

same persons who had killed his son; that, when the arresting of the persons who had perpetrated the outrage was spoken of, he observed that he would give \$200 to have them arrested. But to a remark of one of the company, that he did not want any of his money, he said he did not intend it for them. Who did he intend it for, then? for others who were not present? How did he suppose they were to know it? He made no public offer; he authorized no one to make it for him. We are constrained to believe that what is called an offered reward of \$200 was nothing but a strong expression of his feelings of anxiety for the arrest of those who had so severely injured him, and this [116] greatly increased by the distracted state of his own mind and that of his family; as we frequently hear persons exclaim, Oh! I would give a thousand dollars if such an event were to happen, or vice versa. No contract can be made out of such expressions; they are evidence of strong excitement, but not of a contracting intention.

But, furthermore, Jonathan Lassater, in making the arrest, was in the line of his duty; he was deputy sheriff of the county where the outrage had been committed; he had been sent by the principal sheriff to attend to it in his stead. Under such circumstances a majority of the court hold that, as a matter of public policy, he would not have been entitled to claim the reward had it been offered.

Upon the whole view of the case, then, we reverse the judgment of the court, and remand the case for a new trial.

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### JONES v. MARABLE.

NASHVILLE, DECEMBER, 1845.

**SUCCESSION TO IMMOVABLE PROPERTY.** All immovable property, whether immovable in its nature or made so by the laws of the State where it is situated, is controlled as to the succession by the *lex rei sitae*.

**SAME—PERSONAL PROPERTY.** Although it is a rule of international law that the succession of personal property is controlled by the law of the domicile, yet it is in the power of any State to change the law in this respect.

**CASE IN JUDGMENT.** Under a statute of the State of Arkansas, pro-

viding that "slaves are hereby declared to be, and hereafter shall descend and be holden as, real estate," slaves in Arkansas, belonging to a Tennessee owner, a married woman, who died in Tennessee, would go to her heir, her mother, instead of to the administrator and husband, according to the law of Tennessee.

[Cited in: 16 Pickle, 186.]

This case was tried in the chancery court at Clarksville, on bill, answer, replication, and proof, by Chancellor McCambell. He gave a decree for the complainant, and defendant appealed.

Fogg and Boyd, for complainant.

Meigs and Kimble, for defendant.

Green, J., delivered the opinion of the court.

Mary W. Jordan was the daughter of the complainant, and in the spring of 1842 she intermarried with the defendant. She died in Tennessee the 27th of December, 1842. [117] Previously to her marriage, and about two years before her death, she removed from Tennessee to Arkansas, taking her negroes with her, where she hired them to her brothers. She was married to the defendant, in Arkansas, and shortly after the marriage the parties came to Tennessee, where the defendant commenced building on his wife's land, with a view to a future residence; and previously to her death had despatched an agent to Arkansas for her negroes, but they had not been removed at the time of her death.

The defendant's domicile was in Tennessee at the time of his marriage and at the death of his wife. By an act of the Arkansas legislature, passed the 28th of December, 1840, it is enacted "that slaves are hereby declared to be, and hereafter shall descend and be, holden as real estate, saving to husbands, creditors, and all others, the rights vested in them by the laws now in force."

The question is whether the mother of Mrs. Marable shall inherit the slaves that were in Arkansas at the time of her death, as, by the law of that State, she would inherit lands; or did the defendant by the marriage, acquire a right to the slaves? as, by the laws of Tennessee, the personal estate vests absolutely in the husband.

1. The first enquiry is, What construction shall we place upon the saving of the statute? The enactment is: "Slaves are hereby declared to be, and hereafter shall de-

scend and be, holden as real estate, saving to husbands, creditors, and all others, the rights vested in them by the laws now in force." It is argued by the defendant's counsel that we are to understand this saving as an exemption of husbands, creditors, and all others from the operation of the preceding clause, and that the laws then in force were to continue to regulate and control the disposition of slaves, so far as husbands, creditors, and all others were concerned. We can not concur in this construction of the law. It would have some plausibility if it were not for the words "all others," in connection with "husbands and creditors."

But if the law is to continue as it was before, as to "husbands, creditors, and all others," we are unable to perceive in what particular it was changed. Besides, the saving applies [118] to rights vested in "husbands, creditors, and all others." These words apply to rights then in existence, and with which the new principles applicable to this species of property was to have nothing to do.

2. As to the question whether these slaves shall go according to the law of the State where they were situated at the time of Mrs. Marable's death, or according to the law of her domicile, the cases of *McCollum v. Smith*, Meigs, 342, and *Kneeland v. Ensley*, Id. 626, are conclusive.

In the case of *McCollum v. Smith*, the contest was in relation to the proceeds of an estate in Louisiana, to which Mrs. Tamsey Smith was entitled. The husband claimed the estate, as administrator of his wife, and his children claimed the succession according to the laws of Louisiana. The wife's domicile was in Tennessee, and she died here. That case differs from the one before us in no material particular.

But, if the question were now for the first time before this court, there could be no difficulty in its determination. Land and all immovable property, whether immovable in its nature or made so by the laws of the State where it is situated, is controlled as to succession by the *lex rei sitae*. Story on Conf. 447. And although it is a rule of international law that the succession to personal property is controlled by the law of the domicile, yet it is in the power of any State to change the law in this respect; for un-

questionably every State has a right to regulate persons and things within its own territory according to its own sovereign will and pleasure. Story on Conf. 23. Nor is it bound to give effect to any general principle recognized among nations upon this subject.

The legislature of Arkansas, exercising this sovereign right, has declared that "slaves shall descend and be holden as real estate." This enactment is opposed to the general rule of succession as to things movable in their nature, and declares that the succession to this particular description of movable property shall be governed by the laws which regulate the holding and descent of real estate.

We can not concur in the sentiment of the court of appeals of Kentucky "that, if the legislature had declared slaves should be considered real estate without qualification, such [119] an act should not be construed to be an abrogation of the international law, as to the disposition of movables." 5 J. J. Marsh. 482. On the contrary, we hold that every nation "may impress upon movable property any character it may choose, and no other nation can impugn or vary that character." Story on Conf. 447.

We think, therefore, the complainant is entitled to the negroes in controversy, by inheritance, according to the laws of Arkansas.

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### STOCKARD'S HEIRS V. PINKARD.

NASHVILLE, DECEMBER, 1845.

#### LANDS DESCENDED—HOW SUBJECTED TO LIEN OF EXECUTION-CREDITOR.

A sale of land under a *venditioni exponas* tested after the death of the debtor, although issued upon a judgment of condemnation in his lifetime based upon a levy of a justice's, execution is void, and the heirs of the debtor are entitled, upon bill filed, to recover possession of the land; the land, in such case, is not liable until the personal assets are exhausted by proper proceedings against the personal representative, and the heirs brought before the court. (See Preston v. Surgoine, Peck, 72, and Overton v. Perkins, 10 Yerg., 328, and cases cited in the head-notes. See, also, Green v. Shaver, 3 Humph., 139, and Perkins v. Norvell, 6 Humph., 151.)

[Cited in: 6 Baxt., 91; 4 Lea., 525; 6 Lea., 58; 1 Pickle, 677.]

This is an appeal from a decree given by Chancellor