

Burton Vs. Smith

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Court : US Supreme Court

Decided On : 1839

Appeal No. : 38 U.S. 464

Appellant : Burton

Respondent : Smith

Judgement :

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Burton v. Smith

38 U.S. (13 Pet.) 464

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF VIRGINIA

SYLLABUS

Under the laws of Virginia in relation to lands of which the debtor has an actual seizin, although there is no statute in Virginia which expressly makes a judgment or lien on the lands of the debtor, yet during the existence of the right of the

plaintiff to take out an *elegit*, the lien of the judgment is universally acknowledged.

All the authorities, ancient and modern, agree in this proposition that a reversion after an estate for life is assets, or, as some of the books express it, *quasi-assets*, in the hands of the heir, in regard to the bond of the ancestor, binding heirs, and that in such case the plaintiff may take judgment of it, *quando acciderit*. Upon principle, it would seem to be clear that whatever estate descended to the heir which was liable as assets to the bond debt of the ancestor must be bound by a judgment obtained against the ancestor in his lifetime.

There is a current of authorities going to prove that a reversion after an estate for life is bound by a judgment obtained against the ancestor, from whom it immediately descended. So far from its being proper for a court to hesitate about decreeing a sale of an interest because it is reversionary, the character of the interest affords a stronger reason for such a decree. For although in regard to property in present actual possession, the *elegit*, although tardy in its operation, yet is in some degree an effective remedy, inasmuch as the creditor will by that means annually receive something towards his debt, whereas in the case of a dry reversion, if the outstanding life estate should continue during half a century, the creditor might look on in hopeless despondency, without the possibility of receiving a cent from that source, except through the interposition of a court of equity in decreeing a sale.

It is the very nature and essence of a lien that no matter into whose hands the property goes, it passes *cum onere*. If this were not the case, it would cease to be a lien.

The case, as stated in the opinion of the Court, was as follows:

"In the month of June, 1827, Smith and Kennedy obtained a judgment in the circuit court against Reuben Burton for \$1,348.75, with interest from 14 of October, 1823, and costs. On this judgment an *elegit* was issued on 31 December, 1827. On 12 August in the same year, Reuben Burton by deed conveyed his real estate to

certain trustees in trust to sell the same for the benefit of his creditors; amongst many other debts enumerated in the deed, the judgment already mentioned, recovered by Smith and Kennedy, was included."

"These last mentioned creditors, the appellees, never assented to or accepted anything under the trust deed. Burton having died, the only trustee who accepted the trust, on 21 December, 1829, sold, under the deed, all the estate, both real and personal, conveyed by it, and at that sale, Sarah Burton, by her agent, purchased, at the price of \$1,000, the interest of Reuben Burton, that is two-fifth parts of a certain tract of land called Springfield, supposed to contain about five hundred acres, and also his interest in certain coal pits on the same tract. The character of Reuben Burton's interest in the Springfield tract of land, as appears from the record, was that of a reversion in fee after an estate for life. And the character

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of his interest in the coal pits, as appears from an agreement in the record, was this:"

"The heirs of Daniel Burton, of whom Reuben Burton was one, were to have, during the widow's life, the right of occupying, using, and working the coal pits, and the right and power of sinking shafts, and searching for coal on any part of the land except the yard, &c.;, paying to the widow during her life the yearly sum of \$200 for her dower interest. The same agreement will show his interest in a mineral spring included in the decree."

"After the death of Reuben Burton, the appellees, finding that there was no personal estate to satisfy their debt, in September, 1834, filed their bill to enforce the lien created by their judgment, making, amongst others, Sarah Burton a defendant as purchaser of the interest of Reuben Burton before described in the Springfield tract of land and coal pits."

She answered saying that the property conveyed to her was not purchased for her own benefit, but for the benefit of her son Thomas O. Burton, the appellant. She

insisted in her answer that the appellees had no right to enforce their judgment, as more than five years has elapsed since the death of Reuben Burton. She denied that the judgment created any lien on the property purchased by her which was valid against her. She insisted that the appellees were entitled to no relief in equity, and that at all events a sale should not be decreed.

An amended bill was thereupon filed making Thomas O. Burton a defendant. He filed an answer insisting on the grounds taken by Sarah Burton.

The cause coming on to be heard, the court held the reversionary interest of Reuben Burton in the Springfield tract of land, and his interest in the right of occupying and working the coal pits thereon, and also his interest in the mineral spring thereon, with the twenty-five acres of land adjoining thereto, liable to the appellees' judgment, and decreed a moiety of Reuben Burton's interest to be sold.

From this decree an appeal was taken.

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MR. JUSTICE BARBOUR delivered the opinion of the Court.

The case was this:

In the month of June, 1827, Smith and Kennedy obtained a judgment in the circuit court against Reuben Burton for \$1,348.75, with interest from 14 October, 1823, and costs. On this judgment

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an *elegit* was issued on 31 December, 1827. On 12 August in the same year, Reuben Burton, by deed conveyed his real estate to certain trustees in trust to sell the same for the benefit of his creditors; amongst many other debts enumerated in the deed, the judgment already mentioned, recovered by Smith and Kennedy, was included.

These last mentioned creditors, the appellees, never assented to, or accepted anything under the trust deed. Burton having died, the only trustee who accepted the trust, on 21 December, 1829, sold, under the deed, all the estate, both real and personal conveyed by it, and at that sale Sarah Burton, by her agent, purchased at the price of \$1,000 the interest of Reuben Burton -- that is, two-fifth parts in a certain tract of land called Springfield, supposed to contain about five hundred acres, and also his interest in certain coal pits on the same tract. The character of Reuben Burton's interest in the Springfield tract of land, as appears from the record, was that of a reversion in fee after an estate for life. And the character of his interest in the coal pits, as appears from an agreement in the record, was this: the heirs of Daniel Burton, of whom Reuben was one, were to have, during the widow's life, the right of occupying, using, and working the coal pits and the right and power of sinking shafts and searching for coal on any part of the land except the yard, &c.;, paying to the widow during her life the yearly sum of \$200 for her dower interest. The same agreement will show his interest in a mineral spring, also included in the decree.

After the death of Reuben Burton, the appellees, finding that there was no personal estate to satisfy their debt, in September, 1834, filed their bill to enforce the lien created by their judgment, making, amongst others, Sarah Burton a defendant, as purchaser of the interest of Reuben Burton, before described, in the Springfield tract of land, and coal pits.

She answered saying that the property conveyed to her was not purchased for her own benefit, but for the benefit of her son, Thomas O. Burton, the appellant. She insisted in her answer that the appellees had no right to enforce their judgment, as more than five years had elapsed since the death of Reuben Burton; she denied that the judgment created any lien on the property purchased by her which was valid against her; she insisted that the appellees were entitled to no relief in equity, and that at all events a sale should not be decreed.

An amended bill was thereupon filed making Thomas O. Burton a defendant. He filed an answer insisting upon the grounds taken by Sarah Burton.

The cause coming on to be heard, the court held the reversionary interest of Reuben Burton in the Springfield tract of land, and his interest in the right of occupying and working the coal pits thereon, and also his interest in the mineral spring thereon, with the twenty-five acres of land adjoining thereto, liable to the appellees' judgment,

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and decreed a moiety of Reuben Burton's interest to be sold. From that decree this appeal is taken.

Upon this state of facts two questions arise: 1st, whether the judgment created a lien on the reversionary interest of Reuben Burton in the land in question, and 2d, whether it was competent to the court to decree a sale of his interest with a view to accelerate the payment of the debt, or whether the appellees should have been left to such remedy as they had at law.

As to the first point. In relation to lands of which the debtor has the actual seizin, there is no doubt but that the judgment creates a lien. Upon this subject this Court said, in the case of [*United States v. Morrison*](#), 4 Pet. 124, 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 right, the lien is universally acknowledged. That right unquestionably existed in this case, because an *elegit* did actually issue within the year after the judgment was rendered. There would then be no sort of difficulty upon the question of a lien if the debtor had had actual seizin of the land, but the difficulty is suggested that his interest was reversionary only. Let us inquire whether this interposes any obstacle. All the authorities, ancient and modern, agree in this proposition that a reversion after an estate for life is assets, or, as some of the books express it, *quasi*- assets, in the hands of the heir, in regard to the bond of his ancestor, binding heirs, and that in such case, the plaintiff may take judgment of it *quando acciderit*. Dyer 373; Carthew 129; 1 Lord Ray. 53; Chitty on Descents 336. In Dyer, *ubi supra*, the form of the judgment in such case is given. It is "that he should recover the debt and damages of the aforesaid

reversion, to be levied when it shall fall in." And it is added that a special writ shall issue to extend the whole. The doctrine upon this subject is laid down very clearly by the Master of the Rolls in the case of *Tyndale v. Warre*, 3 Jacob. 217, 218. There are, says he, three cases of reversions; if it be a reversion dependant upon a term of years, the law does not consider the term as anything, and judgment is given against the heirs, if he plead *reins per descent*. But if the creditor take out an *elegit*, he is stopped by the term, which is a good defense for the lessee in ejectment, and so there is a *cesset executio* during the term. If it be a reversion after an estate for life, the heir must plead specially, stating that he has no assets except this and setting forth what it is; the creditor may then take judgment *quando acciderit*. In the case of a reversion after an estate tail, the authorities say that the heir may plead generally *reins per descent*, distinguishing this from the plea in the case of a reversion after an estate for life. The plaintiff may then reply that there is this reversion descended to the defendant, and he may then have a judgment *quando acciderit* the same as in the case of a reversion after an estate for life.

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Now upon principle it would seem to be clear that whatever estate descended to the heir which was liable as assets to the bond debt of the ancestor must be bound by a judgment obtained against the ancestor in his lifetime.

But this is not left to rest upon deductions from general principles or analogy to the case of assets descended to the heir. Whatever may be the doctrine as to reversions after estates tail, about which there has been some doubt, as appears from the case before cited, from Jacob's Reports, there is a current of authority going to prove that a reversion after an estate for life is bound by a judgment against the ancestor from whom it immediately descends.

The statute of Virginia giving to a party the right, at his election, to have an *elegit* is almost a transcript of the statute of Westminster the second. The writ itself commands the officer to deliver to the plaintiff a moiety of all the lands and

tenements whereof the debtor, at the time of obtaining the judgment, was seized or at any time afterwards.

Lands and tenements, then, are the subject on which the writ is to operate.

Now in Comyn's Digest, title Grant, E. 2, it is said that by grant of all lands and tenements, a reversion passes. In the same book, title Estate, B. 12, it is said if a man grant the land itself the reversion passes. So in Moore's Reports 36, a reversion is said to be a tenement. Thus it appears that a reversion falls within each of the terms lands and tenements. But the party must have been seized at the time of obtaining the judgment or afterwards.

Now let us see what is meant by the seizin spoken of in the statute. And the authorities are clear that it is not confined to actual corporeal possession. In Gilbert on Executions, pages 38 and 39, it is said that the judgment binds not only the lands and tenements of which the defendant is actually seized, but also the reversions on leases for lives, as well as for years, for although the words of the *elegit* are that without delay you cause to be delivered a moiety of all the lands and tenements of which the aforesaid B. was seized, &c.;, yet the intent of the writ extends to whatever lands and tenements were actually vested in the defendant, because the statute is a moiety of the land, which extends to reversions, which are comprised under the name lands, since they are lands returning to the defendant when the particular estate ceases.

So in 2 Williams' Saun. 68f it is said judgment binds not only lands of which defendant is actually seized, but also reversions on leases for lives or years, and therefore a moiety of a reversion may be extended, and plaintiff will have a moiety of the rent. So in Chitty on Descents 338 it is said that if judgment be had in the debtor's lifetime, it will bind the property, though no execution be taken out till the property descends to others. Nay, in case of a judgment, it is said to bind even where it is against a person from whom the estate does not immediately descend, as if it were against

a remainderman or reversioner, whereas the contrary would be the case of a bond on which no judgment had been rendered in the debtor's lifetime who stood in the same relation.

The author last cited, in page 54, quoting Watkins on Descents 40-41, speaking of the subject of seizin of reversions, remarks that the confusion seems to have been created by the different meanings which have been attached to the word "seizin" by being used in a general sense when it should properly have been confined in its acceptation, or by being confined when it should have been taken in a general sense. And in pages 53-54, he thus sums up the doctrine. We must here remember that the expressions or terms of a seizin in law and a seizin in deed refer only to the present and actual corporeal possession of the premises, and not to the fixture of an interest which is to come into actual enjoyment in some future event, and here the word "seizin" is used in its strict sense, and though we frequently use the term "seizin" of a remainder or reversion expectant upon a freehold, yet this signifies no more than that the property in them is fixed in the owner, and that such owner is placed in the tenancy. The particular estates, and those expectant upon them, form in law only one estate, and the delivery of possession to the person taking first extends to all. All therefore may be said to be seized, all being placed in the tenancy, and the property being thus fixed in all. It is upon these principles that the authorities lay down the doctrine that a judgment binds a reversion after an estate for life.

We are therefore satisfied that the judgment of the appellees bound the reversionary interest in the land in question, and as to the other property embraced in the decree, there is no room for doubt or difficulty. And then the question is whether the court ought to have decreed a sale with a view to accelerate the payment of the debt, or whether the appellees should have been left to such remedy as they had at law. Upon the subject of the power of a court of equity in this respect the authorities are decisive. More than a century ago, in the case of *Robinson v. Tong*, 3 Viner's Abr. Assets A, pl. 28, 145, an advowson was decreed to be sold, at the instance of creditors, as assets descended, and the decree was affirmed in the House of Lords. That is supposed to have been the

case not of judgment, but bond creditors. In *Stileman v. Ashdown*, 2 Atk. 607, Lord Hardwicke decreed a sale of a moiety of the land to satisfy a judgment creditor. He confined the decree to a moiety because the judgment only bound a moiety at law. On that occasion he said that whilst equity could not change the rights of the parties, it might accelerate the payment by directing the sale of a moiety, and not let the creditor wait until he was paid out of the rents and profits. The principle was asserted by Lord Redesdale in 2 Sch. & Lef. 138, and in the same book, 13, and such he stated to be the settled doctrine in Ireland. In the first of these cases he said:

"Although this Court has been in the habit of selling to pay judgment debts, where it was ascertained that they were

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legal liens on the land, the foundation of that was the legal right. The only equity the creditor had was to render his remedy more effectual by getting a sale, instead of levying his debt out of rents and profits, which was the only execution the common law gave."

These cases are cited and relied upon, and the doctrine of them approved, in 2 Leigh 30, and in page 58 of that volume, Judge Green says:

"This principle, so far as I am informed, has been uniformly practiced on in Virginia, in the cases of heirs bound by the obligations of their ancestors. And although I cannot see clearly the foundation of this equity to sell, where the law only authorizes an extent, or a personal judgment, or decree against the heir for the value of the assets descended, whether aliened by him or not (see the statute of fraudulent devises), yet I think we are bound by the practice founded on these precedents, so long acquiesced in."

In 6 Leigh 196, which was a suit in equity brought by creditors to marshal assets, the same authorities were again cited with approbation, and the same doctrine reasserted by the judges in their reasoning upon the case. In pages 219-220 of this latter case, Judge Carr went into a review of English cases, which he said

seemed to him to establish beyond question the regular and long established course there of selling the lands of deceased persons to pay their debts, binding the land, or to marshal their assets, and he added that it struck him as a novelty when, in the course of the argument of the case, he heard a doubt suggested of the power of the court to decree a sale in such cases. In the case of *Tyndale v. Warre*, 3 Jacob 212, this subject was extensively considered by Sir Thomas Plumer, Master of the Rolls, who held in that case a reversion expectant upon an estate for life, and even upon estates tail, limited to unborn children, to be assets for the payment of specialty debts, and accordingly he decreed it to be sold for that purpose. This last has a peculiar analogy to and bearing upon the case before us, because it sustains in the fullest and most decisive manner both the grounds on which the decree of the circuit court rests -- that is, it proves first that a reversion after an estate for life, or even after estates tail limited to unborn children, is assets liable to the specialty debt, and, of necessary consequence, to the judgment of the ancestor from whom it immediately descends, and secondly that a court of equity will decree such a reversion to be sold, in order to accelerate the payment of the debt.

The liability of a reversion after a life estate to be sold was at once conceded by the counsel for the heir; their effort was to maintain that the reversion in that case could not be sold, because it was after an estate tail. It was strongly said by the Master of the Rolls in that case that the reversion was a part of the real estate of the ancestor, and according to all general principles, every part of the real estate of the debtor, except copyhold, is considered as applicable to the payment of his specialty debts. There is another part of the reasoning of the Master of the Rolls which has a most cogent application to this. It having being urged that a sale ought not to be decreed, out of consideration to the heir, that a higher price might be obtained,

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he said:

"But I think that such considerations ought not to weigh, for the question is to whom does the property belong? It is not the habit of the court to consider the interest of the heir when opposed to that of the creditors. They ought to have the fullest remedy. And upon what principle can the court refuse to give them the benefit of a sale because another person, whose interest is secondary and entirely subject to theirs, may be benefited by delay?"

So far from its being proper for a court to hesitate about decreeing the sale of an interest because it is reversionary, we think that the character of the interest affords a stronger reason. For in regard to property in present actual possession, the *elegit*, although a tardy remedy in its operations, yet is in some degree an effective remedy, inasmuch as the creditor will by that means annually receive something towards his debt, whereas in the case of a dry reversion, as the one in the present case is, if the outstanding life estate should continue during half a century, the creditor might look on in hopeless despondency, without the possibility of receiving one cent from that source, except through the interposition of a court of equity, in decreeing a sale. Now if the acceleration of a tardy remedy be cause enough to justify the helping hand of equity, *a fortiori* it ought to be extended to him who during the life of the tenant for life is without any remedy at all. As to the objection that the judgment did not bind the land in the hands of the appellant because he was a purchaser, we consider it wholly untenable. We have already said that the judgment created a lien; now it is of the very nature and essence of a lien that no matter into whose hands the property goes, it passes *cum onere*; if this were not the case, it would cease to be a lien. If this proposition stood in need of authority to support it, we find it abundantly in the case of [*United States v. Morrison*](#), 4 Pet. 124. In that case, the judgment of the United States rendered in 1822 was held to overreach several deeds of trust executed in 1823; although the United States having issued a *feri facias*, whilst that execution was in the marshal's hands, 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 accordingly the marshal did not make a levy, but made a return within the year 1822 that all further proceedings were suspended in pursuance of said instructions, and that suspension was continued until the year

1825.

A very strong application of this doctrine was made in the case of *Mutual Assurance Society v. Stanard*, 4 Munf. 539. In that case, a deed of trust bearing date 28 April, 1808, was held to be overreached by a judgment rendered on 6 May, the court applying the legal fiction that the judgment in contemplation of law related back to the commencement of the term, which was before the execution of the deed.

A still stronger application of the doctrine was made by the same court in the case of *Coutts v. Walker*, 2 Leigh, 268. In that case, the court held that a judgment creditor had a lien in equity upon

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the equitable estate of the debtor in like manner as he had a lien in law upon his legal estate, and a deed of trust having been executed by the debtor conveying his equitable estate to a trustee, and that too for the benefit of creditors between the commencement of the term, and the day on which the judgment was obtained; the same relation of the judgments to the first day of the term as in the case previously cited was held to exist, and thus the trust deed was overreached by the judgment.

It is argued that the judgment in this case was barred by the act of limitations of Virginia. That act provides that no action of debt shall be brought against any executor or administrator upon a judgment obtained against his testator, or intestate, nor shall any *scire facias* be issued against any executor, or administrator, to revive such judgment after the expiration of five years from the qualification of his executor or administrator. The facts in the record furnish a decisive answer to this argument. It appears from them that the administration on Reuben Burton's estate was granted on 9 December, 1829, and this suit was brought on 15 September, 1834. So that five years had not elapsed from the time of the qualification of the administrator.

This view renders it unnecessary to examine whether the appellees would not have been within the saving of the statute, as contended for by their counsel.

Furthermore, it is objected that there should have been an account taken of the administration of Reuben Burton's personal estate. Without stopping to inquire whether that would be necessary in any case where the suit is brought merely to enforce a legal lien, it is a sufficient answer to this objection to say that there is abundant evidence in the record, that there was no personal estate -- nothing therefore could have been more unnecessary or unprofitable than to have ordered an account to be taken.

The last objection is that an account should have been ordered of the rents and profits of the coal property.

Here too the record furnishes a satisfactory answer. Assuming for the purpose of meeting this objection that by analogy to the case of marshaling assets, a court of equity would not decree a sale of real estate to satisfy a judgment where the rents and profits would discharge it in a reasonable time, as was held by the court in the case of *Tennent's Heirs v. Patton*, 2 Leigh 196, yet the facts of this case utterly repel the application of that principle to it. In that case it will be seen that the debts of the ancestor were said by one of the judges to amount to \$820, and the annual value of the land was ascertained to be \$400.

In that case, therefore, the debt would be satisfied by the rents and profits in a short time. In this case the facts are these. There was an outstanding life estate in all the Springfield tract of land, except the coal pits and the mineral spring. Reuben Burton's interest in the coal pits was two-fifths, in the privilege of working them during the lifetime of the tenant for life, she receiving annually two hundred dollars

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for the whole. Reuben Burton's real interest, then, is only two-fifths of any surplus which might remain after deducting two-fifths of the annual rent to be paid. But the parties themselves seem to have considered \$200 per annum as the full value of the whole privilege of working them. If the agreement of the parties were to be taken as the standard of the annual value, his interest would really be worth nothing, because he would have to pay precisely the same proportion of the rent

which he received of the profits, and it must be assumed that they were worth more than the parties fixed as the value, in order to make any surplus at all. But at all events there is nothing in the case to justify the belief that there would be any surplus that would discharge the judgment in a reasonable time, or even in a long time, for at the date of the decree, the whole debt, including principal, interest, and costs, amounted to about \$2,500, and the principal being \$1,348.75, there would be an annually accruing interest of about \$80, besides the annual payment of two-fifths of the \$200 for rent, which would be \$80 more. Thus it will appear that his interest of two-fifths must produce \$160 annually in order even to prevent the debt from being increased. To allow \$160 for his two-fifths would require that the whole should be worth annually \$400, which is precisely double the sum at which the parties fixed the rent.

This, then, seems to us to be emphatically a case in which the established principles of equity justify the sale of the property with a view to accelerate the payment of a debt due to a judgment creditor.

In every respect in which we have viewed the case, we think that the decree of the circuit court is correct, and it is therefore

Affirmed with costs.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Virginia and was argued by counsel. On consideration whereof it is adjudged and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.