

case now remains open upon the docket, no *fiat* having been entered.

The petitioners insist that their said judgment is a lien on the money produced by the sale of the trustee, and entitled to be paid in preference to the mortgage, and they, therefore, pray that the trustee may be compelled to bring the money into court that it may be so applied. In addition to this relief, the petitioners prayed that the sheriff's return, that he had made a part of the debt, might be corrected, upon the allegation that said return was false.

The matter of this petition was ordered to stand for hearing on notice to the complainant, Hodges, and having been argued by the solicitors in writing, is now to be decided.

The original judgment, it will be perceived, bears date prior to the mortgage, and upon this ground the preference claimed for it is insisted upon, and authorities are cited to show that in a proceeding like the present, the proceeds of property sold under the authority of this court will be applied to the payment of liens in the order in which they were created. The Chancellor does not deem it necessary to state what his opinion would be, if the judgment in question had actually been revived in the court in which it was rendered. In the case of *Coombs vs. Jordan*, 3 *Bland*, 324, the late Chancellor decided that a judgment revived by *scire facias* after the time allowed for suing out execution only operates prospectively, and not with any retrospective effect, so as to overreach intermediate incumbrances or alienations, though as between the parties to the judgment, it may operate as a lien from its date. The same question came before the Court of Appeals in *Murphy vs. Cord*, 12 *G. & J.*, 182, and though no opinion was delivered, it is inferrible from the judgment rendered by the court, that the doctrine of the Chancellor, in *Coombs and Jordan*, would not receive the sanction of the appellate tribunal.

But in the present case, the petitioners have not obtained a *fiat* upon their judgment, and it does not become this court to say whether they will be able to do so or not. It is manifest that standing upon their judgment of 1840 they are precluded from insisting upon their lien or proceeding to enforce payment