

It appears, that claim No. 11, the voucher of which was filed on the 30th of October, 1830, is founded on a supersedeas judgment, acknowledged by the deceased on the 17th of April, 1815, which, after having been suffered to lapse, was revived by *scire facias* in 1822. And, consequently, it is now a subsisting lien upon the real estate of the deceased, not barred by the Statute of Limitations, and, as such, is entitled to a preference over all subsequent liens, as well as over all the claims of the general creditors.

But the mortgage on which claim No. 4 is founded, bears date on the 10th of October, 1821, at a time when this judgment must have so expired, that no execution could have issued upon it; and, therefore, it could not, after that time, be revived so as to overreach the mortgage claim No. 4; and thus, upon the principles heretofore laid down by this Court, *Coombs v. Jordan*, *ante*, 284, this judgment claim No. 11, can only be allowed a preference out of the proceeds of the realty, after the mortgage claim No. 4 has been fully satisfied.

The claims No. 35 and 36, founded on judgments rendered against the deceased on the 10th of April, 1818, being the eldest liens upon the realty of the deceased, appear to be entitled to a preference over all other claims. But the Bank of the United States, who stands here as claimants No. 4, 5, 6, 7 and 8, has relied upon the Statute of Limitations in opposition to these two claims; the vouchers of which were not filed until the 13th of January, 1832, and therefore they are clearly barred. And hence, according to the rule laid down, in relation to this matter, these claims, No. 35 and 36, can be allowed to obtain no portion of these assets to the prejudice of any of the claims of the bank which may be in any manner, or to any extent sustained as against the estate of the
518 *deceased; although as against all the other creditors, now before the Court, except claim No. 4, they would, if not opposed by a plea of limitations, be clearly entitled to a preference; even against claim No. 11, whose right to issue an execution upon his judgment, existing at the time when these two judgments were obtained, having been suffered to expire, could not be revived so as to overreach an intermediate lien or conveyance, which during its lapse, had taken full effect. 1823, ch. 194; *Coombs v. Jordan*, *ante*, 284.

The personal estate is the fund primarily liable for the payment of debts; and therefore, if the real estate be mortgaged, the personal estate must be applied in discharge of the mortgage in relief of the realty. But where there are simple contract creditors who cannot resort to the mortgaged estate, the mortgage debt may be thrown entirely upon it, so as to leave the personalty for the benefit of the simple contract creditors. But by our law, on the personal estate being exhausted, all creditors may resort to the realty;