

trustee of the insolvent, himself. Or, in other words, because such trustee sells free of incumbrances, as he must do, in order to accomplish the purposes of the insolvent system, that the same result must follow when a sale is made by a chancery trustee, in a case to which the trustee in insolvency is a party."

But can this be so? If it is, then the fund raised by the sale in Hodges' case, should have been handed over to the insolvent trustee, to be administered in insolvency by him, and its distribution by this court was improper.

The insolvent system, as contained in the act of 1805 and its supplements, is a system to be administered by the courts of law, and with which this court has nothing to do; the County Court is to appoint the trustee—to order the sale—to fix the commission—and to limit the time for the creditors to bring in and declare their claims.

Now, if the trustee appointed by this court can by any consent of the trustee in insolvency, be so far substituted for him, as that a sale made by the former, shall pass to the purchaser an unincumbered title, to the same extent, as if made by the latter; and, if this court, by reason of such assent, or presence of the insolvent's trustee, as a party to the cause, can administer the insolvent system, it should do so, as the County Court is required to do by the act of assembly.

The creditors should be called in upon notice, as provided for by the 12th section of the act; for surely nothing could be more unjust, than that their rights should be concluded, without an opportunity of asserting them. If the argument of the counsel of the complainant is sound, that the insolvent trustee represents all the creditors of the insolvent, then it follows, not only that these judgment creditors are concluded, but all the other creditors of the insolvent are in the same situation, though they may have had no notice whatever of the existence of this chancery suit, and of course no opportunity of presenting their claims. Now, suppose it should turn out, that there is some other creditor of Sevier, having a lien older than Hodges' mortgage, who never, as these creditors did, came in and asked to be paid out of this fund, and who in point of fact, had no no-