

It is a general rule, that all liens and incumbrances which are not in themselves vicious or defective must be satisfied according to their respective priorities. (e) Two of these parties, *Oliver* and *Carroll*, rely on their judgments as giving them liens which entitle them to be satisfied in preference to all other creditors of *The Cape Sable Company*. These plaintiffs and some of the other creditors, however, not only deny the legality of their liens, but the very existence of their claims; and as between *Oliver* and *Carroll* themselves, each claims a priority over the other. It will, therefore be necessary to enquire whether they are in truth to be considered as judgment creditors and from what date.

Upon the principles of equity by which this court has been so long governed in relation to the distribution of the estate of an insolvent living person among his creditors; and in regard to the application of the estates of deceased persons to the payment of their debts; upon the ground that creditors have by the misfortunes or death of such debtors been confined to a single fund from which alone they can obtain satisfaction; I can see no reason why this court may not, upon the same principles, where a corporation is admitted or shewn by proof to be in a condition of absolute insolvency, and especially if such insolvency must inevitably eventuate in its total dissolution, take cognizance of the matter, call in its creditors, and apply its effects in satisfaction of their claims, according to the course of proceeding in a creditor's suit. (f) And this case having heretofore, by the admissions of the parties, been submitted as a creditor's suit, I shall therefore continue so to consider and treat it.

The decree of the 5th of April, 1828, is founded not only on the admitted fact, that these debts were then due from the company to *Oliver* and *Carroll*; but also upon the concession, that *The Cape Sable Company* was then in a condition of absolute insolvency. That decree, and the agreement upon which it was passed, there being then no other creditors but *Oliver* and *Carroll* before the court, necessarily involved these facts and admissions; because the court could not, otherwise, have treated the case as a creditor's suit, and have ordered a sale to pay debts, none of which were then admitted or established; nor could the court have ordered notice to be given to the other creditors to bring in their claims upon any other

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(e) *Rankin v. Scott*, 12 Wheat. 177.—(f) *Hammond v. Hammond*, 2 Bland, 316; *Shepherd v. Towgood*, 11 Cond. Chan. Rep. 206.