

acquire a lien by *feri facias* or attachment, unless the same be levied before the filing of his petition.

Distribution.

Distribution must be made by the trustee in insolvency court, and that court must pass upon all claims and liens. The insolvency court cannot by its order divest itself of jurisdiction. *Cross v. Hecker*, 75 Md. 576; *Manahan v. Sammon*, 3 Md. 475. See also *Wiles v. Wiles*, 3 Md. 10; *Pierson v. Trail*, 1 Md. 142; *Carter v. Dennison*, 7 Gill, 170; *Buschmann v. Hanna*, 72 Md. 4 (explaining *Thomas v. Brown*, 67 Md. 512).

Equity will not assume jurisdiction over the distribution of the estate of an insolvent. *Pierson v. Trail*, 1 Md. 142; *Powles v. Dilley*, 9 Gill, 240.

The rule of distribution is the same as that regulating a court of equity. *Clark Co. v. Colton*, 91 Md. 217; *Fox v. Merfeld*, 81 Md. 82; *Third Natl. Bank v. Lanahan*, 66 Md. 469; *McCulloh v. Dashiell*, 1 H. & G. 97.

Where a creditor attaches before the filing of petition in insolvency, the property vests in the trustee subject to the inchoate lien of attaching creditor. *Willison v. Frostburg Bank*, 80 Md. 211; *Buschmann v. Hanna*, 72 Md. 4 (explaining *Thomas v. Brown*, 67 Md. 512); *Dowler v. Cushwa*, 27 Md. 365; *Manahan v. Sammon*, 3 Md. 473; *Selby v. Magruder*, 6 H. & J. 459.

In order to put this section into operation, an injunction will be granted restraining further proceedings upon judgments or attachments. The rights and priorities of all creditors will be preserved in the distribution. *Lynch v. Roberts*, 57 Md. 153.

Where before the commencement of a building the owner confesses judgment in favor of A. to secure certain advances which A. makes after the commencement of building, such judgment has priority in distribution of insolvent's estate over a mechanic's lien claim against building. *Robinson v. Consol. Real Estate Co.*, 55 Md. 106.

Where a part owner surrenders to another part owner all her interest in certain real estate in consideration of a sum which is not paid, there being no actual conveyance, and the latter becomes an insolvent, the former is entitled to a vendor's lien against that portion of the real estate which she thus sold her co-owner. *Thomas v. Farmers' Bank*, 32 Md. 70.

An equitable lien cannot be enforced by the mortgagee in an action of trover against him brought by insolvent trustee of mortgagor. The mortgagee's rights must be asserted in the insolvent court. *Crocker v. Hopps*, 78 Md. 265.

Where a creditor is compelled to file his claim, and another creditor excepts to it on the ground of usury, the court will allow the principal of the former's claim with legal interest. *Carter v. Dennison*, 7 Gill, 173.

Where A. sells land to B, the latter making a small cash payment and the former taking notes for balance and reserving legal title C., a party to whom A. has indorsed and guaranteed the notes, has a priority in distribution of insolvent's estate, trustee having sold land and A. being compellable to convey legal title accordingly. *Willis v. Wright*, 22 Md. 379.

If a claim is valid at the time it is filed in an insolvent estate, it will not be barred by limitations thereafter. Numerous audits in an insolvent estate, condemned. *Hignutt v. Garey*, 62 Md. 192.

Custodia legis.

The insolvent's property being vested in the trustee, is no longer within the reach of process. *Insolvent Estate of Leiman*, 32 Md. 240.

Upon an application for benefit of our insolvent laws, a debtor's property passes in *custodia legis*, and is not thereafter liable to distraint. This is true though rent be due at the time petition is filed. The same principle is applicable to proceedings in bankruptcy when administered in Maryland. *Fox v. Merfeld*, 81 Md. 82; *Buckey v. Snouffer*, 10 Md. 155; *in re. Southern Company*, 180 Fed. 838.

The "*custodia legis*" commences with filing of petition. All *bona fide* liens for a valuable consideration antecedently attached must be respected. Assignees in insolvency are not *bona fide* purchasers for value, but take property subject to all burdens it was under in hands of assignor. Set-off as applicable to insolvency cases. *Dowler v. Cushwa*, 27 Md. 365. As to set-off, see also *Colton v. Drovers' Bldg. Assn.*, 90 Md. 95.

Property in hands of an insolvent trustee is not liable to attachment by non-resident creditor. *Pinckney v. Lanahan*, 62 Md. 451 (overruling earlier cases to contrary; see note to *Larrabee v. Talbott*, 5 Gill, 426); *Torrens v. Hammond*, 10 Fed. 900.

Trustee's power of sale.

The insolvent trustee sells all insolvent's property (save as mentioned in sec. 27) free and discharged from liens, reserving the settlement of all priorities until final distribution. *Eschbach v. Pitts*, 6 Md. 75; *Manahan v. Sammon*, 3 Md. 473; *Glenn v. Gill*, 2 Md. 18.

The creditor's acquiring a lien in accordance with this section does not divest the trustee of his right to sell, which extends to all of the insolvent's property. *Alexander v. Ghiselin*, 5 Gill, 179.