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LIEN OF JUDGMENT—WHAT IT BINDS.

At common law lands were not affected by a judgment; but since the Stat. Westminster 2, 13 Edward I. c. 18, as against the defendant and his heirs, a judgment binds a moiety of all the freehold land and tenements which the debtor, or any person in trust for him, were seised of, at or after the time to which the judgment relates.[1]

In Pennsylvania, the whole of defendant's freehold lands which were in his possession at the time of the judgment, are bound, but it is well settled here, that lands which were acquired by him subsequently to the judgment are not affected by it, and if aliened bona fide before execution, cannot be followed.[2]

If, however, such after acquired lands had remained in defendant's possession at the issue of execution, they would have been subject to levy.[3] And, as a corollary to this proposition, it has been held that such after acquired lands still in the possession of defendant, are bound by the first of several executions, without regard to priority among the judgments obtained before the land was purchased.[4] And, in Parker's Appeal,[5] the principle has been legiti-

[1] 3 Comm. 418. Tidd Pr. p. 850, and cases there cited.
[2] Colhoun v. Snider, 6 Binn. 135.
[3] Ibid.
[4] Lea v. Hopkins, 7 Barr, 492.
[5] 6 Barr, 277.

mately carried out to the extent that, an execution levied upon land acquired after the judgment, is to be preferred to another judgment obtained after both the purchase and the execution.

In the case of *Colhoun* vs. *Snider*, Justices Yates and Brackenridge, the latter in a very characteristic opinion,[1] labored to show that the doctrine now prevailing in England, that a judgment binds after-acquired lands, was introduced by a series of misapprehensions on the part of reporters and legal writers, as to the points really decided by the courts.

Chief Justice Tilghman, however, with his usual caution, contents himself with deciding the point, on the ground of long continued and universal usage in Pennsylvania, sanctioned by judicial decisions. He says, after citing *Rundle* vs. *Etwein*,[2] directly to the point, "It is certain that, in many instances, the common law of England has been departed from in this country from a sense of inconvenience, which has produced a silent practice not now to be traced to its origin. * * * There has been some difference of opinion respecting the common law, on this point; but I have reason to suppose, from a conversation which I once had with Judge Smith, that both he and Chief Justice Shippen (in *Rundle* vs. *Etwein*) founded themselves on the understanding which had long prevailed in this State. Be that as it may, my opinion is bottomed *solely* on the decisions which I have mentioned, and, therefore, I

[1] Speaking of the doctrine that all freehold lands which have been in the possession of the defendant at any time since the judgment, are bound by it, he says, "Supposing it to be the law of England, it may not be practicable to eradicate it in that country, it having become a rule of property, and estates having passed under it, even though upon investigation it should be evident that it has got into the system, though it did not originally belong to it: as flies, or other *insects*, which have been embodied when the gum or mineral oil was liquid, and cannot be got out when become hard, without breaking the amber. For as the poet sings—

Pretty in amber, to observe the forms
Of hairs, or straws, or dirt, or grubs, or worms;
The things we know are neither rich nor rare,
But wonder how the devil they got there—"

[2] Rundle *vs.* Etwein, 2 Yates, 23; Canal Co. *vs.* Nicholson; Pleasants *vs.* Boyer, cited 6 Binn. 137.

forbear from entering into any discussion of the common law principle."[1]

The case of *Colhoun* vs. *Snider* has been discussed,[2] and its operation restricted to the exact point decided, viz., that land, to which the judgment debtor had not even an inchoate title until after the judgment was obtained, is not bound by it.

But in Pennsylvania, a judgment binds every equitable interest which the debtor has at the time it is obtained.[3] Hence, since a purchaser, under articles of agreement, acquires an equitable interest in the land, though a deed has not been executed, it follows that this interest is bound by a judgment subsequently obtained.[4] But equity looks upon things agreed to be done, as actually performed, and when a contract is made for the sale of land, equity considers the vendee as the purchaser of the estate sold, and as trustee for the vendor of the purchase money. The moment, then, the legal title is acquired, and the equity and the law united, the judgment attaches and binds the united interest.[5]

The doctrine contained in the words of Judge Duncan is somewhat too broadly laid down, and has since been restricted. It is now settled that the judgment attaches upon the subsequently acquired title only when the subsequent acquisition is in pursuance of the contract under which the original estate of freehold, held before the judgment, was obtained, not when the subsequent acquisition results from an independent contract. Thus when the owner of a life estate, against whom a judgment exists, afterwards purchases the fee from a different vendor, although, as regards the purchaser, the life estate is merged in the fee, yet, as regards the interest of the lien creditors, it is not merged, and a judgment against the owner of the life estate does not attach upon the fee simple, but is to be enforced against the life estate alone.[6]

But a judgment against a vendee, under articles of agreement, binds only his equitable title, and if the legal title is subsequently

[1] 6 Binn. 137. [2] Richter *vs.* Selin, 8 S. & R. 425. [3] See *post.*

[4] Lynch *vs.* Dearth, 2 Pa. R. 101; Lyon *vs.* McGuffey, 4 Barr, 128.

[5] Per Duncan, J. in Richter *vs.* Selin, 8 S. & R. 425; Foster's Appeal, 3 Barr, 79

[6] Denison's Appeal, 1 Barr, 201.

acquired by him, subject to a *condition in the deed* for the payment of the balance of the purchase money, the judgment, though it attaches against the legal title, will be subordinated to the condition.[1] In this case, in addition to the condition *in the deed*, a bond and mortgage were given for the payment of the balance of the purchase money, but the mortgage was not recorded until over two years after its execution, and the deed was not recorded at all. The land was sold under the mortgage, and the dispute was between the vendors and creditors under judgments obtained after the execution, but before delivery of the deed, as to who were entitled to the fund. The court held that the conveyance having been made subject to the payment of the purchase money, this was an incumbrance upon the title, and valid, though the mortgage might not be so. The conclusion to which the court comes in this case, seems inconsistent with their reasoning, unless they merely meant to decide that such a condition in the deed is equivalent to a mortgage, and not within the recording statutes, which postpone even a mortgage for purchase money to subsequent judgments, if it is not recorded within sixty days from its *date*.[2] On any other ground it seems incontestible that the unpaid instalments still binding the land, the sheriff's vendee must take it, subject to all the equities of the judgment debtor, in whose shoes he stands, and that, therefore, the original vendor must look to the land for the unpaid instalment, and not to the fund. This, indeed is true in all cases of sale of vendee's interest under the judgment of a stranger, and it has been frequently held in such cases that the purchaser at sheriff's sale of a vendee's interest under articles of agreement, takes precisely the estate, and acquires all the rights which the vendee had.[3]

But in the case of a sale, under a judgment of the vendor, for the purchase money, the doctrine was originated by Kennedy, J.,

[1] Episcopal Academy *vs.* Freize, 2 Watts, 16.

[2] The same view was taken of the difference between a condition contained in the original deed, and a separate unrecorded mortgage, in Irvine *vs.* Campbell, 6 Binn. 120, per Tilghman, C. J. And it is there put upon the ground that the condition in the deed was notice to the purchaser.

[3] Anwerter *vs.* Mathiot, 9 S. & R. 397.

that such a sale conveys the whole estate of both vendor and vendee in the land, and that consequently the vendor is entitled to claim the unpaid purchase money from the fund.[1] The vendor is considered as selling all that estate in the land, whatever it may be, which he agreed to sell and convey to the defendant. The vendor being the plaintiff in such case, and the owner of the legal estate, has the right to agree that such shall be the effect of the sale by the sheriff, under his judgment; and in order that complete justice may be done to all concerned, without delay, and with as little expense as possible, it is right and necessary that the agreement of the plaintiff to this effect should be implied from his having caused the land to be levied on and sold under his judgment. The learned judge then proceeds to comment upon the obvious advantages to be derived from the new doctrine—"By giving this effect to the sale, complete justice is more likely to be done, perhaps to every one concerned, than could be had in any other course of proceeding that could be adopted. It will enable those who have a notion of buying, to ascertain beforehand, with certainty, the nature, extent, and value of the estate that is about to be sold, which is indispensably necessary, in order to obtain anything near a fair price for it. The precise nature and extent of the estate being known at the time of the sale, and it being known also that it is to be sold free,

[1] Love *vs.* Jones, 4 Watts, 465. The principle is the same as that which governs in the sale of land by a mortgagee under a judgment on the bond accompanying the mortgage. There, it is said by Gibson, J., in McCall *vs.* Lenox, 9 S. & R. 307, "With us, the practice has been universal, when the land has been pursued on the bond, to sell without any reservation of the lien of the mortgage; and the purchaser is, therefore, always considered as having acquired the legal as well as the equitable estate." And Duncan, J., is still more explicit. He says (9 S. & R. 316) "I consider the law in Pennsylvania to stand thus, that on the sale of lands on a judgment on bond, secured by mortgage, by the sheriff, though that judgment is posterior to the execution of the mortgage, the purchaser acquires all the title of the mortgagee, and will hold against all subsequent incumbrances of whatever nature, mortgages, or judgments." And afterwards, he repeats, "I deny the right of the mortgagor to proceed either by *scire facias*, or ejectment, to disturb such purchaser at sheriff's sale, and contend that it is not the equity of redemption (merely) that is sold, but all the title of the mortgagor at the time of the execution of the mortgage."

and discharged from all incumbrances, it is clear that every possible inducement which can be afforded in a cash sale, is held out by this course, to encourage persons disposed to buy, to give the full value of the estate. The sale being thus effected under regulations suited to obtain, as it would seem, the highest possible price for the land, it only remains, in order to effectuate justice, that the money or price should be distributed among the parties, according to the priority of their respective liens. That the claim of the vendor to the unpaid purchase money, if he has any lien at all as vendor, stands first in the list of liens, and must, therefore, be paid in preference to all others, cannot be questioned; after this, all other liens must be paid according to the priority of their respective dates. Principles of policy as well as justice, seem to favor and support this doctrine strongly: because, while it secures to all parties the full benefit of their respective rights, it gives to the vendor, by one action alone, all that he could obtain otherwise by two, or more, in many instances. For if, after obtaining his judgment for the recovery of the purchase money remaining unpaid, it were to be held that he could have nothing sold under it but the vendee's equitable interest in the land, and that the proceeds thereof must be appropriated first to the satisfaction of all liens thereon, prior in date to that of the vendor's judgment, and growing out of the acts of the vendee; and the money arising from the sheriff's sale should, from this or any other cause, prove insufficient to satisfy the vendor's claim, he must then, if the vendee be without other means to satisfy his judgment, have recourse to the action of ejectment in order to get the land back."[1] The learned judge then suggests other complications which might occur if any other effect than the one recommended, were given to a sale under the judgment of a vendor.

Notwithstanding the obvious advantages of the doctrine settled in *Love* vs. *Jones*, the court in the subsequent case of *Day* vs. *Lowrie*[2] established a distinction in the case where the vendor becomes himself the purchaser at the sheriff's sale, under his own judgment, and held on the authority of *Purviance* vs. *Lemmon*,[3] and *Chew* vs. *Mather's Administrators*,[4] (both prior to *Love* vs. *Jones*) that this

[1] Love *vs.* Jones, 4 Watts, 472.
[2] 5 Watts, 412.
[3] 16 Serg. & Rawle, 292.
[4] 1 Pa. Rep. 474.

rescinds the contract, and the vendor having before the legal, now acquires the equitable estate, and, having lost all remedy for the unpaid residue of the purchase money, must come upon the fund arising from the sheriff's sale for the amount of his judgment, in preference to the intervening creditors of the vendee. So far *Day* vs. *Lowrie* agrees *in effect* with *Love* vs. *Jones*, but the learned judge (Sergeant) who delivered the opinion of the court, goes on to say, "Had a third person purchased, the prior judgment creditors of the vendee would have been first entitled to payment from the proceeds of the sale, *because the equitable estate would still subsist and remain liable to the original vendor in the hands of the new purchaser.*"[1] And *Wilson* vs. *Stoxe*,[2] which was the case of a purchase by a stranger at a sheriff's sale, under the judgment of a vendor for unpaid purchase money, was decided in accordance with this dictum of Mr. Justice Sergeant. In that case Chief Justice Gibson said, "When the vendor sold it (the equitable interest of vendee) by execution, he sold not his legal title along with it, and a supposition that he did is the root of the fallacy. The execution was levied not on the fee, but on the vendee's interest in it; for no man willingly sells his own estate on his own execution."[3]

However curious it might be to examine the authorities cited, and ascertain how far they sustain the positions of the court in *Day* vs. *Lowrie*, and *Wilson* vs. *Stoxe*, it is no longer necessary, for in *Horbach* vs. *Riley*[4] the court overruled *Wilson* vs. *Stoxe*, and exploded the distinction taken in *Day* vs. *Lowrie*, between the purchase at the sheriff's sale by the vendor and by a stranger. In this case the opinion of the court was delivered by Rogers, J., who says, "It would be no difficult matter to reconcile the cases of *Wilson* vs. *Stoxe*, and *Day* vs. *Lowrie*, as one was a purchase by a stranger, and the other by the vendor; but we are willing to admit that the distinction is rather plausible than sound; that the law is the same whether the property be purchased by one or the other." His honor then proceeds to make a rather extraordinary admission. "It must be remarked that in *Wilson* vs. *Stoxe*, *Day* vs. *Lowrie* was not cited on the argument, and that although *Love* vs. *Jones* was

[1] 5 Watts, 417. [2] 10 Watts, 434. [3] 10 Watts, 437. [4] 7 Barr, 81.

cited, *yet it is nowhere noticed in the opinion of the court.*"[1] He continues, "The groundwork of that opinion is, that by the sale, the vendor's title did not pass to the sheriff's vendee. Granting the position, there is no gainsaying the conclusion. * * * * But in this (position) the court was in error; for that the vendee under such circumstances acquires the legal as well as the equitable estate had been ruled in the two cases cited.[2] I have some reason to believe that we were misled by the dictum of Mr. Justice Sergeant, in *Day* vs. *Lowrie, who did not advert to the decision in Love* vs. *Jones.*" His honor then cites, with approbation, portions of the opinion in *Love* vs. *Jones*, which are given above somewhat at length, and concludes his quotations thus: "This case is precisely in point, and explodes the distinction between a purchase by a stranger and by the vendor, and had it been cited in *Day* vs. *Lowrie*, we should have been spared the dictum of Mr. Justice Sergeant; and had both cases been adverted to in *Wilson* vs. *Stoxe*, we should never have been troubled with this case."[3]

The doctrine that a sale on the judgment of the vendor against the vendee, under the articles, conveys the whole united interest of vendor and vendee, and leaves the vendor to resort for the unpaid purchase money to the fund arising therefrom, may, after all its fluctuations, be considered as settled for the present, inasmuch as the court in a recent case[4] in the last volume of Harris's Reports, went considerably out of their way to express their approbation of it, and nothing is found in the two volumes (1st and 2d Casey) which have appeared since, to indicate any change of opinion.

It was said at the commencement of this article, that in Pennsylvania the whole of defendant's freehold lands, which were in his possession at the time of the judgment, are bound by it. This is true, not only of his lands but of any legal title, contingent or

[1] That is to say, the court overruled a point decided, after full discussion, in a former case, without once adverting to the fact, perhaps without being aware of it, that the point had ever been raised or settled.

[2] Love *vs.* Jones, 4 Watts, 465; Day *vs.* Lowrie, 5 Watts, 412.

[3] 7 Barr, 83.

[4] Vierheller's Appeal, 12 Harris, 105.

otherwise, in lands where there is a *real interest* vested in the debtor at the time of the judgment, though unaccompanied by possession.[1]

Thus the legal title retained by the vendor, under articles of agreement for the sale of lands, is bound to the extent of his interest at the time of the judgment. And on a sale under such judgment, the sheriff's vendee stands precisely in the situation of the original vendor, and may bring ejectment for the unpaid purchase money.[2]

And the lien of a judgment against the vendor upon the unpaid purchase money, is not divested by a sheriff's sale of the original vendee's interest.[3] And judgments against the vendor and vendee by different creditors, bind the rights of each, and after a sale by the sheriff under such judgments, the purchasers stand towards each other in the relation of the original vendor and vendee.[4]

So the interest of a widow in the real estate of her deceased husband, which has been put by our Act of April 19th, 1794, upon the footing of a rent charge, is bound by a judgment against her.[5] And this, whether she takes under a will, or the statute of distribution. And her right to dower is bound by a judgment obtained before assignment.[6]

A husband's curtesy in his wife's lands is likewise such an interest as may be bound by a judgment against him; and the birth of issue is not necessary, under our act, in order to give him a tenancy by the curtesy initiate which may be bound. And where lands to which the wife is co-heiress, have been ordered to be appraised in proceedings in partition, but have not been sold or accepted by the

[1] Lessee of Humphreys *vs.* Humphreys, 1 Yates, 429.

[2] M'Mullen *vs.* Wenner, 16 S. & R. 18; Stewart *vs.* Coder, 1 Jones, 20. It might be a curious question whether, if a vendor should, after a judgment against him, bring ejectment against the vendee and dispossess him, the judgment would bind the recovered lands. In Richter *vs.* Selin (8 S. & R. 425) it was decided that a judgment against an equitable interest in lands, expands in order to embrace the subsequently acquired legal interest, and it is difficult to see why the same should not hold in the converse case. The case of Stewart *vs.* Coder, 1 Jones, 90, which decides that a judgment against the vendor is a lien upon the unpaid purchase money, seems to settle the point, for the recovered land would certainly stand in the place of the unpaid instalments.

[3] Creigh *vs.* Shatto, 9 W. & S. 82.

[4] Chahoon *vs.* Hollenback, 16 S. & R. 425.

[5] Shaupe *vs.* Shaupe, 12 S. & R. 12.

[6] Thomas *vs.* Simpson, 3 Barr, 69.

other heirs at the date of the judgment against the husband, his estate in them is bound, and this lien continues against securities given for the wife's share of the valuation.[1]

So a vested remainder to take effect upon the determination of a life estate, is bound by a judgment against the remainderman.[2]

In the case of *Ammant* vs. *The New Alexandria and Pittsburg Turnpike Co.*,[3] however, the court decided that under the charter, no interest in the land that could be subject to execution, was conferred upon the company, but only a right to enter upon land for the purpose of constructing a road and to take tolls, and that, therefore, the road could not be taken in execution, as "the defendants had no tangible interest—nothing which could be delivered by the sheriff to a purchaser under the execution. There was no rent or profit of any kind issuing out of land; nothing but a right to receive toll for horses, carriages, &c., passing over the land. Every kind of right of license granted by the act of Assembly, was confined to the company. They alone were confided in. They alone were looked to for a faithful performance of the important duties incumbent on them. * * * * There is nothing in the incorporating act which authorizes the company to transfer their right to other persons; and such transfer would certainly be inconsistent with the whole design and object of the law. * * * If a turnpike company has a right to land or other property not on the road, there is no reason why it should not be subject to an execution."[4] Upon this, the court, in the subsequent case of *Leedom* vs. *The Plymouth R. R. Co.*,[5] grounded their decision that the right of taking tolls by a road company from passengers and freights, is a species of incorporeal hereditament incident to the road which cannot be bound by a judgment. They say,[6] "The plaintiff could claim a priority out of the tolls collected, only on the ground that his judgment gave him a lien upon them. To have this effect, he must make out that these tolls were such an interest in land existing in the corporation at the

[1] Lancaster Bank *vs.* Stauffer, 10 Barr, 398.

[2] Lessee of Humphreys *vs.* Humphreys, 1 Yates, 429.

[3] 13 S. & R. 210.

[4] Per Tilghman, C. J. [5] 5 Watts & Sergeant, 265. [6] Per Sergeant, J.

time when the judgment was rendered, as to be bound by it. The road itself could not be taken in execution, (here the learned judge cites the case given above) and for the same reason is not bound by a judgment: much less is the right of taking tolls from passengers and freights, which is a corporate franchise—a species of incorporeal hereditament incident to the road. 2 Black. Comm. 38."

And in pursuance of the spirit of these decisions which is, "that privileges granted to corporations to construct turnpike roads, canals, &c., are conferred with a view to the public use and accommodation, and that they cannot voluntarily deprive themselves of the lands and real estate and franchises which are necessary for that purpose; nor can they be taken from them by execution and sold by a creditor, because to permit it would tend to defeat the whole object of the charter, by taking the improvements out of the hands of the corporation and destroying their use and benefit,"[1] the court decided in *The Susquehanna Canal Company* vs. *Bouham*[2] that the toll-houses of a company, though not directly on the line of their works, cannot be taken in execution.

Even a contingent title to land accompanied with a real interest is bound by a judgment. Thus, where a grantor conveys land to trustees on a charitable use, expressly reserving to himself, his heirs and assigns, a right of entry on condition broken, he has such an interest remaining in the land as is the subject of levy and sale on execution, even before a breach of the condition: and on such breach afterwards occurring, the sheriff's vendee may enter.[3] And where a lease was made to one and his heirs for forty-nine years, reserving to the lessee the privilege of building, with a covenant by the lessor to purchase the improvements at the end of the term, or *convey to the lessee, his heirs and assigns, the land at a valuation*, and the lessee afterwards erected valuable buildings, it was *held* that he had such an interest in the premises as was bound by a judgment.[4]

But the contingent interest liable to be bound by a judgment must be of freehold; hence a lease to one, his executors and ad-

[1] Per Sergeant, J. 9 Watts & Serg. 28.
[2] 9 Watts & Serg. 27.
[3] M'Kissick *vs.* Pickle, 4 Harris, 140.
[4] Ely *vs.* Beaumont, 5 S. & R. 124.

ministrators for twelve months, and so from year to year as long as both parties please, with a covenant not to assign without the special license of the lessor, and a proviso that, if the lessor determine the lease, the improvements of the lessee are to be paid for after their value is ascertained in a certain way, does not vest any title to the freehold in the lessee, so as to subject his interest to the lien of a judgment.[1] The distinction between these two cases as explained by Huston J. in Krause's Appeal is that in the former the lessee had a contingent interest in the realty dependent upon the failure of the lessor to compensate him for his improvements, while in the latter there was no such interest in the land but a mere right to compensation in money. The first being an interest in the land, however remote, could be bound by a judgment, the latter, being mere personalty, could not.

So a contingent estate in realty, limited by executory devise, is subject to the lien of a judgment, and may be levied on and sold during the continuance of the previous estate.[2]

But a judgment against a trustee is no lien upon his bare legal title.[3] And a limitation in a deed of trust of a *contingent* percentage on the trust fund as a compensation to the trustee does not create such an interest in him, as to subject the trust estate to an execution for his debts.[4] Though if the trust be accompanied with a beneficial interest in the subject matter this is an estate in the trustee which will be bound by a judgment against him.[5]

But not only is every legal estate of freehold vested in the defendant at the time of the judgment bound by it, in Pennsylvania; the lien of the judgment in this State embraces also every kind of equitable interest in lands. This anomaly in our practice has arisen from the want of a court of equity here (owing to the jealousy of chancery powers and forms always entertained by our legislatures from the origin of the colony) and the consequent necessity imposed on the common law courts, of attaining the ends of justice,

[1] Krause's Appeal, 2 Wharton, 398.
[2] De Hoas *vs.* Bunn, 2 Barr, 335.
[3] Reed's Appeal, 1 Harris, 478.
[4] Ashurst *vs.* Given, 5 W. & S. 323.
[5] Drysdale's Appeal, 3 Harris, 457.

in cases of equity jurisdiction, through the medium of common law forms whenever possible. In England the lien of a judgment does not attach to any equitable estate, but there the creditor may have relief through the court of chancery; here we have no such resort, and our courts have therefore, from necessity, established it as a principle, that both judgments and executions have an immediate operation on equitable estates, and on the *venditioni* the sheriff sells and conveys all the debtor's right, such as it may be.[1]

The interest of a vendee under articles of agreement for the sale of land has already been seen to be bound by a judgment against him. But the extent of the interest so bound has been the subject of much discussion in our courts. The principles settled in numerous decisions are briefly these: Written articles of agreement for the sale of lands vest immediately an equitable estate in the vendee which will be bound by a subsequent judgment against him if the contract is afterwards executed, though no part of the purchase money had been paid nor possession given at the date of the judgment[2] and as the interest of vendee is enlarged by successive payments of the purchase money or the paying off of prior incumbrances, the lien of the judgment expands so as to include the enlarged interest.[3] And consequently, when the title of the vendee

[1] Carkhuff *vs.* Anderson, 3 Binn. 9, per Tilghman, C. J.; Anwerter *vs.* Mathiot, 9 S. & R. 397; Lynch *vs.* Dearth, 2 Pa. R. 101; Carneghan *vs.* Brewster, 2 Barr, 41; Thomas *vs.* Simpson, 3 Barr, 60. So an improvement right may be levied on and sold at sheriff's sale, and the purchaser may continue and complete the settlement by means of a tenant in possession. Myers *vs.* Myers, 8 Watts, 430.

[2] Stephens' Appeal, 8 W. & S. 186.

[3] Stephens' Appeal.—The inconvenience which would result from the opposite rule, that each judgment binds only the interest of the vendee actually existing at the time it was obtained, and the confusion which would arise in the case of different judgments obtained against the purchaser of an estate payable by instalments was clearly foreshadowed by Duncan, J. in Richter *vs.* Selin, 8 S. & R. 425. The rule which now obtains, that each judgment binds the interest at the time it was obtained, and has the benefit of all subsequent payments up to the time of the sheriff's sale (which disposes of the vendee's whole existing estate together with his equitable right to demand a conveyance upon the completion of the payments) is intelligible and just, inasmuch as it allows all the judgments to come upon the fund in the sheriff's hands in the order of their priority, without complicating the distribution of the proceeds by any question as to the amount which had been paid at the date of each judgment.

is perfected by payment and a conveyance, the judgment binds the whole legal and equitable estate which are now united.[1] *A fortiori* it follows that when there has been a part performance of the contract contained in the written articles, either by payment of a portion of the purchase money, or by taking possession of the land, the vendee has an equity which will be bound by a subsequent judgment.[2]

But a mere oral agreement to purchase land does not vest an estate until it is executed, nor is mere payment of a portion of the purchase money such an execution of such an agreement, as will vest in the vendee an equitable estate which can be bound by a judgment.[3] Though delivery of possession of land, in pursuance of a parol contract, amounts to a part performance, and the vendee as well as the vendor may insist on specific execution of the contract. Hence if in such case, one authorized by the vendor to deliver the possession to the vendee takes a lease of the land from the vendee and enters into actual possession, there is an equitable estate in the lessor which is bound by a judgment against him.[4]

A judgment may therefore bind an equitable or even an inchoate interest in lands, but that interest must be an estate in the lands themselves. The interest of a mortgagee, judgment creditor, owner of a legacy charged on land, creditor of an intestate estate, mechanic or material-man, or of a preferred creditor under an assignment to trustees (to whom the land is debtor) is not the subject of judgment, for these are interests not in land but in the proceeds of land.[5] Hence the interest of a devisee in lands ordered by the will

[1] Richter *vs.* Selin, 8 S. & R. 425; Morrison *vs.* Wurtz, 7 Watts, 437.

[2] Lynch *vs.* Dearth, 2 Pa. R. 101; Hartman *vs.* Stahl, Ib. 223; The Episcopal Academy *vs.* Frieze, 2 Watts, 16; Catlin *vs.* Robinson, Ib. 373; Baird *vs.* Lent, 8 Watts, 423; Foster's Appeal, 3 Barr, 80; a sale by the sheriff is attended with the ordinary consequences of a sale by an individual, Stoever *vs.* Rice, 3 Wharton, 24, hence a purchaser at a sheriff's sale before his deed has been acknowledged has an inceptive interest in the land, by the contract, which may be bound by the lien of a judgment, Morrison *vs.* Wurtz, 7 Watts, 437.

[3] Miller *vs.* Specht, 1 Jones, 456.

[4] Pugh *vs.* Good, 3 W. & S. 56; and see also Anwerter *vs.* Mathiot, 9 S. & R. 397; Chahoon *vs.* Hollenback, 16 S. & R. 425.

[5] Per Gibson, C. J. in Morrow *vs.* Brenizer, 2 Rawle, 188.

to be sold, and the proceeds or a portion thereof paid over to him, is not bound by a judgment obtained against him, because the legatees have no estate in the lands themselves but only in the execution of the trust and in the proceeds arising therefrom.[1] But the legatees, where proceeds of land to be sold are directed by the will to be divided among them, may elect to take the land instead of the proceeds of the sale, and after such election it becomes the subject of lien, and may be sold upon a judgment.[2] So where a house and lot were devised by a father to trustees in trust to pay over the rents to his son during life, and after the son's death to his appointees, or in default of appointment to his heirs, with powers to the trustees and son conjointly to change the investment and also to convey the property to the son absolutely in case he is relieved from embarrassment; it was held that the son took no estate in the land that could be bound by a judgment.[3] Upon the same grounds it was decided in *Kramer* vs. *Arthurs & Nicholson*,[4] that a member of a partnership established for the purpose of dealing in land has no interest in the land itself but merely a resulting interest in the proceeds, and that it is not so bound by a judgment for his separate debt, that it could be pursued in the hands of a vendee, though a sale on a judgment of a partnership creditor, while the title still remained in the partnership, would pass the lands, whether as such, or as chattels; and a joint stock company dealing in lands is virtually a partnership.[5]

But where a person has not merely a beneficial interest in the proceeds of the land but is also the possessor of the legal title as sole trustee for himself and others, he has such an estate in the land as will be bound by a judgment against him, and on a sale in pursuance of the power by a trustee substituted in his place, the judgment creditor of the original trustee is entitled to be paid out of the proceeds in preference to one to whom the original trustee had assigned his interest subsequent to the judgment.[6]

[1] Allison *vs.* Wilson's Executors, 13 S. & R. 330; Morrow *vs.* Brenizer, 2 Rawle, 188; Selfridge's Appeal, 9 W. & S. 55; Stuck *vs.* Mackey, 4 W. & S. 196.

[2] Stuck *vs* Mackey, supra. [3] Vaux *vs.* Parke, 7 W. & S. 19. [4] 7 Barr, 165.

[5] Kramer *vs.* Arthurs and Nicholson, 7 Barr, 165.

[6] Drysdale's Appeal, 3 Harris, 457.