brown, Senior, *viz.* "

"A bond dated 27 October, 1829, due 26 August, 1830, amount of duties $632; a bond dated 27 October, 1829, due 26 June, 1830, amount of duties $632.10; a bond dated 27 October, 1829, due 26 October, 1830, amount of duties $632; a bond dated 3 December, 1829, due 2 October, 1830, amount of duties $698; a bond dated 3 December, 1829, due 3 December, 1830, amount of duties $698; a bond dated 3 December, 1829, due 2 August, 1830, amount of duties $698; a bond dated 11 January, 1830, due 9 September, 1830, amount of duties $530.45; a bond dated 11 January, 1830, due 9 November, 1830, amount of duties $531; a bond dated 11 January, 1830, due 9 January, 1831, amount of duties $531."

"On all of which, with the exception of the last mentioned, judgment was rendered against L. E. Brown on the 22 December, 1830, for the aforesaid amounts, with interest at six percent, from the falling due of the bonds until paid, with costs

of suit, and in the last mentioned bond a like judgment was rendered on 22 February, 1831. On these judgments writs of *fieri facias* have issued against all the parties, on which the marshal has returned *nulla bona,* and nothing has been paid by any of the parties on account of the same. John Brown, Sr., failed and became insolvent, and applied for the benefit of the insolvent law of Louisiana, on 19 June, 1830. The sale of Lewis E. Brown's property was made by order of the syndics at public auction on 30 July, 1830. The defendants, as syndics, in addition to the sums stated by them to have been received in the account hereunto annexed, have received from the sale of the property of said Brown endorsed promissory notes, secured by mortgage on the property sold, amounting to $24,898.60, one-half of which fell due on 31 July, 1832, and the other half on 31 July, 1833. The note stated in the account of moneys received and disbursed by the syndics of Lewis E. Brown to have been paid to the United States was endorsed by Charles Armstrong and was paid at the Bank of the United States,

where it was deposited for collection by Martin Gordon and paid by the syndics. The United States have never in any manner appeared in the proceedings had in the parish court in relation to the insolvency of Lewis E. Brown."

"Lewis E. Brown failed and became insolvent on 29 May, 1880. On 15 July, 1829, he mortgaged houses and lots in Canal Street to J. H. Field & Co., to secure the payment of $5,359.76, with ten percent per annum interest from that date till paid."

"On 12 February, 1829, Brown executed another mortgage to J. H. Field & Co., for $5,000 on the same property, with same interest as above. On 18 March, 1830, L. E. Brown gave another mortgage to said Field & Co., for $745.16, same property and same rate of interest. The first mortgage was recorded in the recorder of mortgages' office on 16 July, 1829; the second was recorded on 13 February, 1829; and the third on 20 March, 1830."

"On 10 March, 1830, Lewis E. Brown mortgaged said property and the rest of his real estate to R. Ball & Co.

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for $1,000, which was recorded on 17 March, 1830."

"On 4 February, 1830, Brown mortgaged the houses and lots in Canal Street, and lots Nos. 3 and 4 in suburb St. Mary, to Ogier and Williams, for $3,300, which was recorded on 8 February, 1830."

"On 2 March, 1830, Brown mortgaged the houses and lots between Burgundy and Rampart Streets, and the lots in Canal Street, between Dauphine and Rampart, to Peters and Millard for $7,000, with ten percentum per annum interest from date till paid, recorded on 4 March, 1830."

"On 19 February, 1830, this last property was mortgaged to Thompson and Grant for $3,000, as all the lots in Canal, between Burgundy and Dauphine Streets, and recorded on 20 February, 1830. There existed on the property of said Brown the following sums due on original purchase money, and price of the property surrendered by him to his creditors, and for which said property was mortgaged,

and other mortgages were duly recorded, being prior to his insolvency, to-wit, the amount of a note in favor of the heirs of Jones, for the price of the lot between Burgundy and Rampart streets, in Canal Street, including protests and interest, $1,055.97; ditto to William McCawly, price of lots in Canal Street, between Dauphine and Burgundy Streets, $650, dated in 1829; a note due to the United States for $333.33, dated 1829, for a lot on New Levee Street. Besides this, the syndics have paid other debts due by the estate of said Brown, as detailed in annexed record making part of this statement. On 15 December, 1831, the tableau of distribution, including the list of sums paid as aforesaid, was finally confirmed by the Parish Court for the Parish and City of New Orleans after due proceedings having been previously had thereon."

On 3 December, 1830, the marshal, acting under writs of *fieri facias,* issued on the several judgments against Lewis E. Brown, seized the funds and property in the possession of the syndics or assignees of Lewis E. Brown, and gave notice to them personally of the seizure of said funds in amount sufficient to satisfy the three several judgments.

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Job Wilson, the syndic of John Brown, Sr., had under his control notes and other assets to an amount exceeding the debt due by John Brown, Sr. to the United States. Those notes were not yet due, but were considered good, and would be applicable, when paid, to the satisfaction of the judgments rendered against the said Brown. These notes were deposited with the district attorney, who was also acting as the attorney of the said syndics, but had no authority to dispose of them to satisfy the United States.

On 9 January and 21 February, 1833, the causes came before the court, and were finally disposed of on the latter day. The counsel for the defendants, on the trial, tendered the following bill of exceptions, which was signed by the district judge.

"Be it remembered that during the trial of this cause, the counsel for the plaintiffs offered to prove by the marshal that he had made a seizure, or given notice that

he seized in the hands of the defendants any funds in their hands, to a sufficient amount to satisfy the judgment obtained in the case of *United States v. John Brown, Sr. and Lewis E. Brown.* The counsel of the defendants objected to this testimony as being contrary to the statement of facts made in this case, where it is stated that a return of *nulla bona* had been made in said case, and because the act was done in a case to which the defendants were not parties, and because the best evidence was notice itself or true and proved copy thereof, because, if any such seizure or notice was made or given, that it should appear from the official return of the marshal."

"The counsel for the plaintiffs then offered the return of the marshal in the said case of *United States v. John Brown Sr. and L. E. Brown.* This the defendants' counsel objected to because the writ which issued in that case was *ex parte,* and these defendants were not parties, directly or indirectly, to the said case of *United States v. John Brown, Sr. and L. E. Brown,* and that the same was otherwise illegal."

"These objections were overruled by the court because the testimony was considered pertinent and legal, and also because, previous to the introduction by the district attorney of the testimony heretofore referred to, the defendants had been

permitted to amend the statement of facts by proof of matters not stated therein."

The court gave the following judgment for the United States.

"The court, having maturely considered these cases, doth now adjudge, order, and decree that judgment be entered up in favor of the United States against Samuel J. Peters Seaman Field and Thomas Toby, jointly and severally, for the sum of $5,661.55, with interest thereon at the rate of six percentum per annum, from the following dates, to-wit: on $632.10 from 26 June, 1830, until paid; on $797 from 2 August, 1830, until paid; on $632 from 26 August, 1830, until paid; on $530 from 9 September, 1830, until paid; on $698 from 2 October, 1830, until paid; on $632

from 26 October, 1830, until paid; on $531 from 9 November, 1830, until paid; on $698 from 3 December, 1830, until paid; on $531 from 9 January, 1831, until paid; together with all the costs which have accrued both before and since their consolidation."

The following is the material portion of the opinion of the district judge, read at the time of the rendition of the above final decree and filed in the clerk's office of the Eastern District of Louisiana.

" *United States v. Syndics of L. E. Brown* "

"On 30 March, 1831, the attorney of the United States instituted nine separate suits against S. Field, S. J. Peters, and Thomas Toby, the syndics of L. E. Brown, founded on fourteen judgments previously obtained against John Brown and his securities, of whom Lewis E. Brown was one, on custom house bonds for duties. The suits against the syndics are constituted under the provisions of the sixty-fifth section of the duty act of 1799. The object of these actions is to make them personally liable out of their own funds to the United States for the debt due to the latter by the insolvent, L. E. Brown, for having, as is alleged, improperly paid to others moneys out of the estate of said Brown which ought to have been paid to the United States, as a debt having priority."

"On 17 May, 1831, the defendants, by their counsel,

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filed separate answers of the syndics to each of the petitions of the United States, all in substance the same, by which they admit that they are the syndics of L. E. Brown, and in that capacity have taken possession of his estate. The answers then state that the defendants sold, as they had a right to do under the laws of Louisiana, the property of the insolvent on a credit of one, two, and three years, which, when due, they allege they have a right to pay to certain privileged and mortgaged creditors, as being preferred to the United States. They then say they have no funds belonging to the estate of L. E. Brown, all the property ceded by him having been sold on a credit, and for which the notes taken are not due. They

then admit that they have sold the household furniture, and certain other movables of the estate of said Brown for an amount not stated, which has been received and paid over in law charges, house rent, and other charges privileged upon said estate, and preferred to the United States, as stated in an account annexed. The remainder of the answers is a general denial of the allegations of the plaintiffs' petition, and of their personal liability to them."

"All these suits were consolidated on 9 March, 1833, and in that shape submitted to me for adjudication, which, therefore, I shall treat as one action. The following facts have been stated and agreed upon by the parties. That judgments were obtained against L. E. Brown, on the custom house bonds, on 22 December, 1830, with interest thereon at the rate of six percentum per annum from the date of their falling due; that writs of *fieri facias* were issued against all the parties, on which the marshal has returned *nulla bona,* and nothing has been paid by any of the parties; that John Brown, the principal in these bonds, became insolvent, and applied for the benefit of the insolvent law of Louisiana on 10 June, 1830; that the sale of Lewis E. Brown's property was made by order of the syndics, these defendants, on 30 July, 1830; that the defendants, as syndics, in addition to the sums stated by them to have been received in the account current annexed, have received from the sale of the property of said Brown endorsed promissory notes, secured by mortgage on the property sold, amounting to $24,898.60, one-half of which was due on 31 July,

1832, and the other half will be due on 31 July, 1833; that the United States has never in any manner appeared in the proceedings had in the parish court in relation to the insolvency of L. E. Brown; that L. E. Brown became insolvent on 29 May, 1830. On 15 July, 1829, he mortgaged houses and lots in Canal Street to J. H. Field & Co. to secure the payment of the sum of $5,359.76; on 12 February, 1829 he executed another mortgage to J. H. Field & Co. for $5,000 on the same property, with interest on both at the rate of ten percentum per annum; on 15 March, 1830, he gave another mortgage to said Field for $745.16 cents on the same property with the same rate of interest; on 10 March, 1830, he mortgaged

said property and the rest of his real estate to R. Ball & Co. for $1,000; on 4 February, 1830, he mortgaged the houses and lots in Canal Street and lots Nos. 3 and 4 in Suburb St. Mary to Ogier and Williams for $3,300; on 2 March, 1830, he mortgaged the houses and lots between Burgundy and Rampart, and the lots in Canal between Dauphine and Rampart Streets to Peters and Millard for $7,000; on 19 February, 1830, the last property was mortgaged to Thompson and Grant for $3,000. There existed on the property of said Brown surrendered to his creditors, as the original purchase money and price of the property and due to individuals, about the sum of $2,000, for which his property had been mortgaged long before his insolvency."

"On 15 December, 1831, the tableau of distribution was finally confirmed by the parish court."

"At the opening of this cause, the court permitted the defendants to add to the statement of facts that the attorney of the United States, as counsel for the syndics of John Brown, has now in his possession good notes sufficient to pay the debt of the United States, and the court also permitted the district attorney to prove by the marshal that these defendants had due notice of the debt due to the United States by L. E. Brown before making any payments to his creditors. The tableau of distribution exhibited shows that the syndics did not consider the United States as creditors of L. E. Brown, inasmuch as they are not put down as such upon it. "

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"With these facts before me, I am called upon to adjudge whether or not the defendants are personally liable to pay the debt due to the United States. Both parties have chiefly relied upon the authority of the case of *Conard v. Atlantic Insurance Company,* decided by the Supreme Court of the United States, and reported in 26 U. S. 1 Pet. 386. That case, however, differs materially from this. There, the dispute was whether the property seized upon by the marshal belonged to the United States or to the insurance company. Here, there is no contest about the estate of Brown having passed to the syndics, and that it was his estate when so passed, but whether his syndics have so managed the trust confided to them

as to lay themselves individually liable to the United States. The case, however, cited establishes some doctrines applicable to this, and especially one that is not denied by the attorney of the United States, that *bona fide* mortgages of property executed before the insolvency of a debtor to the United States divests the mortgagor of his property, and, as it has been decided that the United States must seek its pay out of the estate of its debtor, such property cannot be reached by it. According to this principle, there is apparently on the face of these proceedings a sum of about $27,000 secured to mortgagees and beyond the reach of the United States."

"But the district attorney contends that as all these are special and not general mortgages, it was incumbent on the defendants to have shown how much each property mortgaged sold for in order to ascertain whether anything remained over and above for the United States. That the defendants have no right to add the amount of mortgaged debt together and then say the aggregate exceeds the debt due to the government -- as, for instance, one man has a mortgage for $15,000, and the property mortgaged sold for only $10,000; another has a mortgage for $10,000, and the property sold for $15,000 -- on this supposition the aggregate of mortgages would be $25,000, and the total amount of sales would also be $25,000. In such a case, it would appear that as the whole of the sales of property was covered by privileged claims, nothing would remain for the United States. But he insists that the fallacy consists in this, that in the first case, the mortgagee must submit to a loss of $5,000,

his mortgage not reaching any other property, and in the latter case, the mortgagee having his claim satisfied by the payment of $10,000, the remaining sum of $5,000 must go the United States in preference to those holding special mortgages on other property. This position I take to be impregnable. But were it otherwise, how stand the facts of this case?"

"It appears from the exhibits that the defendants have sold property to the amount of upwards of $40,000 belonging to the estate of L. E. Brown, and the mortgaged

debts they have paid only amount to about $27,000, leaving a balance of $13,000, which is more than double the sum due to the United States, which it has paid to other creditors on the ground that these creditors had a privilege on the common fund in virtue of the laws of this state, and as the decisions go to show that the United States had no lien for its debts under the sixty-fifth section of the duty act, its priority of payment therein mentioned must yield to the privileges given by the laws of the state. It will not, I think, be denied that acts of Congress passed in pursuance of the Constitution, when in conflict with state laws, must prevail. It has never been doubted that the law under consideration is constitutional. Now it says,"

" In all cases of insolvency or when any estate in the hands of the executors, administrators, or assignees shall be insufficient to pay all the debts due from the deceased or insolvent, as the case may be, the debt or debts due to the United States, or any such bond or bonds, shall be first satisfied, and any executor, administrator, or assignee, or other person who shall pay any debt due by the person or estate for whom or for which they are acting, previous to the debt or debts due to the United States from such person or estate being first duly satisfied and paid, shall become answerable in their person and estate for the debt or debts due to the United States,"

"&c.; Now here we have the case of an insolvent who is unable to pay all of his debts, whose estate has gone into the hands of assignees, and who has not paid the debt due to the United States, but has paid others in preference."

"If the liens established by the laws of Louisiana to attach after insolvency are to have a preference over the debts due to

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the United States, then the state legislature has deprived the general government of nearly all the privileges secured to it by the act of 1799, and may by future legislation deprive it of all of them, and all that may be done by a state which was not a member of the union until thirteen years after Congress so legislated."

"The doctrine of privilege in Louisiana may be very well as between her own citizens and other individuals who may choose to come into her tribunals; so far her legislation is valid, but she cannot content the general government, or compel it to submit to the decisions of her courts in a case like this, in which Congress has specified the rights of the United States. The hardship of the case was much and ably insisted on in argument, but I do not view it in that light. Every citizen is bound to know the law of the land, and if state legislatures will pass laws which cannot be enforced as against the United States, and thereby entrap the citizen, he has himself and them to blame, but cannot censure the general government which had previously told both them and him that the interests of the whole are paramount to those of the individual, and especially in the collection of the very money which is indispensable to the existence of the general government."

"It was insisted also that if the charges incident to the surrender of an insolvent's estate have not a first privilege, the officers of the courts would not render their services. Whatever necessary court charges are incurred in such cases ought to be paid first, and the United States must be postponed to such creditors on the same principle that, out of the proceeds of a vessel forfeited to the United States must first be paid seamen's wages and supplies furnished, because without such aids nothing probably would be saved to the government. But after an estate has passed into the hands of assignees, any debts they may pay, other than court charges and privileges existing antecedently to the failure to the prejudice of the United States, are payments made in their own wrong. According to this view of the subject, a number of items charged as paid to individuals in the tableau of distribution have been wrongfully paid, and for the reasons assigned in a former part of this opinion, the application of the general fund to the payment of special mortgages was illegal; but it is sufficient

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to entitle the United States to recover in this action to show that the syndics have, to the prejudice of the government, paid one dollar wrongfully, for by the statute, if such persons pay any debt improperly, they *ipso facto* lay themselves liable to the United States for so much."

"If this case had been tried on the issue made by the answer of the defendants, it would have been incumbent on the United States to have shown how much the syndics had wrongfully paid previous to the institution of this suit to enable them to recover that much, for they could not have been made liable in this action for anything done by them after its inception -- that would have been the subject of another suit; but the defendants, by their admission of facts and by the documents they have voluntarily produced and made part of the pleadings or evidence, have put their whole proceedings, first and last, in issue, and the case is now prosecuted as if all the payments they have made had been made before suit brought."

"Now a bare inspection of the list of debts paid by them is conclusive against them aided by all the force of the laws of Louisiana, for they have paid claims, to the exclusion of the United States, not recognized as liens or privileged by these laws, and they admit in their answer that previous to filing it, they had paid to creditors other than mortgaged creditors money out of the estate, but do not say how much."

"The defendants have in no manner acknowledged the debt of the United States as due from the estate of the insolvent."

"Knowing of its existence, as it is presumed they did, they ought at least to have put them on their tableau, even if they had afterwards disputed their right to priority of payment, but the fact is, as that document shows, they have claims individually adverse to the United States, and therefore it was no part of their policy to admit the rights of the latter in any shape."

"In the course of this opinion, whatever *obiter dicta* I may have expressed *arguendo,* I wish to be explicitly understood as affirming the law to be that whatever legal liens may have attached to the property of the debtor of the United States prior to his insolvency, whether they arise from mortgages, judgments, or from the operation of state laws (if properly set forth

and pleaded), so far divests the debtor of his property *pro tanto* as to exempt it from the claim of the United States."

"It is to the unencumbered estate of the insolvent, divested of any preexisting lien, that they must look for priority of payment, for, having no lien themselves on their debtor's property while it is under his own control, they cannot reach it in the hands of others who have an implied right to it in case of the nonpayment of the debt for which it is security, as in the case of mortgage, the mortgagee having the *jus in re.* "

"But all liens incidentally attaching to an insolvent's estate after his insolvency and surrender of it for the benefit of his creditors, except court charges or the expenses necessary to put it into the hands of assignees, must be postponed to the claim of the United States, for whatever property exists unencumbered by liens at the time of insolvency constitutes the estate of the insolvent, and is that 'common fund' spoken of by the Supreme Court in *Conard v. Atlantic Insurance Company,* out of which all the creditors are to be paid, the United States having priority. If it should be thought that I might have deduced this doctrine with less prolixity of expression, my answer is that I have been thus tedious on this part of the case for two reasons: first, because I have never seen any judicial discussion and decision on the main points involved in this case, and secondly, cases of this kind are likely hereafter to arise, and on that account it is proper that my construction of the 65th section of the collection act should be known, and the reasons for it."

"The defendants' counsel seemed to attach much importance to the fact that the district attorney has in his possession good notes arising from the sale of John Brown's estate (the principal in the custom house bonds) more than sufficient to pay the debt due to the United States. The answers to this are 1, that because the government may have another recourse for payment, it is no reason why she should relinquish any security she may have for her debt, and 2, if, through the diligence and vigilance of the district attorney, acting in his private capacity as the attorney of the syndics of John Brown, he has succeeded in wresting from a fraudulent grasp the only means by which these defendants may be ultimately reimbursed the amount of this judgment against them, they

surely have no right to complain, so that under present circumstances, the question is virtually one of costs, for as to their liability to pay the debt sued for, little or no doubt can exist, and so deeply impressed with that idea was the defendants' counsel of record that he labored to convince the court that although costs usually follow a judgment, yet in this case they might not be taxed against his clients. His complaint is that the attorney of the United States has unnecessarily multiplied costs by bringing nine suits when he ought to have brought but one, and on that point he relies upon the third section of the Act of Congress of 22 July, 1813, which prohibits attorneys from unnecessarily and vexatiously increasing costs, on pain of being made liable themselves for any excess. It is true, if the district attorney could have foreseen the defense which has been set up in these cases, it would have been his duty to have included all in one action; but these suits were brought on separate judgments, each of which might have admitted of a distinct defense. To one want of proper service of process on the original debtors might have been pleaded. To another that the judgment was erroneously entered on the record. To a third that under the rules of court, it had been prematurely signed, and therefore no judgment. To a fourth, *nul tiel record.* And to the rest other pleas such as might have suggested themselves to the minds of ingenious counsel might have been put in."

"If it had been the wish of the defendants' counsel to diminish the costs, he ought to have applied to the court to consolidate the suits before he added to the costs so much himself by filing twenty-seven answers instead of one, and even when the suits were consolidated, the record shows that it was done on motion of the district attorney, no doubt for the sake of more conveniently trying together a number of cases in which the issue in all was the same, and the language of the answers the same, *verbatim et literatim,* with the exception of the names of the defendants."

"On the whole, I can perceive no reason why judgment should not be given against the defendants for both debt and costs, and I shall accordingly direct judgment to be so entered."

The defendants prosecuted a writ of error to this Court.

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

This is a writ of error from a judgment of the District Court of the United States for the District of Louisiana rendered on the petition of the United States against Seaman Field and others, the plaintiffs in error, as syndics or assignees of Lewis E. Brown, an insolvent debtor. The petition states that Lewis E. Brown, being indebted to the United States on a certain bond on which judgment had been obtained for a sum stated in the petition, became insolvent on or about 20 April, 1830, and made a voluntary assignment of all his property to his creditors under the laws of Louisiana, and that the original defendants were appointed syndics or assignees of the creditors, and had received and taken possession of all the property of Brown and sold and disposed of the same to an amount far exceeding the debt due to the United States; that the defendants, at the time of their receiving and taking possession of the property aforesaid, well knew of the existence of the debt due to the United States, and though the same had been demanded of them, refused to pay it. Several other suits of a similar nature were brought for other debts, upon bonds due to the United States by Lewis E. Brown, which were afterwards consolidated with the present suit. Answers were duly put in by the defendants which admitted the assignment but denied that the syndics then had funds applicable to the debt. The cause was finally submitted to the court upon a statement of facts (which is in the case) prepared by the parties, the trial by jury being waived by their consent.

From this statement of facts it appears that Lewis E. Brown, at the time of his failure and insolvency, on 26 May, 1830, was surety for one John Brown, on certain custom house bonds, for duties, due at various times between 26 August, 1830 and 9 January, 1831, upon all of which bonds judgments were rendered in favor of the United States, before the commencement of the present suit, which was in March, 1831. On these judgments writs of *fieri facias* issued against all the

parties, which were returned by the

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marshal *nulla bona,* and none of them has as yet been paid. John Brown failed and became insolvent, and applied for the benefit of the insolvent act of Louisiana on 10 June, 1830.

The defendants made sale of Lewis E. Brown's property on a credit of one, two, and three years, and received promissory notes therefor. A part of these notes were paid before 3 December, 1831, and the residue was secured by mortgage on the property, and amounted to $24,898.60, one-half of which fell due on 31 July, 1832, and the other half on 31 July, 1833. The United States never in any manner appeared in the proceedings had in the parish court under the laws of Louisiana in relation to the insolvency of Lewis E. Brown. At the time of his failure, there were certain mortgages and privileged debts on his estate. A part of these, as well as some other debts, had been paid by the assignees and were stated in the tableau of distribution, which was rendered to and confirmed by the parish court, on 15 December, 1831, upon due proceedings had thereon. On 30 December, 1830, the marshal, acting under the writs of *fieri facias* on several of the judgments against Lewis E. Brown, seized the funds in the possession of the defendants as syndics and gave notice to them of the seizure thereof to satisfy these judgments respectively. At the hearing of the cause, the court admitted certain evidence to prove that the marshal made a seizure, and gave notice to the defendants that he had seized any funds in their hands to satisfy the judgment on which the present petition was founded, and an exception, by a bill of exceptions, was taken to such admission. And upon the final hearing in February, 1833, the court gave judgment for the United States for the amount of all the bonds and the interest due thereon and costs.

The claim of the United States to the payment of the debts due to them out of the funds in the hands of the syndics is founded upon the priority given them by the sixty-fifth section of the Duty Collection Act of 1799, ch. 128, which, in cases of a general insolvency and assignment like the present provides that the debts of the

United States shall be first satisfied out of the funds in the hands of the assignees.

The first objection now taken by the plaintiffs in error is

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that the order of the parish court confirming the tableau of distribution was the judgment of a court of competent jurisdiction, in favor of each creditor whose debt was therein stated, and that the syndics were obliged to pay the proceeds of the sale to such creditors, and the United States, not being named as creditors therein, can have no right to the fund against the other creditors. If at the time of the confirmation of this tableau of distribution no debts due to the United States had been known to the syndics, and they had, in ignorance thereof, made a distribution of the whole funds among the other creditors, that might have raised a very different question. But in point of fact it has not been denied that the syndics, long before that period, had notice of the existence of the debts due to the United States, and the present suit was commenced against them in the preceding March. The United States was, it is true, not party to the proceedings in the parish court, nor was it bound to appear and become party therein. The local laws of the state could not and did not bind them in their rights. They could not create a priority in favor of other creditors in cases of insolvency which should supersede that of the United States. The priority of the latter attached by the laws of the United States in virtue of the assignment and notice to the syndics of their debts. And it was the duty of the syndics to have made known those debts in their tableau of distribution, as having such priority. There is no doubt that the mortgages upon particular estates sold must be first paid out of the proceeds of the sales of those estates. But if there be any deficiency of the proceeds of any particular estate, to pay the mortgages thereon; the mortgagees thereof cannot come in upon the funds and proceeds of the sales of the other estates, except as general creditors. The district judge was perfectly correct in the views taken by him in his opinion on this subject.

It appears from the papers in the record that the whole amount of the proceeds of all the sales exceeds $40,000, and that the mortgages are about $27,000, and

making allowance for other privileged claims, if any, there will remain a balance in the hands of the syndics (when all the notes for the sales are paid) more than sufficient to pay all the debts due to the United States. But the difficulty is that the notes for a large amount of their proceeds, *viz.* $24,898.60,

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did not become due until July, 1832, and July, 1833 (a moiety in each year), the first being after the present suit was commenced and the latter after the present judgment was rendered. Now the syndics are certainly not liable to the United States for the debts due to them, unless funds have actually come to their hands. The notes for the sales may all be good, but as one moiety thereof was not paid at the time of the judgment, it does not judicially appear that, even at that time, they had funds out of which the United States was entitled to judgments. If the remaining moiety of the notes has been since paid, the United States will then have a legal claim thereon for their debts. For this reason, the judgment of the district court must be

Reversed and the cause sent back for further proceedings.

In regard to the bill of exceptions, as the cause was by consent not tried by a jury, the exception to the admission of evidence was not properly the subject of a bill of exceptions. But if the district court improperly admitted the evidence, the only effect would be that this Court would reject that evidence and proceed to decide the cause as if it were not in the record. It would not, however, of itself, constitute any ground for a reversal of the judgment. But we are of opinion that the evidence was properly admissible as proof positive to the syndics of the debts due to the United States, and if the fact was material to enable the court to render suitable judgment on the statement of the parties, it is not easy to perceive why it should have been objectionable. Without this evidence, there seems to be enough in the record to show that the syndics had full notice of the debts due to the United States. They do not even set up in their answers any want of notice as a defense. But in the present state of the case, this matter is the less important because they now have the most ample notice of the debts due to the United States, and these

will at all events be payable out of the residue of the sales when it is received.

With the question of costs this Court has nothing to do, and as the judgment is reversed for another cause, it becomes immaterial to be considered.

This cause came on to be heard on the transcript of the record

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from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said district court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said district court for further proceedings to be had therein according to law and justice and in conformity to the opinion of this Court.

[This case was decided on 21 February, 1834.]