

that which must injure another; and that equality is equity, provided the court has any foundation for enforcing such equity without depriving a party of his clear legal rights, or impairing the obligation of his contract. (s)

I am therefore of opinion, that the claimant No. 4, cannot, for the benefit of the other creditors of the deceased, be required to proceed against and exhaust the fund, or land in the District of Columbia, which had been mortgaged to them as a security for their debt, before they are allowed to come here for satisfaction out of the proceeds of that fund lying within this state which had also been mortgaged to them as a security for the same debt.

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, (t) 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

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(s) 2 Fonb. Eq. 298.—(t) *Coombs v. Jordon*, ante 284.