

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 the benefit of our insolvent laws, a debtor's property passes *in custodia legis*, and is not thereafter liable to distraint. This is true though the rent be due at the time the 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 the filing of the 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 the property subject to all the burdens it was under in the hands of the 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 the hands of an insolvent trustee is not liable to attachment by a non-resident creditor. Pinckney v. Lanahan, 62 Md. 451 (overruling earlier cases to the 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 the insolvent's property (save as mentioned in section 25) free and discharged from liens, reserving the settlement of all priorities until the 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.

This section makes it evident that where there is specific property, it must be sold. Zeigler v. King, 9 Md. 334.

Generally.

This section does not clothe the insolvent court with the powers and jurisdiction of a court of chancery; it is acting under special statutory powers. Gable v. Scott, 56 Md. 185. And see Bowie v. Jones, 1 Gill, 208; Paul v. Locust Point Co., 70 Md. 292.

The provisions of this section apply equally to voluntary and involuntary insolvency. A creditor who files his claim for a distributive share of an insolvent estate, will not be allowed to impeach the adjudication. Gottschalk v. Smith, 74 Md. 562.

Where A. issues an attachment against B. and the latter thereafter goes into insolvency, and C. still later gets a judgment against B. and issues an attachment thereon laying it in the hands of the insolvent trustee to affect the fund arising from a sale of the property attached by A., C. may intervene and move to quash A.'s attachment. Clarke v. Meixsell, 29 Md. 228.

Where there are three judgment debtors and one of them dies and the other two go into insolvency, and the judgment debt being filed against the insolvent estate of one of the latter, is paid by the trustee, the latter is entitled to two-thirds of the amount paid by him out of the proceeds of the sale of the real estate of the deceased judgment debtor, the evidence establishing the relation of principal and surety between his insolvent and the other judgment debtors. Walsh v. Boyle, 30 Md. 267.

This section relates only to cases of insolvency. Triebert v. Burgess, 11 Md. 462.

The attachment may be on *mesne* process, as well as on judgment. Thomas v. Brown, 67 Md. 515.

The insolvent trustee could not recover from the guarantors of debts of the insolvent. Colton v. Mayer, 90 Md. 716.

Cited but not construed in Insolvent Estate of Leiman, 32 Md. 241; State v. Mayugh, 13 Md. 377.

The landlord's lien on crops reserved as rent is not divested by the tenant's insolvency—art. 53, sec. 22.

As to the insolvency of agents and factors as bearing upon consigned goods and money due therefor, see art. 2, sec. 7, *et seq.*