

to place their execution upon any property of the insolvent debtor to be found undistributed in the hands of the trustee.”

Whether this position is to be regarded as an *obiter dictum* or not, it is of course entitled to great consideration ; and seeing that the case was decided at the same term as that of Alexander and Ghiselin, with which it is supposed to be inconsistent, we must presume that the enlightened tribunal by which both causes were decided, were clearly of opinion, that nothing decided, or even said by way of argument, in the one, was in conflict with the other.

The conflict, certainly, is not apparent to me, nor do I see the dangers which it is said the domestic creditors will be exposed to, if property in the hands of the trustee, upon which they have acquired liens, prior to its transfer to him is afterwards levied upon in his hands at suit of the foreign creditor of the insolvent. Because, although the foreign creditor may lay his execution on property in the hands of the trustee, such levy must be subject to the prior liens of the domestic creditor, and any sale which may be made under such execution would pass the property subject to the same lien, precisely as if the party had not petitioned, and the levy and sale had been made whilst the property remained in the hands of the debtor himself.

My opinion, therefore, is, that as this case now stands, I cannot grant the application of the trustee of Kerr, and must dismiss his petition, but inasmuch as the anticipated opinion of the Court of Appeals, may present his right in a different aspect, it will be dismissed without prejudice to his rights hereafter to renew the application as he may be advised. The money and funds, however, now in the hands of the receiver, will be ordered to be brought into court to be deposited to the credit of this cause.