

only attach upon real estate or an equitable interest in such an estate subject to all prior liens or incumbrances; and that the first lien is, in all cases, entitled to a prior satisfaction, unless it be intrinsically defective. (p) If the legal estate in fee in this land, had been vested in *Booth*, and he had mortgaged it, the judgment and lien of *Stone & McWilliams* would only, according to the English law, have given them the right to come here and redeem the prior mortgage; or, according to our law, to have had the land sold, and after satisfying all prior liens to have had the residue of the proceeds of sale applied in whole or in part satisfaction of their claim. Here, the equitable lien held by the court for the benefit of the creditors and heirs of the late *Richard Jordan*, was a prior incumbrance which must be satisfied: and the proceeds of sale remaining after that, represents the amount and value of that equitable interest in the land upon which the judgment of *Stone & McWilliams* gave them a lien which followed that interest from the land to the proceeds of sale, so as to entitle them to be paid out of that fund in preference to any subsequent lien upon that interest, or any other of the creditors of *Jeremiah Booth*. (q)

It is clear then, that the judgment of *Stone & McWilliams* did give them a lien upon the equitable interest held by *Jeremiah Booth*; but the circumstances of this case suggests another inquiry, in relation to this point, and that is, whether their lien continued to be in full force, at the time they filed their petition, so as to overreach any intermediate claims against *Booth's* estate; and to continue to them their right to a preference in satisfaction.

At common law, a man, by a judgment, authenticated his debt, and thereby obtained authority to sue out execution within a year and a day; but, if he failed to do so, it was presumed to be paid; and the defendant might plead payment and a release of such recorded debt; because all judgments were to be rendered effectual within a competent time, which was the same as in case of non-claim. This time of limitation of judgment was the same in real as in personal actions; for though the judgment on a real action settled the right to the land, as in the personal it did to the thing in demand; yet that judgment could not lie dormant forever, to be executed at any time; for then dormant judgments would overreach conveyances between parties, which would be produc-

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(p) *Powel Mortg.* 435; *Rankin v. Scott*, 12 *Wheat.* 179.—(q) *Davidson v. Clayland*, 1 *H. & J.* 546; *Jones v. Jones*, 1 *Bland*, 451; *Lewis v. Zouche*, 2 *Cond. Chan. Rep.* 470.