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THE NEW JUDGMENT LIEN LAW

Among the acts passed at the recent session of the Washington legislature, and which became effective June 12, 1929, is one entitled "An Act relating to judgments, their duration, lien, assignment and satisfaction and repealing certain acts relating thereto."[1] This act purports to be a comprehensive and complete declaration of the law upon the subject-matter set forth in the title, to apply to judgments of both state and federal courts, and to repeal existing laws relating to the matters covered by the act.

The principal purpose of its enactment was to repeal the existing provisions of the code relating to the lien of judgments of federal courts which were clearly invalid in the light of the decision of the Supreme Court of the United States in the case of *Rhea v. Smith*,[2] and to substitute therefor provisions deemed valid and applicable. The problem to be considered herein is whether the new act accomplishes that particular purpose or object.

It is, of course, a fundamental principle that the force and effect of judgments and decrees depends upon the will of the sovereignty [3] The United States and each of the states are sovereign powers, and have the power, subject to constitutional limitations, to declare judgments of its courts shall be liens and to fix the particulars thereof, and no one of these sovereignties can interfere with the exercise of this right by the others within their respective jurisdictions.[4] So it is within the power of Congress to declare the judgments of federal courts shall be liens and to prescribe the time of commencement, mode of creation, and other details as it may see fit, independent of and without regard to the laws of any state.[5] Instead of declaring that judgments and decrees of federal courts shall be liens according to prescribed rules uniformly applicable to

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[1] Laws of Wash. 1929. Chap. 60, p. 56 et seq.

[2] 274 U. S. 434, 71 L. ed. 1139, 47 Sup. Ct. 698 (1927).

[3] *Corwin v. Benham*, 2 Oh. St. 36 (1853).

[4] *Cooke v. Avery*, 147 U. S. 375, 13 Sup. Ct. 370, 37 L. ed. 209 (1893) *Ward v. Chamberlain*, 2 Black. 430, 17 L. ed. 219 (1863) *Dartmouth Savings Bk. v. Bates*, 44 Fed. 546 (1890) *Blair v. Ostrander*, 109 Ia. 204, 80 N. W. 330, 77 Am. St. R. 532, 47 L. R. A. 469 (1899) *Corwin v. Benham*, note 3 *supra*.

[5] Same cases as note 4.

federal courts' judgments throughout the United States, Congress has elected to adopt the law of each state and to make the same apply to judgments of federal courts within the state.[6]

By section 1 of the existing act Congress consented that each state might make applicable to the lien of federal court judgments the rules governing the time of commencement and mode of creation of the lien of judgments of courts of the state of first instance of general jurisdiction. So whether a state law upon that matter is valid or not, depends upon whether it complies with the condition imposed by the federal law, whether the state act conforms the lien of federal court judgments to the lien of judgments of the state's courts of first instance of general jurisdiction, or differentiates between the judgments of the two sets of courts in that matter.

In *Rhea v. Smith, supra,* the Supreme Court of the United States had under consideration this state of facts A pecuniary judgment had been rendered by the federal district court in Jasper county against one Whitlock, who owned land in that county Afterwards, Whitlock sold and conveyed the land to Smith. Subsequently an

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[6] Act of August 1, 1888; U. S. Comp. Stat. 1916, sec. 1606, Fed. Stat. Ann. 2 ed., p. 608; 25 Stat. at L. 357, which reads as follows: "Sec. 1. The judgment and decrees rendered in a circuit court 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, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state.

"Sec. 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."

When the foregoing act was originally enacted, it also contained a third section which read as follows: "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" This section was amended by an act approved March 3, 1895, 28 Stat. at L. 813, 814, ch. 180, which added after the last word "county" to the words "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." This section 3, as so amended, was repealed January 1, 1917, 39 Stat. at L., p. 531, ch. 397.

execution issued on the judgment, the land was levied upon, and an execution sale thereof was made to Rhea. This resulted in the suit of *Rhea v. Smith,* wherein Smith contended the judgment against Whitlock had not been a lien on the land when he, Smith, bought it, for the reason a transcript of the judgment had not been filed in the office of the clerk of the circuit court of Jasper county as required by the Missouri statute governing the lien of federal court judgments. The Supreme Court of Missouri held the statute valid and applicable and, therefore, decided in favor of Smith. On appeal, the Supreme Court of the United States overruled the decision of the Missouri court, holding the Missouri statute[7] invalid.

The court said.

> "The Missouri statutes prescribe that judgments rendered by any state 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, and the lien shall commence on the day of the rendition of the judgment and shall continue for three years. They further provide that judgments obtained in the Supreme Court of the state, in any federal court held within the state, and in the Court of Appeals of either Kansas City or St. Louis, shall upon the filing of a transcript 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.
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> "It is very clear from this recital that a lien of a judgment of the federal court upon lands in the county in which

[7] The Missouri statutes quoted in the decision, read as follows: "Sec. 1554. Lien of judgment in Supreme Court, Courts of Appeals, and Federal Courts in this State. Judgments and decrees in the Supreme Court, in any United States District or Circuit Court held within this state, in the Kansas City Court of Appeals, or in 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 the Duration of the 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 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 parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered."

it sits, if we give effect to the state statute, cannot be a lien unless a transcript of the judgment shall be made and filed in the office of the clerk of the circuit court of the state in that county, whereas no such transcript of a judgment in the state circuit court is required to create a lien for its judgment, but the lien takes effect the minute that it is entered on its record. Not only is this true with respect to the state circuit court of the county, a court of general jurisdiction, but it is also true of judgments in the county court and in the probate court of that county which are courts of record.

"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.

"Reference is made by the state Supreme Court to *In re Jackson Light & Traction Co.* (C. C. A. 5th), 269 Fed. 223, a decision of the Circuit Court of Appeals of the Fifth Circuit concerning a judgment rendered in Mississippi, holding that the required conformity was furnished by the state statute. The statute required the enrollment of a judgment in the state court of general jurisdiction in order that it might become a lien upon the property in the county of its jurisdiction, only if enrolled twenty days after the term of entry of the judgment. The judgments of the federal court, the state Supreme Court and the chancery courts also become liens from the time they are enrolled in the county where the land lay We think that case may well be distinguished from this one because necessity of enrollment was exacted as to every court.

"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 the Mississippi case, above referred to, there was the same formality of enrollment within twenty days after the judgment in order to secure a lien in both the state court and the federal court in the county where both sat.

"We think that the three sections, 1555, 1556 and 1554, do not secure the needed conformity in the creation, extent and operation of the resulting liens upon land as between federal and state court judgments. The lien of federal court judgments in Missouri therefore attaches to all lands of the judgment debtor lying in the counties within the respective jurisdictions of the two federal District Courts in that state. This requires a reversal in this case of judgment of the Supreme Court of Missouri. The cause is

remanded for further proceedings not inconsistent with this opinion."

For a clear understanding of the problem under consideration, let us consider the provisions of the Washington statute[8] which was repealed by the new act and the invalidity thereof in the light of the *Rhea v. Smith* decision.

Under the former Washington law, a judgment became a lien on the debtor's property situate in the county in which the judgment was rendered, "from the date of entry thereof" where rendered by the superior court of that county, but "from the time of the filing and indexing of a duly certified transcript or abstract" of the judgment "with the county clerk of the court" where the judgment was rendered by a federal court in that county The statute made a marked differentiation as to the time of commencement and mode of creation of lien as between judgments of the superior court and of the federal court rendered in the same county, and between judgments of the superior court in the county of rendition and judgments of a federal court rendered in some other county The only conformity effected was as to time of commencement and mode of creation of lien of judgments of superior and federal courts in counties other than those of rendition.

In *Rhea v. Smith, supra,* it is clearly stated that to be valid a state law must conform the lien of federal district court judgments to the lien of the state's courts of first instance of general jurisdiction.[9]

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[8] Sess. L. 1893, p. 65, ch. 42. That statute declared: "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, or any judgment of a justice of the peace, for the period of five (5) years 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 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, and the judgments of a justice of the peace, 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 county clerk of the county in which said real estate is situated."

[9] Of this latter class are the circuit courts in Missouri and the superior courts in Washington.

It is interesting to compare the provisions of the Missouri statutes and of the formerly existing statutes of Washington governing the lien of the judgments of federal courts and of the state's courts of the first instance of general jurisdiction in the county of RENDITION. In Missouri judgments of the circuit court are a lien from time of redemption; judgments of the federal district court are a lien from the time of filing a transcript thereof

Manifestly, the former Washington law was subject to the disapproval accorded the Missouri law by the Supreme Court of the United States in *Rhea v. Smith, supra.*

That decision caused the enactment of the new judgment lien law [10]

Subdivision (a) of section 2 of the new act[11] effects an exact conformity or identity of time of commencement and mode of creation of lien as between judgments of the federal court in the county of RENDITION and judgments of the superior court rendered in that SAME county Thus, the act effects conformity as to the operation as liens on the debtors' property situated in King county of judgments of the federal court and superior court rendered in that county There is also conformity or identity of time of commencement and mode of creation of lien in all counties other than that of rendition as between federal and superior court judgments. But the new act does not effect conformity between the lien in the county of rendition of judgments of the superior court and the lien in that same county of judgments of the federal district court rendered in another county, though the county first referred to is within the jurisdiction or district of the federal court. For example, there is no equality as to lien between a judgment rendered in King county by the federal district court against a debtor owning property in Kitsap county, and a judgment rendered against the same debtor by the superior court in Kitsap

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with the clerk of the state circuit court. In Washington judgments of the superior court are a lien from the time of entry· judgments of the federal district court are a lien from the time of filing and indexing a transcript thereof. The Washington law imposed not only the like requirement imposed by the Missouri law upon federal court judgment creditors, that of filing a transcript, but also the additional prerequisite to the creation of a lien, viz., indexing.

[10] Sess. L. 1929, p. 56, ch. 60. The provision thereof material to our inquiry reads as follows: "Sec. 2. The lien of judgments upon the real estate of the judgment debtor shall commence as follows:

"(a) Judgments of the district court of the United States rendered in the county in which the real estate of the judgment debtor is situated, and judgments of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry thereof;

"(b) Judgments of the district court of the United States rendered in any county in this state other than that in which the real estate of the judgment debtor to be affected is situated, judgments of the supreme court of this state, and judgments of the superior court for any county other than that in which the real estate of the judgment debtor to be affected is situated, from the time of the filing of a duly certified abstract of such judgment with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, as provided in this act."

[11] See previous footnote for text.

county The latter judgment, under this new act, would operate as a lien immediately upon its entry, at the moment the formal written judgment signed by the judge is filed with the county clerk. But the judgment of the federal court would not operate as a lien on the debtor's property in Kitsap county until the judgment had been entered with the clerk of the federal court, and a certified transcript obtained and filed with the clerk of Kitsap county Here appears a discrimination against a federal court judgment creditor to the advantage of a superior court judgment creditor in all such cases, for the jurisdiction of the federal court sitting in King county embraces Kitsap county as well as King and other counties in the Western District of Washington.

In *Rhea v. Smith* it is said.

> "We are dealing here with a question necessarily of great nicety in determining the effect and the priority of liens upon real estate, and the subject requires exactness. Merely approximate conformity with reference to such a subject-matter will not do, especially where complete conformity is entirely possible."

Is "complete conformity entirely possible" in this state? It is. It could be provided that no judgment shall operate as a lien until a certified abstract or transcript thereof is filed in the office of the auditor of the county in which the debtor's property is situate. Abstracts or transcripts of judgments could be required to be recorded and indexed in that office in books kept for that purpose, and merely for the purpose of evidencing and affording a means of notice and ascertainment of the existence of such liens. The clerk of the court would continue to keep the existing system of judgment or execution dockets and indexes thereto, and all proceedings for the enforcement of judgments continue as at present.

Or, as an alternative, it appears that conformity could be accomplished by providing no judgment shall be a lien until a certified abstract or transcript thereof is obtained and filed with the clerk of the county in which the debtor's property is situate. The present system would continue in effect, but the additional step suggested would be necessary to establish a judgment lien, and a judgment lien docket with index thereto would be required. This course would require a creditor upon entering his judgment with the clerk of the county of rendition, to ask that a certified abstract or transcript thereof be prepared, to secure the same and file it with

the same clerk to effect a lien in that same county Although rather an anomalous procedure, it would nevertheless be necessary to accomplish conformity under such a system.

Under either of these modes, the docketing, or, as it is designated in some jurisdictions, enrollment of a judgment of any court, state and federal, whether rendered in the county where docketed or in other counties, would be necessary in order to give it effect as a lien. There would be an absolute conformity, or identity of time of commencement and mode of creation of lien of the judgments of state and federal courts.

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