

ed as their representative. But, for this conclusion, the prayer of that petition must have been granted.

That this judgment was a lien at the time of the execution of the mortgage to Hodges is incontestibly settled by authority. *Murphy vs. Cord*, 12 *Gill & Johns.*, 182; *Rankin and Schatzell vs. Scott*, 12 *Wheat.*, 177.

And, it is equally indisputable, that if the judgment creditor was not a party to the suit, he was not bound to seek payment out of the proceeds of sales in the hands of the trustee, but might prosecute his lien against the property, after its conveyance to the purchaser. *Brooks vs. Brooke et al.*, 12 *Gill & Johns.*, 318.

These propositions are not understood to be denied, but it is insisted, with much force, that notwithstanding the former decision of this court upon the petition of the complainants in Hodges' case, and which, as has been explained, could only have been pronounced upon the hypothesis, that these judgment creditors were not to be regarded in any sense as parties to, and bound by, the decree in that suit; this court will now upon this bill declare, that they were parties, and bound by the decree, because the insolvent trustee was a party and consented to it.

The Court of Appeals, in the case of *Alexander vs. Ghiselin* and others, decided at December term last, that upon the true construction of the seventh section of the act of 1805, chapter 110, the trustee of an insolvent debtor, whose property had been taken in execution before his application for the benefit of the insolvent laws, is, nevertheless, to make the sales applying the proceeds to the satisfaction of the liens; that, upon such application, the property of the petitioning debtor, no matter how incumbered, and though in *custodia legis*, is to be taken possession of and sold by the trustee, in order that there may be but one administration of the estate. And, it is insisted, that the principle of this decision extends to the present case; and, that the sale made under the decree of this court, upon the bill filed by Hodges, the trustee of the insolvent debtor being a party thereto and assenting to the decree, produces the same legal consequences as if the sale had been made by the