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WHEN IS A JUDGMENT A LIEN?

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This question has bedeviled the legal profession in Indiana ever since the amendment of our judgment lien law in 1929. It seems that the confusion is largely caused by the adherence by a considerable number of able lawyers, to the belief that judgments become liens in the same manner as they did prior to the amendment.[1]

Often in the past few years inquiries have earnestly, but incredulously, been made, such as: "Do you mean to say if I have a judgment in a circuit court or superior court of this county, it is not a lien on the defendant's land, also in this county, unless I obtain a transcript or statement of it, file it with the clerk, pay his fees and have him enter it in the judgment docket? You know the clerk enters all judgments in his docket without a statement or transcript. Does not that of itself make them liens?"

Prior to January 18, 1943, when the Supreme Court of Indiana rendered its decision in Watson v. Strohl,[2] the blunt but very sufficient answer might have been to suggest to the naive inquirer that he read the statute.[3] However, the court in that case obscured and complicated the subject in a most regrettable fashion when it adopted this language:

> "It would seem that even in the case of a money judgment, where such judgment is to be entered in the judgment docket of the clerk of the court rendering the judgment, it would be necessary for the plaintiff to procure from the clerk a certified copy or transcript of the judgment and then deliver it back to the clerk for entry in the judgment docket.
>
> "IT COULD NOT HAVE BEEN THE INTENTION OF THE LEGISLATURE TO REQUIRE SUCH AN UNNECESSARY STEP. It is, of course, necessary that such a judgment be enrolled in the judgment docket to become a lien."[4]

The argument may come from some quarters that, after all, the court correctly decided that case, and that the quoted

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1. Burns' Ind. Stat. (1933) §§ 2-2520, 2-2706; Ind. Acts 1881 (Sp. Sess.) ch. 38, Ind. Acts 1929, ch. 83, § 2.
2. 220 Ind. 672, 46 N.E. (2d) 204 (1943).
3. Supra n. 1.
4. Supra n. 2 at p. 684.

portion of the opinion amounts to obiter dictum only, in that a decision of the disputed question of law applicable to the specially found facts did not require any mention of the method of acquiring a general, as distinguished from a special, judgment lien, since the adversaries were each claiming under separate sheriff's sales of a piece of land, one based on a mechanic's lien foreclosure and the other on the foreclosure of a corporate employee's lien, in which case the general judgment lien law has no application, unless it were sought to bind property other than that ordered sold under the decree.

This sounds plausible. But it overlooks the fact that the particular question was presented and urged that one of the parties did not have a special lien under the mechanic's lien act because of an erroneous description of the land, which was not reformed, and that therefore he must rely upon a general judgment lien, which he also did not have because of failure to file the required transcript.

However, it is not proposed here to attempt a review of the merits of that decision in its entirety. That is not the purpose of this article. The bare fact that there is room for a heated discussion as to whether part of it is or is not dictum, sufficiently makes the point that it was an injudicious treatment of an important subject and, it seems to me, is certain to cause continued and increasing uncertainty and perplexity. In fact, the resulting confusion may be even more bewildering because of such a collateral dispute.

The writer harbors the view that the legislative purpose was diametrically opposite to that found by the court.

The first sentence quoted above, although stated somewhat timidly, correctly spoke the law—if the court had stopped there. But the second sentence reveals a startling misconception of the basic reason for the amendment under discussion. A fair understanding of the question demands painstaking analysis because it is not by any means free from difficulty.

Strangely enough the whole affair started with a lawsuit in Missouri about 1925. That state had a statute[5] in essence not dissimilar to our Act of 1893, concerning the liens of Federal judgments. The case ended in the Supreme Court of the United States when on May 31, 1927, the then Chief Justice, William Howard Taft, wrote the opinion in

5. Rev. Stat. Mo. 1919, §§ 1554-1556.

Rhea v. Smith.[6] It was held in that case that the Missouri statute did not secure the needed conformity in the creation, extent and operation of the resulting liens upon lands, as between Federal and State courts; therefore a Federal court judgment in Missouri attached to all lands of the judgment debtor lying within the jurisdiction of the Federal courts of that state.

Quickly appreciating the implications of this decision, attorneys for the Indiana Title Association, an organization composed of persons engaged in the abstract and title insurance business, urged the passage of a law in Indiana which would attain conformity with the Act of Congress, as indicated in Justice Taft's opinion, and appointed a committee which drew the bill that was passed by our General Assembly and became law on March 11, 1929.

In view of the decision of our court of last resort in the Watson case,[7] a review of the pertinent statutes of Indiana touching judgment liens, which were in force prior to 1929 but now repealed, appears to be necessary and first in order. They are as follows:

> "The clerk of every court of record shall keep a docket in which he shall enter, within thirty days after each term of the court, in alphabetical order, a statement of each judgment rendered at such term, containing:
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> First: The name at length of all the parties.
>
> Second: The amount of the judgment and costs, and the date of its rendition.
>
> Third: If the judgment be against several persons, the statement shall be repeated under the name of each defendant, in alphabetical order."[8]
>
> "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."[9]
>
> "It shall be the duty of the Clerk of any court of record in this state, rendering any judgment, to make out a certified copy

6. 274 U.S. 434 (1927).
7. Supra n. 2.
8. Burns' Ind. Stat. (1926) § 634; Ind. Acts 1881 (Sp. Sess.) ch. 38, § 587.
9. Id. §§ 659-601.

thereof, under the seal of such court, at the request of any person interested; which copy may be filed in the office of the clerk of any circuit court of this state, and, when so filed, shall be recorded and entered in the judgment docket in the same manner as judgments rendered in any such court."[10]

"Transcripts from United States Courts.—1. Any person interested may file, or cause to be filed, in the office of the clerk of any circuit court in 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."

"Lien.—2. Such judgment, from the time of filling 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."

"Fees of Clerk.—3. The same fees shall be taxed, charged and received by the clerk of such circuit court for so filing, recording and entering such copy as are taxed, charged and received by him according to law for filing, recording, and entering transcripts of judgments, for like purposes, rendered by the courts of record of this state."[11]

It is also necessary to recall that in 1888 the Congress passed an act concerning the liens of Federal judgments and decrease, which has remained in effect continuously ever since that time and is still in force. This statute seems to have been quite generally overlooked, or misunderstood, in this state as well as many others, except for the brief recognition accorded to it following the decision in the Rhea case, supra.

The text of the act, including the title, follows:

"An act to regulate the liens of the judgments and decrees of the Courts of the United States.

"Be it enacted by the Senate and the House of Representatives in Congress assembled,

That the judgments and decrees rendered in a 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. Whenever the laws of any State require a judgment or decree of a State court to be registered,

10. Id. §§ 662, 603.
11. Id. §§ 664-666; Ind. Acts 1893, ch. 44(§§ 1-3.

> 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 section and section 813 of this chapter 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."[12]
>
> Section 813 requires clerks of United States courts to prepare and keep in their offices, indices of all judgment-debtors in the judgments and decrees in such courts; and Section 814 provides that such judgments shall cease to be liens at like periods as those of State courts.

The last sentence of section 812 was enacted to avoid the hardship resulting from the ignorance of citizens of Federal judgment liens on their property which were not of record in the county where the property was located.[13]

At this stage it should be apparent that the laws of this state, prior to 1929, did not succeed in limiting the territorial scope of Federal judgments as were those of the State courts; that is, not under identical terms and conditions.

This is so because the duty was imposed upon the Federal judgment-holder of obtaining and paying for a transcript and filing it in the office of the clerk of the state court, where he also had to pay another fee, and no such duty or burden was imposed on the State judgment-holder, except in cases where his judgment came from a different county.

There was but one method of escaping this result; it was to impose by law upon every holder of every judgment who wished to make his claim a lien, the uniform obligation of obtaining a transcript, filing it in the county where the land sought to be bound was situated, and by paying the statutory fees. And this must apply, unavoidably, to all judgments, State or Federal, even when rendered in the very county where the debtor's land lay.

Any and all arguments to the contrary were swept aside and effectively settled when Chief Justice Taft, in his opinion, said:

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12. 28 USCA § 812.
13. Lineker v. Dillon, 275 Fed. 460 (1921).

"It is clear that Congress by the first section of the Act of August 1, 1888 . . . intended to change and limit the existing rule, as stated by this court in Massingill v. Downs, 7 How. 760; 12 L.Ed. 903, that Federal court judgments were a lien upon lands throughout the territorial jurisdiction of the respective Federal Courts, but intended to do this only in those states which passed laws making the conditions of creation, scope and territorial application of the liens of Federal court judgments the same as State court judgments, so that where any state has not passed such laws, the rule that Federal court judgments are liens throughout the territorial jurisdiction of such courts must still be in force. . . .

"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. . . .

"Congress did not intend to change the rule that Federal court judgments were liens on lands throughout the territorial jurisdiction of the respective Federal courts except in those states which passed laws making the conditions of creation, scope and territorial application of liens of Federal court judgments the same as State court judgments. . . .

"With respect to the equality required as between Federal and State judgments, A SLIGHT INEQUALITY IS FATAL. MERE APPROXIMATE CONFORMITY WILL NOT DO, especially where complete conformity is possible."[14]

Under the Missouri statute above cited, the liens of Federal judgments on lands in the county in which the court sits can not attach, unless a transcript of the judgment shall be made and filed in the office of the clerk of the State court in that county, though no such transcript of a judgment in a State court is required before its lien becomes effective; hence the conformity affecting the creation, scope and territorial application of the liens of Federal and State court judgments, required by the Federal act, does not exist, and under the rule prevailing before enactment of such a statute, Federal court judgments are liens throughout the territorial jurisdiction of such courts without filing a transcript.

The Supreme Court of Missouri, from which the Rhea case was appealed, erroneously held that the Federal judgment-holder could not be harmed or prejudiced as to the time of effectiveness of his lien by any delay in filing his transcript, since his lien was supposed to attach at the time of the rendition of the judgment; however, Justice Taft very aptly answered:

14. Supra n. 6 at 442.

> "The risk is in the danger that the judgment creditor's attorney may forget to file a transcript, the State judgment-holder having a lien without being required to even remember that a transcript should be filed."[15]

It is now obvious that our Indiana judgment lien law, prior to 1929, was subject to the same infirmity as those of Missouri, especially our act of 1893. It then became a question of policy, whether we wished State court judgments to be confined to the limits of the county where rendered, while Federal judgments remain state wide in scope, without regard to the filing of a transcript. The consensus of the committee of the Indiana Title Association was against this, and their view was adopted by our legislature at the 1929 session.[16]

It is scarcely necessary to point out that this law was designed to accomplish a revolutionary change in the mode of creating general judgment liens upon lands in Indiana. The repealing section is very broad, expressly abrogating all laws in conflict with its terms and specifically voiding certain others.

The effect was to completely destroy the lien of every judgment then existing in the state prior to the effective date of the act, but permitting the holders to restore them by following the new method, and thereafter to require all judgment-holders, on equal terms, to follow the procedure set up if they wished to create liens.

Judgments for money or costs become general liens upon lands solely by statutory authority, and there must be a substantial compliance with the requirements of such statutes or there is no lien.

> "Judgment liens are created by statute, and the requirements of the statute giving a lien must be complied with or none exists . . . for a judgment merely becomes a general lien when all has been done by the judgment creditor which the law requires.
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> "Entering and docketing transcripts of judgments rendered in a different county are not simply methods of supplying notice, but they are essential acts which create a lien. A transcript of a judgment lying in the vaults of a Clerk's office,

15. Supra n. 6 at 434.
16. Supra n. 1.

> neither entered or docketed, is no more a lien on lands in that county than the last week's newspaper received by the clerk."[17]

If we were at liberty to disregard the court's interpretation in the Watson case and apply the act according to its evident intent, it would be a great accomplishment in the interest of order and clarity; but this we cannot do.[18]

Another phase deserving some attention concerns judgments of superior courts which have been established in fourteen counties of this state. They are original, general jurisdiction, practically co-ordinate with the circuit courts. In each instance the clerk of the circuit court is made ex officio clerk of the superior court. Each of these courts sit at the county seat, with the exception of Elkhart, Lake and La Porte, where they are located in other cities. Allen, St. Joseph and Vigo counties each have two such courts, while Lake and Marion each have five.

Separate judgment dockets are provided by law for all of them, save Elkhart, Delaware, Grant, Lake and La Porte. These five are required to use the dockets of the respective circuit courts. However, in the case of Elkhart, Lake and La Porte, the situs being apart from the circuit courts, the statutes establishing them directed the clerks to enter their judgments in the circuit court dockets within forty-eight hours after rendition. This is not so in Delaware and Grant, presumably because they occupy the same building with their circuit courts.

The Indiana Act of 1895, ch. 104, §11, creating the Lake-Porter-Laporte Superior court, and Acts 1907, ch. 5, §7, establishing the one in Elkhart county, provide:

> "Said court shall be a court of record and of general jurisdiction at law and equity and its judgments, decrees, orders and proceedings shall have the same force and effect as those of the circuit court, and shall be enforced in the same manner: Provided, That the clerk of said court shall within forty-eight (48) hours after the rendition of any judgment in said superior court cause the same to be entered in the judgment docket of the circuit court of such county in the same manner and to the

17. Bell v. Davis, 75 Ind. 314 (1881); Petrovich v. Witholm, 85 Ind. App. 144, 152 N.E. 849 (1926).

18. "When a statute has been construed by the highest court, having jurisdiction to pass on it, such construction is as much a part of the statute as if plainly written into it originally." 59 Corpus Juris. § 613; cf. 3 Sutherland, Stat. Constr. (3d ed.) § 5105.

same extent that judgments of the circuit court are required to be entered therein."

House Bill No. 416 became law at the 1945 session of the Indiana General Assembly, amending Section 11 of the Act of 1895, by eliminating the proviso concerning entry of judgments within forty-eight hours, but made no reference to Section 7 of the Act of 1907, thus ostensibly leaving it in effect as to the superior court of Elkhart county.

It could, and perhaps should, be assumed that the lawmakers realized the full import of the 1929 amendment under discussion, and sought to clarify the matter, at least in part, but overlooked the situation in Elkhart county. However, it seems certain that both of these sections were repealed by the amendment of 1929, because since that time judgments should be entered in the docket only upon request of the holders, after procuring statements or transcripts thereof. Our legislature might better have taken notice of the condition created by the court's decision in the Watson case and directed their effort toward curing the mischief resulting from it.

It also could have removed any possible doubt concerning the status of separate judgment dockets in those superior courts where that requirement prevails. Such a doubt, however, is more speculative than real, because it is clear that the same 1929 amendment repealed the provisions for such separate dockets, if not expressly then by necessary implication.

If it is true that "IT COULD NOT HAVE BEEN THE INTENTION OF THE LEGISLATURE TO REQUIRE SUCH AN UNNECESSARY STEP" as the filing of a transcript or statement, then the judgment lien act of 1929 was a piece of legislative caprice, wholly devoid of meaning or purpose. But it seems to this writer that it represents a first rate job of attaining conformity with the Federal act and that, by its interpretation, the Supreme Court has nullified its valid objective.

A law expressly forbidding clerks to enter any judgment, State or Federal, in the judgment docket until after the filing in his office of a transcript or statement thereof, and the payment of the satutory fees, is perhaps now the only effective remedy.