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THE LIEN OF FEDERAL JUDGMENTS AND DECREES†

CHARLES P. WATTLES*

The question, which appears as the subject of this article, is limited to those which arise in the application of the Act of Congress of August 1, 1888. Many attorneys have failed to appreciate the effect of this statute, but the recent decision of *Rhea v. Smith* has brought sharply to the attention of attorneys throughout the country, the question of the lien of judgments and decrees of the United States Court.

In order that we may thoroughly understand the situation here in Indiana, and I may say in passing that it applies to many states as well, it is my purpose in this article to review the Federal statutes specifically dealing with the subject of Federal liens, with a review of the principal cases bearing upon the question, and as applied to our local situation.

One cannot have a complete understanding of the legal consequences without knowing the history of the enactments, amendments and repeal of the various sections of the Federal statutes dealing with Federal judgments and decrees.

† Editor's note:—In view of the probability of the present General Assembly's remedying the situation discussed in this article, the author felt that the time for publishing it had passed. The editor believes that the article, with its complete presentation of the history of the Federal statutes dealing with Federal liens, and its clarifying discussion of the decisions of the Federal courts pertinent thereto, will be of great value to the profession, as an aid in interpreting and applying whatever statute the General Assembly may enact, as well as a source of light on present property interests as affected by past Federal judgments and decrees.

* See p. 336 for biographical note.

Previous to 1888 I find no Federal statute dealing specifically with the subject of judgment liens. In 1789 a statute¹ was passed providing that

"The laws of the several states except where the constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules and decisions in trials at common law in the courts of the United States in cases where they apply."

In 1840 the following statute² was passed:

"Judgments and decrees rendered in a circuit or district court within any state shall cease to be liens on real estate or chattels real in the same manner and at like periods as judgments and decrees of the courts of such state cease, by law, to be liens thereon."

In 1872 another statute³ was enacted, as follows:

"The party recovering a judgment in any common law case in any circuit or district court shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the State in which court is held, or by any such laws hereafter enacted, which may be adopted by general rules of such circuit or district court; and such court may from time to time, by general rules, adopt such state laws as may hereafter be enforced in such state in relation to remedies upon judgments as aforesaid by execution or otherwise."

There is a long line of decisions under these statutes to the effect that a lien in the Federal court has the same effect throughout the territorial jurisdiction as the lien of a state court has throughout its territorial jurisdiction. Of the numerous decisions on this point, the leading case is *Massingill v. Downs*, decided in 1849, and which is quoted at length in the very recent case of *Rhea v. Smith*. In *Massingill v. Downs*⁴ it is held that in those states where the judgment on the execution of a state court creates a lien only within the county, in which the judgment is rendered, a similar proceeding in the circuit or district court of the United States will create a lien to the extent of the jurisdiction. This has been the practical construction of the power of the courts of the United States, whether the lien was held to be created by the issuing of process or by express stat-

¹ Revised Statutes, Section 721—U. S. Comp. St. 1538.

² Revised Statutes, Section 927—U. S. Comp. St. 1608.

³ Revised Statutes, Section 916—U. S. Comp. St. 1540.

⁴ 7 How. (U. S.) 760 (1849). To the same effect see *Ward v. Chamberlain*, 17 U. S. (L. Ed.) 319 (1862); *Barth v. McKeever*, Fed. case No. 1069 (1868); *U. S. v. Scott*, Fed. case No. 16242 (1878).

ute. Any other construction would tend to subvert, or at least materially affect the judicial power of the Union. It would place suitors in state courts in a much better position than in the Federal courts.

In *United States v. Humphreys*⁵ it was held that a Federal judgment need not be recorded to be valid. This case arose in Virginia, there being a statute in that state requiring judgments in state courts to be recorded. This case was decided previous to the passage of the present Federal statute of 1888.

The next enactment was the Act of August 1, 1888,⁶ which, as originally enacted, reads as follows:

"Sec. 1. That judgments and decrees rendered in a circuit or district court of the United States within any state, shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgment had been rendered by a court of general jurisdiction of such state. PROVIDED, That whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office or county, or parish in the State of Louisiana, before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgment and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state.

"Sec. 3. Nothing herein shall be construed to require the docketing of a judgment or decree of a United States court, or the filing of a transcript thereof, in any state office within the same county, or parish in the State of Louisiana, in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county."

The Act of March 2, 1895, amended Section 3 of the above Act to read as follows:

"Sec. 3. That nothing herein contained shall be construed to require the docketing of a judgment or decree of a United States Court, or the filing of a transcript thereof, in any state office within the same county, or the same parish in the State of Louisiana, in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county, if the Clerk of the United States Court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

On January 1, 1913, the original Section 3 was repealed. Apparently this section was not specifically repealed by the Act of

⁵ Fed. case No. 15422 (1879).

⁶ Ch. 729, 25 Stat. L. 357, U. S. Comp St. 1606.

1895, and on January 1, 1917,⁷ the amended Section 3 was repealed.

Thus, since January 1, 1917, the judgment lien law has consisted of Section 1 of the original Act of August 1, 1888. From August 1, 1888, until January 1, 1917, it was not necessary to docket a Federal judgment in accordance with the state law in those cases where the judgment was rendered by a Federal court sitting in the county where the land was situated.

By way of illustration we shall suppose that a judgment was rendered in a Federal court sitting in Wayne County, Michigan. The judgment would be a lien on all land in Wayne County whether or not the Federal judgment was docketed or recorded in accordance with any law providing for docketing or recording a judgment of the state court.

This has not been the law since January 1, 1917, and all Federal judgments, whether rendered in the county where the land lies, or whether rendered in another county, must comply with Section 1 of the Act of August 1, 1888.

The law, then, with reference to judgments of United States Courts, is what it was previously to 1888. The declaratory part of the enactment previous to the proviso in Section one, merely restates the law as laid down in numerous cases, reference to which has been made. The declaratory part of the law reads as follows:

"That judgments and decrees if rendered in a circuit or District Court of the United States within any State shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments had been rendered by a Court of general jurisdiction of such State."

Thus the various states may be classified with reference to Section one into two classes. In the first class, we find those states whose statutes are such that no advantage can be taken of the above proviso. In the second class we find those states whose judgment lien laws are such that advantage may be taken of the proviso, but of which no advantage has been taken by legislation. Indiana is a splendid example of the first class, as will hereafter be pointed out. With these facts in mind we come now to a discussion of *Rhea v. Smith*,⁸ the most recent case, in order to show the application to the principles laid down above.

⁷ Act of August 23, (1916), Ch. 1397, 39 Stat. L. 531.

⁸ 274 U. S. 434, 71 L. Ed. 1139.

The simple facts of *Rhea v. Smith* are these: One Blanche A. Whitlock was the common source of title of both plaintiff and defendant, and in 1921 owned the property in dispute situated in Jasper County, Missouri. As plaintiff she brought suit in the United States District Court for the south division of the West District of Missouri, at Joplin, in Jasper County. On January 10, 1921, suit was dismissed and the costs adjudged against her in the sum of \$8,890.20.

On April 5, 1921, she conveyed the property in dispute to Thomas C. Smith for \$5,000.00. On July 22, 1921, execution was issued upon the judgment in the Federal Court, and under it the marshal sold part of the land for \$200.00 and conveyed it by his deed to the plaintiff, Rhea. In December, 1921, on another execution the balance of the land was sold and conveyed to Rhea for \$25.00.

The contention of Rhea was that the judgment of the Federal Court was a lien on the real estate from rendition; that his title was acquired through execution sales and was superior to any title secured by subsequent conveyance.

Smith, respondent in the case under consideration, contended that inasmuch as no transcript of the judgment had been filed in the office of the Clerk of the Circuit Court as required by Missouri law, the judgment was not a lien, and the conveyance to Smith by Whitlock, the judgment debtor, was free from its encumbrance.

The contention of Rhea was based upon the legislative acts of the State of Missouri which were adopted in an effort to comply with the requirement of Section 1 of the Congressional Act of 1888, which statutes read as follows:

"Sec. 1554. Lien of Judgment in Supreme Court, Courts of Appeals, and Federal Courts in this State.—Judgments and decrees obtained in the supreme court, in any United States district or circuit court held within this state, in the Kansas City court of appeals or the St. Louis court of appeals, shall, upon the filing of a transcript thereof in the office of the clerk of any circuit court, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

"Sec. 1555. Lien in Courts of Record Generally.—Judgments and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held.

"Sec. 1556. The Commencement, Extent, and Duration of Lien.—The Lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof as to that which was owned when the judgment

or decree was rendered. Such liens shall commence on the day of the rendition of the judgment and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered."

The Supreme Court of Missouri upheld the contention of Rhea.⁹ The opinion first recognizes that there is a difference in the position of the lien of the Federal court, and that of a state court, but decides that the lack of conformity is so slight as to make no material difference, and should not be regarded as a failure to conform. In the second place the court pointed out that the judgments of the Supreme Court of the state and of the courts of appeals of St. Louis and Kansas City could only become a lien on the real estate of a judgment defendant in a particular county, upon the filing of a transcript of the judgment in the Clerk's office where the land lies; these, in the minds of the Supreme Court of Missouri, showing conformity. In the third place the Missouri court recognized the element of time which could possibly elapse between the rendition of a judgment in the Federal Court and the recording of a transcript of the same. Such a lack of conformity between judgments of State and United States courts was dismissed with the thought that,

"it would take but a short time and a very little trouble to transcribe a judgment of a Federal Court sitting in a County Seat and to file it in the office of the County Clerk of the Circuit Court in the same place on the day of its rendition, and thus put it on par with the lien of any judgment of the State Circuit Court rendered on the same day."

Likewise the Supreme Court dwelled upon the significance attached to the purpose of Congress in repealing Article 3 of the Statute of 1888 as amended by the Statute of 1895 and previously referred to. The Missouri Court held that the repeal of that section indicates Congress' intention to permit the requirement in the State Statute that there should be some additional record of the Federal judgment in the State Court in the county where the Federal Court sits, without destroying the desired conformity.

Chief Justice Taft reversed the decision of the Supreme Court of Missouri upon the grounds that Sections 1555, 1556 and 1554 of the Missouri Statutes (*supra*) do not secure the needed con-

⁹ 308 Mo. 422, 272 SW 964.

formity in the creation, extent, and operation of the resulting liens upon land as between Federal and State court judgments.

Taking up the reasoning of the Missouri Court, the Supreme Court holds that the United States District and Circuit Courts cannot be put on the same basis as appellate State Courts in Missouri, having, like the Federal District Court, a larger jurisdiction than a county, and says:

"It is obvious, however, that the District Court of the United States is a Court of first instance of general jurisdiction just as the Circuit Courts of the various counties in Missouri are Courts of general jurisdiction of the first instance. The conformity required should obtain as between them and not as between the Federal Court and the State appellate courts."

With reference to the amount of time necessary to transcribe a judgment and record it, the court finds that there is a possibility that there would be no prejudice to the holder of a judgment, but that the risk to be run by the forgetfulness of attorneys of having this done, or otherwise, is a factor to be considered and makes a real difference between the provision for the lien of the Federal Court judgment and the instant attaching of a lien upon the rendition of the State Court judgment, without court action. With reference to the repealing of Section 3 of the Statute of 1888 as amended, the Chief Justice concedes, for the purpose of argument, that it was Congress' intention to permit the requirement in a State Statute that there should be some additional record with reference to Federal judgments; but decides that this does not show that, in order to secure conformity, there must not be a similar requirement for a formal record in the State Court of the county of its judgment to create a lien.

The decision may be well summarized in the following words of the Chief Justice:

"It is the inequality which permits a lien instantly to attach to the rendition of the judgment without more in the State Court which does not so attach in the Federal Court in that same county that prevents compliance with the requirement of Section 1 of the Act of 1888."

In so far as those principles are applicable to the situation in Indiana, we shall first look at the Statutes with reference to judgments. Sec. 659 (Burns Revised Statutes 1926) defines the lien of a judgment as follows:

"All final judgments in the Supreme and Circuit Courts for the recovery of money or costs shall be a lien upon real estate and chattels real liable to execution in the county where judgment is rendered for the space

of ten years after the rendition thereof, and no longer, exclusive of the time during which the party may be restrained from proceeding thereon by any appeal or injunction, or by the death of the defendant, or by agreement of the parties entered of record."

This act was in force September 19, 1881. Sec. 664 (Burns Revised Statutes 1926) provides for the recording of transcripts from the United States courts as follows:

"Any person interested may file, or cause to be filed, in the office of the clerk of any circuit court of this state a copy of any judgment rendered by the district or circuit courts of the United States in and for the district of Indiana, certified by the clerk of, and under the seal of, such court of the United States, and when so filed, the same shall be entered in the order-book and judgment docket in the same manner as judgments rendered in any such circuit court of the State of Indiana."

This Act was in force February 18, 1893. Sec. 665 (Burns Revised Statutes 1926) defines the lien of such a judgment as follows:

"Such judgment, from the time of filing the copy aforesaid, shall be a lien upon all the real estate, including chattels real, of the judgment debtor situated in the county where filed, as fully as if such judgment had been rendered therein."

Thus it will be seen that Indiana falls within the first classification previously referred to, the wording of the Statute being such that no advantage can be taken of the proviso in the Act of August 1, 1888, and no legislation having been had on the subject of judgment liens for nearly seven years previous to the Federal Act. A judgment in this State is a general lien from the date of rendition, and no provision is made for "registering, recording, docketing, or indexing" the same in order to make it a valid lien. Therefore Section 665 of the Indiana Statutes, which provides that a Federal judgment shall be a lien from the time of filing of the transcript of such judgment, is inoperative. In other words, any law passed by a State Legislature for the purpose of taking advantage of the privilege permitted by the 1888 Statute must put Federal liens exactly on a par with judgments rendered in State courts.

The word "exactly" is used advisedly, for it was decided in *Lineker v. Dillon*¹⁰ that a California law, which attempted to take advantage of the proviso of the Act of August 1, 1888, but

¹⁰ 275 Fed. 460, (1921). See also annotation *Rhea v. Smith*, 71 L. Ed. 1139 et seq.

which in part placed Federal judgments in a less favorable position than judgments in State courts, was inoperative.

The Federal Statutes creating the District court for Indiana, and as amended, provides that the State of Indiana shall constitute one judicial district to be known as the District of Indiana. For the purpose of holding terms of court, the district is divided into seven divisions. In 1925 provision was made for one additional judge for the District of Indiana.

It goes without saying, and has been repeatedly held, that the jurisdiction of a district court is coextensive with the jurisdiction of the judicial district and extends no further, save as Congress has expressly extended it. Likewise it has been repeatedly held that a district court has jurisdiction coextensive with its district regardless of the creation of division within the district or the multiplication of places of holding court.

In the case of *Rhea v. Smith*, Chief Justice Taft makes the statement that the judgment in the district court of Missouri attaches to all lands of the judgment debtor in the two judicial districts of Missouri. This is somewhat indefinite dictum not necessary to the decision and in the light of the Act of August 1, 1888, it is doubtful if the court intended to indicate that a Federal judgment became a lien throughout the State, rather than throughout the district, in which it was rendered.

In attempting to substantiate this dictum of the court, I have found one case¹¹ decided previous to the Act of August 1, 1888, which goes even further than the statement of the Chief Justice, and holds that the lien of a Federal judgment may extend beyond the territorial jurisdiction of the court rendering the decision. This opinion was rendered in a district court of Pennsylvania, but seems to stand alone and has not been followed by other courts. This opinion was based on the Federal Statute providing that all writs of execution upon judgments or decrees obtained in a Circuit or District court, in any State which is divided into two or more districts, may run and be executed in any part of the State but it is issuable and returnable to the court where the judgment was obtained. The court held that the right of lien depended on the right of execution and that therefore a judgment is a lien throughout the State. The Act of August 1, 1888, however, defines the territorial extent and regulates the lien of the judgment, and I believe there was no intent,

¹¹ *Prevost v. Gorrell*, Fed. case 11400 (1877).

and it was not necessary in the decision in *Rhea v. Smith* to give the judgment extra-territorial jurisdiction.

From these premises, we can reach only one conclusion, and that is that in Indiana, and all states, with similar statutes, the lien of a Federal judgment attaches to lands of the judgment debtor throughout the state; that is, coextensive with the boundaries of the judicial district. This is a troublesome and unfortunate situation. The state whose judgment laws are such that advantage can be taken of the proviso in the 1888 law but where no statute has been passed permitting the docketing and recording in exactly the same manner as state judgments are recorded, is laboring under the same practical difficulty.

Such a state of affairs tends to make titles to real estate unmerchantable, without the complete search indicated. As a matter of practice, such a search is out of the question, or causes such unnecessary delay as not to be undertaken. Where title insurance companies are operating, unless the search is made, or the same is expressly excepted from the policy, a liability arises which I am sure, none care to undertake. This chaotic state can only be overcome by remedial legislation in those states falling within the first class, heretofore mentioned, and additional legislation for those states falling in the second class. The situation demands the attention of every thinking attorney, to the end that it may be remedied at the earliest possible moment.