

the master of the rolls refused, under the special circumstances of that case, to restrain the creditor from issuing execution upon his judgment *de bonis testatoris, et si non, de bonis propriis*, as to costs, rendered before a decree against executors to account. But it is clear that the refusal was not upon the ground that such was the invariable course of the court, and one or two cases are referred to in which prior judgment creditors had been so restrained from proceeding upon their judgments.

And in the case of *Hammond vs. Hammond*, 2 Bland, 362, the late Chancellor said, that if a bond creditor has got a judgment against the executor or heir before the decree, then after the decree, although such creditor may come in and prove as a judgment creditor against the real or personal estate, yet the court will, on application, grant an injunction to prevent him from taking out an execution against the assets.

But the case now under consideration is radically and widely different from any of those referred to in the argument. Here the judgments were rendered against the deceased debtor in his lifetime, and executions upon them were issued and laid upon the property afterwards purchased by Kent, also before the death of Harris.

These judgments, it is true, were afterwards enjoined, upon a bill filed by Harris, but upon the dissolution of the injunction in October, 1848, nothing more was necessary, to authorize the sheriff to sell, but writs of *venditioni exponas*. The lands are to be regarded as in *custodia legis*, and the subsequent death of Harris interposed no obstacle to the proceedings of the sheriff.

The case of *Hanson vs. Barnes' Lessee*, 3 G. & J., 359, is conclusive to show, that notwithstanding the death of Harris, after the execution had issued and been levied, a *scire facias* against his heirs or terretenants was not necessary, and that a sale under such process passed the title to the purchaser. Indeed, the case of *Hanson vs. Barnes* goes beyond this, because the sale in that case was decided to transfer the title, though the execution had not been levied before the death of the