Washington Law Review

Volume 2 | Number 2

2-1-1927

Lien of Judgments of United States Courts in Washington

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LIEN OF JUDGMENTS OF UNITED STATES COURTS IN WASHINGTON.

AT common law pecuniary judgments and decrees do not become a lien, in the modern sense of the term, on property of the debtor, so that that effect is a statutory creation. Therefore, whether a judgment is a lien, how made so, to what interest or estate the lien attaches, when the lien commences, how long it endures, and all other particulars must be ascertained from the statutes of the proper jurisdiction.[1]

The fixation of the force and effect of judgments and decrees of courts is an attribute of sovereignty.[2] The United States and the several states being sovereignties, each has the power, within constitutional limitations, to declare that judgments of its own courts shall be a lien on the debtor's property within its jurisdiction, to prescribe the procedure therefor and all other particulars; and, of course, no one of these sovereignties can infringe upon this right of the others.[3] So it is within the power of Congress to impart to judgments and decrees of federal courts effect as a lien, wholly and absolutely independent of and without regard to the laws of any state;[4] and, therefore, Congress can provide that such judgments and decrees shall be a lien on the debtor's property in any state notwithstanding that judgments of the courts of the state do not so operate.[5] Indeed, Congress can, if it desires, give to judgments of federal courts consequences uniform throughout the United States.

Instead, however of enacting a law of that character, Congress has elected from the foundation of the government to pursue a policy of conforming the operative effect of pecuniary judgments and decrees of the federal courts in each state to that given by the law of the

[1] *Cooke v. Avery,* 147 U. S. 375, 13 Sup. Ct. 340, 37 L. ed. 209 (1893), *Morsell v. First Nat. Bk.,* 91 U. S. 357, 23 L. ed. 436 (1875) *United States v. Kendall,* 263 Fed. 126 (1920), *McAfee v. Reynolds,* 130 Ind. 33, 38, 28 N. E. 423, 30 Am. St. Rep. 194, 18 L. R. A. 211 (1891), *Noe v. Moutray,* 170 Ill. 169, 176, 48 N. E. 709 (1897), *In re Jackson Light & Traction Co.,* 265 Fed. 389 (1919), aff'd 269 Fed. 223 (1920).

[2] *Corwin v. Benham,* 2 Oh. St. 37 (1853).

[3] *Cooke v. Avery,* note 1, *supra; Blair v. Ostrander,* 109 Ia. 204, 80 N. W 330, 77 Am. St. Rep. 532, 47 L. R. A. 469 (1899) *Corwin v. Benham,* note 2, *supra; Dartmouth Savings Bk. v. Bates,* 44 Fed. 546 (1890), *Ward v. Chamberlain,* 2 Black 430, 17 L. ed. 319 (1863).

[4] See cases note 3, *supra.*

[5] *Rock Island Nat. B. v. Thompson,* 173 Ill. 593, 50 N. E. 1089, 64 Am. St. Rep. 137 (1898), *Wayman v. Southard,* 10 Wheat. 1, 6 L. ed. 253 (1825), *Bank v. Halstead,* 10 Wheat. 51, 6 L. ed. 264 (1825).

state to like judgments and decrees of its own courts of general jurisdiction.[6] This policy originated with the Act of September 24, 1789, chapter 20,[7] and conformity in the particular mentioned was established by section 34 thereof which declares:

> "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 of decision in trials at common law in the courts of the United States where they apply."[8]

This law was temporary, expiring by its terms at the end of the next session after which it was passed, but the policy so initiated was adhered to in the succeeding Act of May 8, 1792, chapter 36[9] This was followed by the Act of May 19, 1828, chapter 68,[10] the third section of which declares,

> "that writs of execution and other final process issued on judgments and decrees rendered in any of the courts of the United States, and the proceedings thereon, shall be the same, except in their style, in each state, respectively, as are now used in the courts of such state."

Successive decisions of courts, including the Supreme Court of the United States, held that the first two acts, usually called Process Acts, made the laws of each state "rules of decision" in respect of the lien of judgments and decrees of federal courts, and the Act of May 19, 1828, was deemed to have been passed to confirm those decisions.[11] In other words, it was the view that Congress, in passing the aforesaid several laws, adopted the law of each state in regard to the lien of judgments of its courts and made the same applicable to judgments of federal courts within the state, so that the judgment of a federal court became a lien on the debtor's property in all cases and under like circumstances as if rendered in a court of the state.[12] A question existing whether the state law fixing the duration of the lien was included among the state laws adopted, Congress, in settle-

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[6] *Ward v. Chamberlain,* note 3, *supra; Baker v. Morton,* 12 Wall. 150, 20 L. ed. 262 (1871).

[7] *Ward v. Chamberlain,* note 3, *supra.*

[8] Rev. Stat. § 721, U. S. Comp. St., (1916) § 1538.

[9] *Ward v. Chamberlain,* note 3, *supra.*

[10] *Ward v. Chamberlain,* note 3, *supra.*

[11] *Ward v. Chamberlain,* note 3, *supra; Ross v. Duval,* 13 Pet. 44, 10 L. ed. 60 (1839) *Beers v. Haughton,* 9 Pet. 329, 9 L. ed. 158 (1835).

[12] *Ward v. Chamberlain,* note 3, *supra; Baker v. Morton,* note 6, *supra, Brown v. Pierce,* 7 Wall. 205, 19 L. ed. 134 (1868) *Williams v. Benedict,* 8 How. 107, 12 L. ed. 1007 (1850) *Barth v. Makeever* 2 Fed. Cas. No. 1,069 (1868) *Cropsey v. Crandall,* 6 Fed. Cas. No. 3,418 (1851) *Koning v. Bayard,* 14 Fed. Cas. No. 7,924 (1829) *Lombard v. Bayard,* 15 Fed. Cas. No. 8,469 (1842) *Shrew v. Jones, 22* Fed. Cas. No. 12,818 (1840).

ment thereof, passed the Act of July 4, 1840, chaper 43,[13] which declares judgments and decrees of federal courts within any state shall cease to be liens in the same manner and at like periods as judgments and decrees of the courts of such state shall cease to be under the law of the state. Thus the law of each state governing the duration of the lien of judgments of its courts was adopted and applied to the lien of judgments of United States courts within the state.

The laws of the several states have not been and are not uniform in regard to the lien of judgments of the state courts.[14] Judgments are not liens in some states, but are in others. Where they are, generally the lien extends throughout the jurisdiction of the court rendering the judgment, usually a county, and provision is made for extension of the lien to other counties.[15] Furthermore, the statutes generally require that judgments of courts of the state, in order to be effective as a lien in any county, be registered, recorded, docketed, enrolled, indexed, or other entry be made by a designated county official in some book or record in his office in such county.[16] Neither Congress nor the courts has power to require these state officials to perform like functions with respect to judgments of federal courts,[17] and there have been and are no United States officers in every county to perform such duties.[18] Prior to the Act of August 1, 1888, hereinafter referred to, these state laws were held inapplicable to judgments of federal courts, since they would operate to restrict the jurisdiction of those courts by confining the lien of their judgments to the county in which rendered, and thereby give to suitors in the state courts a preference, because they would be able to extend the lien of their judgments to other counties in the mode prescribed by the state law, which suitors in the federal courts could not do. The rule was, therefore, adopted of making the judgment of a federal court a lien throughout the jurisdiction of that court without regard

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[13] U. S. Comp. Stat. (1916) § 1608; 4 Fed. Stat. Ann (2 ed.) p. 606; *Ward v. Chamberlain,* note 3, *supra.*

[14] *Dartmouth Savings Bk. v. Bates,* note 3, *supra.*

[15] See state statutes; *Dartmouth Savings Bk. v. Bates,* note 3, *supra.*

[16] See state statutes; 34 C. J. 576, § 885; *Dartmouth Savings Bk. v. Bates,* note 3, *supra.*

[17] *Cropsey v. Crandall,* note 12, *supra; Shrew v. Jones,* note 12, *supra; Dartmouth Savings Bk. v. Bates,* note 3, *supra; Lineker v. Dillon,* 275 Fed. 460, 473 (1921).

[18] *Darthmouth Savings Bk. v. Bates,* note 3, *supra.*

to county lines.[19] This rule gave suitors in the federal courts a preference over those in state courts as to the territorial extent of judgment lien, and worked a hardship on the public generally The mass of the people were accustomed to rely on the records in that office in the county, where the state law required records of judgments to be kept, as disclosing all judgments which were liens on property in the county, and were ignorant of the different rule applying to, and of the wide extent of, the liens of federal court judgments. The result was many persons who bought and paid for land on the faith of what the county records showed, afterwards lost their land by reason of an execution sale thereof in satisfaction of the lien of a judgment rendered by a federal court in some other county, often at a great distance from the county in which the land was situated.[20] To obviate these hardships and to put suitors in state and federal courts on an equal footing in respect to the territorial extent of the lien of their judgments in so far as Congress could do so, Congress passed the Act of August 1, 1888, chapter 729.[21] As originally enacted it read as follows:[22]

> "Section 1. The judments 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 judgments and decrees 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 judgments and decrees of the United States courts to be registered, recorded, docketed,

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[19] *Ward v. Chamberlain,* note 3, *supra; Cropsey v. Crandall,* note 12, *supra; Shrew v. Jones,* note 12, *supra, Rock Island Nat. Bk. v. Thompson,* note 5, *supra; Dartmouth Savings Bk. v. Bates,* note 3, *supra, Massingill v. Downs,* 7 How. 760, 12 L. ed. 903 (1849) *Ludlow v. Clinton Line R. Co.,* 1 Flip. 25, 15 Fed. Cas. No. 8,600 (1861) *Lineker v. Dillon,* note 17, *supra, Metcalf v. Watertown,* 153 U. S. 671, 678, 14 Sup. Ct. 947, 38 L. ed. 861 (1894) *Conard v. Atlantic Ins. Co.,* 1 Pet. 386, 7 L. ed. 189 (1828) *Barth v. Makeever* note 12, *supra; Carroll v. Watkins,* 5 Fed. Cas. No. 2,457 (1870) *United States v. Duncan,* 25 Fed. Cas. No. 15,003 (1850) *United States v. Scott,* 27 Fed. Cas. No. 16,242 (1878) *Lombard v. Bayard,* note 12, *supra.*

[20] *Dartmouth Savings Bk. v. Bates,* note 3, *supra, Lineker v. Dillon,* note 17, *supra.*

[21] U. S. Comp. Stat. (1916) § 1606; 4 Fed. Stat. Ann. (2 ed.) p. 608.

[22] Subsequent changes in this act are hereinafter fully presented and discussed.

indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state.

"Section 2. That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

"Section 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 Louisana 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."

In passing this law Congress adhered to its historical and consistent policy of conforming federal to state court judgments in each state. The first clause of section 1 (down to the word "Provided,") merely declared in express words the rule to be that which it theretofore had been determined to be by implication from the Process Acts. But the rest of section 1 established a new rule, and sought a greater measure of conformity. While, as heretofore stated, neither Congress nor the courts could make the state mode or system of recording or docketing judgments applicable to judgments of United States courts, yet Congress could give consent to its application and any state could avail itself thereof to make its system apply. This is the policy underlying the provisions of this federal act, more particularly the proviso in section 1. The Act does not authorize or permit a state to prescribe a system for the creation and evidencing of the liens of judgments of federal courts different from that prescribed for liens of judgments of the state's own courts. No discrimination is to be permitted.[23] Nor is the effect as liens of judgments and decrees of United States courts in any state made to depend on compliance by any state with the condition in the proviso.[24] If it were, then a state could, by refusing to enact a law of the character mentioned in the proviso, prevent judgments of federal courts from being a lien notwithstanding state court judgments had that result.

Section 1 is inclusive of all judgments and decrees of United States courts which have effect as liens. But section 3 created an exception

[23] *Lineker v. Dillon,* note 17, *supra.*
[24] *Lineker v. Dillon,* note 17, *supra.*

from the proviso in section 1, since by section 3 Congress withheld from the several states the right, otherwise granted by the proviso in section 1, to require federal court judgments and decrees to be conformed to the state system of recording or docketing judgments in order to be effective as liens in the county in which rendered. In other words, the judgment or decree of a federal court in any state should be a lien on the debtor's property in the county wherein rendered "in the same manner and to the same extent and under the same conditions," by analogy, as if it were a judgment of a court of general jurisdiction of the state, without, however, being registered, recorded, docketed indexed, or the like, in any state office in that particular county as a judgment of the state court should be under the state law [25]

One may infer from section 3 that Congress thought that the records of a federal court in the county where it sat and rendered judgments afforded a known and convenient means of information of the existence of judgment liens of that court on property in that county But the fact, apparently overlooked, was that United States courts held sessions and rendered judgments in counties where only temporary offices were maintained, no records of judgments being there kept permanently, and no means being provided, therefore, for the ascertainment in such counties of the liens of such judgments on property therein. It is an entirely reasonable inference that it was that condition of affairs which induced Congress to amend section 3 by the Act of March 2, 1895.[26] This latter act was a re-enactment of section 3 but with the addition thereto of a final clause reading,

> "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."

Manifestly, this amendment reduced the exceptions from the proviso in section 1, thereby enlarging its scope, since section 3 as amended excepted from the proviso in section 1 only those judgments of United States courts rendered in counties in which the clerks of those courts maintained permanent offices having records of such judgments. Congress apparently still adhered to the view that such records in those counties afforded a known and convenient means for the ascertainment of the existence of the lien of federal court judgments rendered therein.

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[25] *In re Jackson Light & Traction Co.*, note 1, *supra.*
[26] Act of March 2, 1895, c. 180, 28 Stat. at L. 814.

As thus amended the Act of August 1, 1888, remained unchanged until the Act of August 17, 1912,[27] which, by a provision therein, took effect January 1, 1913. This act expressly and specifically repealed section 3 of the Act of August 1, 1888. Next followed the Act of August 23, 1916,[28] which expressly and specifically repealed section 3 of the Act of August 1, 1888, *as amended by the Act of March* 2, 1895. And this Act of August 23, 1916, contained the provision that it should take effect on January 1, 1917 What was the result of the repeal Act of August 17, 1912, need not be discussed, not being material to our inquiry, since the subsequent Act of August 23, 1916, on taking effect January 1, 1917 (long prior to the coming into existence of any existing judgment lien in this state, Washington), eliminated section 3, thereby abolishing the express exceptions therein from the proviso in section 1. Therefore, since January 1, 1917, only sections 1 and 2 of the Act of August 1, 1888, have been in force and effect.

Let us now consider the Washington statute[29] on this matter, which (material part) reads:

> "The real estate of any judgment debtor and such as he may acquire, shall be held and bound to satisfy any judgment of the district or circuit court of the United States, if rendered in this state, or of the superior or supreme court * * * for the period of five (5) years (made six by later act)[30] from the day on which said judgment was rendered, and such judgments shall be a lien thereupon to commence as follows: Judgments of the superior court of the county in which real estate of the judgment debtor is situated from the date of the entry thereof. Judgments of the district or circuit courts of the United States, if rendered in this state; judgments of the supreme court; judgments of the superior court of any county other than the county in which said judgment was rendered, from the time of the filing and indexing of a duly certified transcript or abstract of such judgments as provided by this act, with the clerk of the county in which said real estate is situated."

This state act was passed (March 3, 1893) after the enactment of the federal Act of August 1, 1888, and, no doubt, intended as a compliance therewith. But, by its terms it included those judgments excepted by section 3 of the federal law; and to the extent that it required

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[27] Act of August 17, 1912, c. 300, 37 Stat. at L. 311.
[28] Act of August 23, 1916, c. 397, 39 Stat. at L. 531.
[29] Pierce's 1926 Code, § 8111, Rem. Comp. Stat. § 445, Laws of 1893, p. 65.
[30] Pierce's 1926 Code, § 8163; Rem. Comp. Stat., § 459.

"the filing and indexing of a duly certified transcript or abstract" of a federal court judgment in the county clerk's office of the county wherein the judgment was rendered, this state law was inoperative and of no effect, (but not otherwise void),[31] while section 3 was in force. It operated upon federal judgments brought within the scope of section 1 by the aforementioned amendment of March 2, 1895, and had full operative effect after the repeal of section 3, provided that it does not fail to comply in some essential particular with the terms and conditions of the federal law,—the Act of March 1, 1888, as now in force. Does this state statute comply therewith?

The Washington statute declares:

1. The liens of judgments and decrees of all courts, state and federal, subsist for six years from date of rendition, and therefore, establishes full and complete equality as to duration. A judgment is "rendered" when the court announces its decision or signs the written judgment.[32]

2. Judgments of the "superior court of the county" wherein the debtor's real estate is situated commence to be a lien from "date of the entry thereof." A judgment is entered when the formal written judgment, signed by the judge, is *filed* with the clerk.[33] This gives judgments of state superior courts effect as a lien in the county wherein rendered, that is, within the territorial jurisdiction of the court, from date of entry of the judgment.

3. Judgments of all federal courts rendered in the state, judgments of the state Supreme Court, and judgments of superior courts in counties other than wherein rendered operate as a lien "from the time of filing and indexing of a duly certified transcript or abstract" thereof "with the county clerk of the county" in which the debtor's real estate is situate. By this provision complete equality is given all the judgments referred to.

The only apparent differentiation between state court and federal court judgments by this Washington statute is in the rules giving judg-

[31] Statutes requiring federal court judgments to be docketed, etc., enacted prior to the Act of August 1, 1888, held merely inoperative until that federal law took effect, then becoming effective; *Dartmouth Savings Bank v. Bates*, note 3, *supra*, *Blair v. Ostrander* note 3, *supra*; *Washington First Nat. Bk. v. Clark*, 55 Kan. 219, 40 Pac. 270 (1895).

[32] *Quarales v. Seattle*, 26 Wash. 226, 66 Pac. 389 (1901) *Barthrop v. Tucker*, 29 Wash. 666, 70 Pac. 120 (1902) *State ex rel. Brown v. Brown*, 31 Wash. 397, 72 Pac. 86, 62 L. R. A. 974 (1903) *Morley v. Morley*, 130 Wash. 77, 226 Pac. 132 (1924).

[33] See cases note 32, *supra*.

ments effect as a lien in the county wherein rendered. In such cases the judgments of the superior court in and for the county take effect from date of entry; but judgments of federal courts from the time of filing and indexing a certified transcript or abstract thereof in the office of the county clerk. This latter rule applies to judgments of the Supreme Court, so that federal court and Supreme Court judgments are subject to the same requirements.

The only problems, therefore, which the statute presents relative to the matter under discussion are: Whether the requirement that a certified transcript or abstract of a federal court judgment be filed with the clerk of the county in which the judgment is rendered is authorized by the federal Act of August 1, 1888? Whether there is discrimination against judgments of federal courts in the requirement that a certified transcript or abstract thereof be filed with the clerk of the county in which the judgments are entered and giving them effect as a lien from the date of filing and indexing, while judgments of a superior court are a lien in the county where rendered from date of entry thereof with the clerk?

The provision last mentioned does not appear to effectuate any actual discrimination. All judgments or transcripts of judgments must be indexed,[34] and though a judgment of a superior court is declared a lien within the jurisdiction of that court from the time of its entry, yet it is doubtful if it is against a purchaser unless indexed. This is the rule in other jurisdictions,[35] and appears to be the law in this by reason of the analogy of the judgment index system to that for deeds, mortgages, and other title instruments, both systems having the same object, and the rule which obtains in this state (Washington) relative to the latter system, *viz.*, that an instrument though duly filed or recorded does not impart constructive notice or affect purchasers unless indexed.[36]

Again, there is no priority in Washington between or among judgments or transcripts of judgments entered or filed the same day.[37] All

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[34] Pierce's 1926 Code, §§ 8115, 8116; Rem. Comp. Stat. §§ 453, 446.

[35] *Gilbert v. Berry,* 190 Ia. 170, 180 N. W 148 (1920), *State Savings Bk. v. Shinn,* 130 Ia. 365, 106 N. W 921, 114 Am. St. Rep. 424 (1906) *Jones v. Currie,* 190 N. C. 260, 129 S. E. 605 (1925).

[36] *Ritchie v. Griffiths,* 1 Wash. 429, 25 Pac. 341, 22 Am. St. Rep. 155, 12 L. R. A. 384 (1890). The rule stated in this case is the settled law in Iowa; *Barney v. McCarty,* 15 Ia. 510, 83 Am. Dec. 427 (1864), *Koch v. West,* 118 Ia. 468, 92 N. W 663, 96 Am. St. Rep. 394 (1902). Hence, the holding in Iowa that a judgment must be indexed to be a lien as against *bona fide* purchasers, not being founded on a statute expressly so declaring, but on the object of such indexing, is a sound precedent in this (Washington) state.

[37] *Goetzinger v. Rosenfeld,* 16 Wash. 392, 47 Pac. 882, 38 L. R. A. 257 (1897).

are equal. Hence, the fact that a federal court judgment creditor may be subjected, after entry of his judgment with the clerk of the federal court, to what need be but a brief delay to obtain a certified transcript or abstract of his judgment to file with the county clerk in the county in which that judgment is rendered, cannot occasion him loss of priority, except in the possible rare instances where the federal court might render judgment in too brief a time before the closing of the county clerk's office to permit that act to be performed. And even such instances would not be of consequence unless there were one or more judgments entered or transcripts of judgments filed against the debtor on that same day

The issue presented has arisen and been determined in two cases, both of which support the view that the Washington statute is valid in the particular under consideration.

In Mississippi, the clerk of each state circuit court is required to keep a judgment roll, in which, within twenty days after the adjournment of each term of court, he must enroll all final judgments rendered at the term, in the order in which entered in the minutes of the court. And the statute[38] (material part) declares:

> "Sec. 607 A judgment so enrolled shall be a lien upon and bind all the property of the defendant within the county where so enrolled, from the rendition thereof, and shall have priority according to the order of such enrollment * * *, and the judgment shall not be a lien on any property of the defendant thereto unless the same be enrolled, but in counties having two districts a judgment shall operate as a lien only in the district or districts in which it is enrolled."
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> "Sec. 609. A judgment or decree rendered in any court of the United States or of this state shall not be a lien upon or bind any property of the defendant situated out of the county in which said judgment or decree was rendered, until the plaintiff shall file in the office of the clerk of the circuit court of the county in which such property may be situated an abstract of such judgment or decree, certified by the clerk of the court in which the same was rendered, * * * and such judgment or decree shall, from the date of its enrollment, be a lien upon and bind the property of the defendants within the county where it shall be so enrolled."
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> "Sec. 610. Judgments and decrees, at law or in equity, rendered in any court of the United States held within this state, or in the supreme court or the court of chancery of this state, shall not be a lien upon, or bind the property of the de-

[38] Hemingway's Miss. Code (1917) §§ 606, 607, 609, 610.

> fendant within the county in which such judgments or decrees may be rendered, until an abstract thereof shall be filed in the office of the clerk of the circuit court of the county and enrolled on the judgment roll in like manner and on the same terms hereinbefore provided, and such judgments and decrees shall bind the property of the defendants from the date of such enrollment, in like manner as judgments and decrees rendered in a different county and so enrolled."

By this statute judgments become liens upon and have priority according to their enrollment. In order that judgments and decrees of United States courts, of the state court of chancery and of the Supreme Court be liens within the county wherein rendered, or in any other county, a certified abstract thereof must be filed with the circuit court clerk of the county and enrolled on the judgment roll of his office. But judgments and decrees of the circuit courts become liens in the county where rendered by and from the time of enrollment, without abstracts being filed, the latter being required, as well as enrollment, only to extend the lien to other counties. Here, then, is a statute with provisions similar in character to those in the Washington statute, and making a like differentiation between federal court and state circuit court (equivalent to superior court in Washington) judgments in regard to the mode of giving them effect as liens in the county where rendered.

In Mississippi, the issue was presented to the United States District Court (S. Div.)[39] whether a judgment of a federal court (rendered May 10, 1918) which had been promptly enrolled in the office of the clerk of that court, but not enrolled as required by the state law in the office of the clerk of the circuit court of the county in which the judgment was rendered and in which the debtor's property was situated, was a lien. The judgment creditor conceded that, under the act of 1888, he had no lien on any property outside the county where the judgment was rendered, but contended that the enrollment of the judgment in the office of the clerk of the United States District Court was sufficient to create a lien on the debtor's property within that county. But the District Court denied that contention, saying it rendered meaningless the Act of August 23, 1916, repealing section 3 of the Act of August 1, 1888, as amended by the Act of March 2, 1895, and that:

> "The court must give effect to section 3, while in force, and attribute to Congress a substantial reason or motive for repealing the same."

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[39] *In re Jackson Light & Traction Co.*, note 1, *supra.*

And, further, of the requirement of the state law that an abstract of a federal judgment be filed and enrolled in the office of the state circuit court clerk's office in the county where such judgment is rendered, the Court said.

> Section 3 obviated the necessity of such enrollment, but the repeal of section 3, * * * which became effective January 1, 1917, rendered the same procedure as to a federal court judgment necessary in the same county where the judgment rendered as was required in other counties of the state in order to obtain a lien."

Accordingly, the judgment was held not to be a lien.

On appeal, the Circuit Court of Appeals[40] (Fifth Circuit) sustained the decision of the District Court. In its decision that appellate court reviewed the federal and state statutes (heretofore quoted), and of these said.

> "The purpose of the foregoing provisions is quite plain. They provide that judgments entered on the minutes of the circuit court must be enrolled on the judgment roll in the order of their rendition within 20 days after the adjournment of the term of court wherein rendered, and, when so enrolled, shall be a lien from the rendition thereof, and shall have priority according to the order of enrollment against the judgment debtor and those claiming under him. A judgment has no lien unless enrolled. In every case, except that of a judgment in the court on whose records the enrollment shall take place, even in the case of a circuit court of a different judicial district in the same county, a judgment has a lien only from the time when enrolled.
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> "As to every other state, or United States, court judgment, where the same is not rendered in the court where the enrollment takes place, it is the enrollment that gives the lien and fixes its date. That act is the first entry of record in the circuit court clerk's office of the existence of the judgment, not so in the case of judgments rendered in such circuit court. There the minutes in the clerk s office would show their existence, and the 'judgment roll' but indexes the existing record, but even then the priority is to be 'in the order of such enrollment.'
>
> "We cannot see, therefore, where there is any discrimination against the United States courts when they are put on the same footing with the state supreme court, and every other state court at law or in equity where the judgment is not rendered in the same court on whose judgment roll an ab-

[40] *In re Jackson Light & Traction Co.*, note 1, *supra.*

stract must be enrolled in order to give it a lien on the property of the judgment debtor."

The statute of Missouri declares:[41]

> "Section 1554. 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, situated in the county in which such transcript is filed."
> "Section 1555. 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, situated in the county for which the court is held."
>
> "Section 1556. 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."

In a case in that state, a United States District Court having rendered a pecuniary judgment, a transcript thereof was not filed in the office of the clerk of the Circuit Court of the county wherein the judgment was rendered as required by the state law to create a lien on the debtor's property in that county. The debtor owned property in that county, which, after rendition of the judgment, she sold and conveyed to defendant Smith. Thereafter, the judgment creditor caused an execution sale to be made on his judgment of the property to defendant Rhea, who obtained the marshal's deed thereof. Thereafter, Rhea instituted suit against Smith to determine title to the land, claiming the judgment was a lien from the time of its rendition, and that his title under the execution sale was superior, therefore, to any title of Smith. From a judgment for the latter, Rhea prosecuted the appeal under consideration.

The Supreme Court of Missouri observed in this case,[42] that there are two federal districts, and three state courts of appeal districts in that state, that a judgment of the Supreme Court of that state or of the Kansas City Court of Appeals would not be a lien on property within the county where rendered, unless a transcript thereof be

[41] Quoted in *Rhea v. Smith,* 308 Mo. 422, 272 S. W 964 (1925).
[42] *Rhea v. Smith,* note 41, *supra.*

filed in the office of the clerk of the circuit court of that county, as the statute requires. Therefore, in that respect, United States courts

> "are put on the same basis as the state courts having a territorial jurisdiction more than the county."

To the argument of appellant that section 1554 *supra* of the state law conflicted with the federal statute, the court replied, it would if section 3 of the Federal Act of August 1, 1888, had not been repealed. The court said.

> "The act of Congress must be construed according to its terms set out in sections 1 and 2, it must be construed with reference to the repeal of section 3, and some significance must be attached to the act of Congress in repealing that section. Without that section, transcripts of judgments of a federal court were required to be filed in the county records where transcripts of judgments in state courts were required to be so filed. Section 3 relieved a judgment creditor in the federal court from that requirement in a certain instance. The repeal of the section shows an intent to make that requirement.
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> "Having in view the purpose of repealing that provision of the federal statute, we must construe its remaining provisions. It provides that the judgments of federal courts, within the 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 and decrees had been rendered by a court of general jurisdiction of such state.' It is evident that it was the intention by that statute to place judgments of federal courts in the same position as judgments of the state court, and not to give them any advantage. The lien provided for is on property 'throughout the state' in the same manner as judgments of a court of general jurisdiction in the state. That would, of course, apply to *all* property in the territorial jurisdiction of the court. When a judgment in the federal court is rendered there is no distinction as to where the lien applies, between the county where the court happens to sit and any other county within the territorial jurisdiction of the court.
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> "The appellant's argument proceeds upon the theory that because the circuit court is the only state court of *general jurisdiction,* and because the federal district and circuit courts are courts of general jurisdiction, the filing of the transcript in the county where the court sits may be omitted in the case of a federal court the same as in the state circuit court. Section 1555, R. S. 1919, does not provide for such liens when a judgment is rendered by a court held *in* the county It says that a judgment rendered by a court of

> record shall be a lien on the real estate of the person against whom it is rendered, situated in the county *for which,* the court is held, not 'in' which."

The court observed that a federal court sitting in one county is not held *"for"* that county any more than for any other county in its district. A federal court may hear a case in one county and render its judgment in another; or hear part of the evidence in a cause in one county, another part in some other county, render judgment in a third, and pass upon a motion for rehearing in a fourth. A federal court sits for its entire district, one county of which is of as much importance as any other. And the Missouri Supreme Court then declared.

> "Apparently the intention was to place the federal courts on an equality with the state courts of similar territorial jurisdiction. Evidently it was the policy of the law to have one definite place where a person might go to ascertain whether there are any judgment liens affecting real estate in which he might be interested, he would not have to go to several places. To say that, in order to place the federal district court on equality with the state court, a judgment of that court must be a lien in the county where it is rendered without filing the transcript with the clerk of the circuit court, is to give that court an advantage over the state circuit courts of every other county in that district. In the Southern Division of the Western District of Missouri, parties litigant come from counties in every part of the division. Parties to litigation arising in a county distant from where the court is held, upon rendition of a judgment would have a lien in the county where the court is held, whereas the same party, if the suit were pending in the state court in the county where the cause originated, would not have any such lien until a transcript of the judgment was filed. For instance, suppose a party in Lawrence county should sue a non-resident in the federal court, and judgment should be rendered in Jasper county where the property of the judgment defendant is. On the theory of the appellant, that judgment would be a lien without the filing of a transcript. Whereas, if another suitor in Lawrence county, having the same kind of a case, should sue in the state court of Lawrence county and obtain a judgment at the same time, he could not have a lien on the property of the defendant in Jasper county, until he had first filed his transcript. In providing for equality between the judgment of federal courts and state courts, so far as the lien is concerned, the endeavor was to place them upon an equality with all the state courts of general jurisdiction, and not merely with one particular state court.

> "The alleged discrimination in favor of the state court against a federal court, sitting in the same county, is only apparent. The provision that the lien of a judgment shall begin from its rendition means on the same day of its rendition. It would take but a short time to transcribe a judgment of the federal court and file it with the clerk of the state court on the day of its rendition, and thus put it on par with the judgment of the state court rendered on the same day"

So the judgment in issue was held not to have been a lien on the debtor's property involved in the case.

That Congress itself considered section 1 of the Act of August 1, 1888, would authorize any state to require a federal court judgment to be docketed and a transcript thereof to be filed in a state office in the county in which rendered is evidenced by certain facts, *viz.*. (1) By the fact that the exercise of that authority was expressly inhibited in section 3. Had Congress considered that section 1 did not confer such power, the inhibition on the exercise of it would have been deemed unnecessary (2) By the amendment of section 3 by the act of 1895. By this amendment Congress excluded from section 3 all judgments rendered in counties in which a federal court clerk did not keep a permanent office with a judgment record open at all times for public inspection. The plain object of this amendment was to remedy the hardships arising from the existence of liens of federal court judgments on property in those counties without record evidence therein of such liens. It is manifest that Congress considered the provisions of section 1 applied to the judgments so excluded from section 3, since otherwise the object or purpose of the amendment would not have been accomplished, no other statute having been applicable or made so.

Furthermore, to hold that the repeal of section 3 as amended did not operate to make section 1 applicable to the judgments referred to in section 3 as amended,—did not abolish the inhibition imposed by the latter section,—would not only be inconsistent with the facts above noted, but would restore the condition which the act of 1895 was passed to remedy For such holding would now give, under the Act of August 1, 1888, as it now stands, those judgments of a federal court rendered in a county in which the clerk of that court has no permanent office with records of judgments, effect as a lien on property in that county without any record therein of such lien. This is necessarily so, because the Act of August 1, 1888, as it now stands does not differentiate between judgments of a federal court

rendered in a county wherein the clerk of that court has a permanent office and those rendered in a county in which he does not. Such differentiation was made by the amendment of 1895 only, and was abolished by the repeal of section 3 so as amended. The holding mentioned, therefore, cannot with reason be sustained.

It appears, therefore, that the repeal of section 3 ought to be construed as evidence of the intention of Congress that section 1 should apply to all federal court judgments; that to require the docketing of a judgment of a United States court, or the filing of a transcript thereof, in any state office in the same county in which the judgment is rendered, in order that it be a lien on property therein, is within the scope of the authority granted by section 1.[43]

The written judgment of a court is an essential part of the records of that court, and cannot be properly used to make a record elsewhere. For such purpose a transcript or abstract, certified as to authenticity and correctness, is necessary. This is the available means to effectuate the record of a federal court judgment in a state office in the county wherein the judgment is rendered. To require, therefore, the use of such means for that purpose in order to establish the lien of such judgments cannot be said to be a discrimination against those judgments on the ground that judgments of state courts rendered in the same county become a lien on their entry. The difference being merely in the incidental means required to bring about the conformity sought by the Act of August 1, 1888, it does not appear to be material, since it does not defeat conformity to the record system applicable to all judgments, nor defeat equality of liens between creditors to federal and state court judgments.

The Washington law does not bring about the discrimination which rendered a former California statute wholly invalid.[44] Under that statute state court judgments became a lien in the county where rendered on being docketed, and in other counties on filing a transcript with the county recorder. But transcripts or copies, possibly both (the statute was ambiguous) of federal court judgments, certified by the clerk of the court, had to be filed with and docketed by the county clerk, and also filed with, recorded and indexed by the county recorder, in every county, even that in which the judgment was rendered, and the judgment became a lien "from such recording."

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[43] This repeal stressed as showing such intent in *In re Jackson Light & Traction Co.*, note 1, *supra*, and *Rhea v. Smith*, note 41, *supra*.

[44] *Lineker v. Dillon*, 275 Fed. 460, 473 *et seq.* (1921).

Manifestly, this statute did not conform federal court judgments to the rules and requirements governing the creation and evidencing of state court judgment liens. The former judgments were not put on an equal footing with the latter. Hence, the statute was held inapplicable to judgments of the United States courts.[45]

In conclusion the writer submits that the provisions of the Washington statute prescribing the mode by which judgments of courts of the United States may be given effect as liens are valid, and must be complied with to accomplish that result.

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[45] *Lineker v. Dillon*, note 44, *supra*.

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