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THE INDIANA JUDGMENT LIEN LAW OF 1929

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The General Assembly at its 76th session (Acts of 1929, Ch. 83, p. 278; Burns Supplement 1929, No. 634 and No. 659; Burns 1933 No. 2-2520 and No. 2-2706) amended the judgment lien law, Acts of 1881, special session, p. 240, No. 587 and No. 601 (Burns 1926, No. 634 and No. 659).

In addition it repealed Acts of 1881, p. 240, No. 603 (Burns 1926, No. 662) and Acts of 1893, p. 43, Nos. 1, 2 and 3 (Burns 1926, Nos. 664, 665 and 666).

Further it expressly repealed "all laws in conflict", which likely includes Acts of 1881, special session, p. 240, No. 604 (Burns 1926, No. 663) and perhaps others.

The first section requires the clerk of the *Circuit Court* of each county to keep a judgment docket in which he shall enter and index alphabetically a statement or transcript of any judgment for the recovery of money when such statement or transcript shall have been filed in his office; such statement shall show, (1) the names of all the parties, the name of the court, the number of the cause, the book and page wherein the judgment is recorded (Order Book?) and the date of the judgment; (2) the amount of the judgment and the amount of the costs; (3) and if the judgment be against several persons, the statement shall be repeated under the name of each judgment debtor in alphabetical order. It further provides that any person interested in any judgment for money or costs rendered by *any* court of general original jurisdiction, *STATE OR FEDERAL,* sitting in the State of Indiana, may file in the office of the Clerk of the *Circuit Court* of any county in this state, a statement thereof, setting forth the above facts, or a transcript of said judgment, duly certified, in either case, under the hand and seal of the court rendering the judgment;

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and the Clerk shall forthwith enter the same on the Judgment Docket.

The second section provides that all final judgments for the recovery of money or costs in the *Circuit Court* and *other courts of record* of general original jurisdiction sitting in the State of Indiana, *WHETHER STATE OR FEDERAL,* shall be a lien upon real estate and chattels real liable to execution in the county where, *AND ONLY WHERE* such judgment has been duly entered and indexed in the Judgment Docket *as provided by law,* from and after the time the same shall have been so entered and indexed and until the expiration of ten years *from 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.

The third section repeals all laws in conflict and particularly No. 603 of the Acts of 1881, p. 240 (Burns 1926, No. 662), and Acts of 1893, p. 43, (Burns 1926, Nos. 664, 665 and 666).

The fourth section declares an emergency and makes the act in full force and effect from its passage. It was approved March 11, 1929.

It is at once apparent, since there is no saving clause, that this Act destroyed the lien upon real estate of all judgments rendered prior to its effective date and gives the ones interested in all prior and subsequent judgments, either state or federal, in lieu thereof, the privilege of making them liens by complying with its requirements.

In the second section the words "as provided by law" apparently mean, "as in Section 1 provided" or "as shall be later provided by law".

A question may be raised as to the power of the Legislature to divest or destroy the liens existing by virtue of the statute prior to this amendment, and to impose upon the persons interested the requirement of filing statements or transcripts and redocketing, in order to restore their liens. A judgment under the amended statute, or under the former statute, was

not a specific, but *only a general lien;* and the Legislature has the right to make, modify or remove it at pleasure.[1]

At least the Legislature may do so at any time before rights under the judgment have become vested. It probably cannot be successfully contended that a judgment lien-holder under the statute, from that fact alone, has a vested right the removal of which by the Legislature invades his constitutional prerogatives. The definition of vested rights as given at Vol. 12 Corpus Juris, p. 995, No. 485, is as follows:

"Rights are vested when the right to enjoyment, prior or prospective, has become the property of some particular person as a present interest. On the other hand, a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right." See Donaldson v. State, 167 Ind. 553; 67 N. E. 1029; 78 N. E. 182. (1906).

The Act apparently does not affect the lien of the *levy* of an execution upon real estate, within the statutory requirements as to first levying upon personal property and as to the time limit of such lien, which is six (6) months, and which is expressly discharged at the end of that time (Burns' 1926, No. 826; 1933, No. 2-3914).

When we discover the causes and reasons underlying this change in our judgment lien law the application of the amended statute and its interpretation become clarified.

The U. S. Congress in 1881 passed an Act to the effect that judgments and decrees of the Federal District Courts within any state should be liens 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; and whenever the law of any state requires a judgment of a State Court to be recorded or docketed or other thing to be done before the lien shall attach, the Act shall be applicable only when the laws of such state shall authorize Federal judg-

[1] Gimble v. Stolte, 59 Ind. 446 (1877); Quackenbush v. Taylor, Adm., 86 Ind. 270 (1882); Snyder v. Thieme and Wagner Brewing Co., et al., 173 Ind. 667, 90 N. E. 314 (1910).

ments to be docketed, or otherwise conformed to the rules and requirements relating to judgments of the state courts; and that federal judgment shall cease to be liens at like periods as state judgments.[2]

So unless a state shall pass laws requiring or permitting Federal judgments rendered within that state to be recorded in the County where the lands of the judgment debtor is located, under precisely the same terms and conditions as the State Judgments, the Federal Judgments continue to constitute liens throughout the entire state.

The desirability of having Federal judgment-liens confined to the county where the land of the judgment debtor is situated, is apparent. In 1893 the Indiana Legislature passed an Act to the effect that any person interested might file in the office of the Clerk of any Circuit Court, a copy of any Federal Judgment rendered in the District of Indiana, certified by the Clerk; and when so filed, the Clerk of the Circuit Court should enter the same in the Order Book and Judgment Docket the same as state judgments; and providing further that such judgment, from the time of filing, should be a lien upon the real estate of the judgment debtor in the county as though such judgment had been rendered therein.

It further provided that the Clerk of the Circuit Court should receive the same fee as for entering judgments rendered in the state courts. The validity of that Act was never questioned with the view it imposed a burden upon Federal Judgments not shared by those of the State.[3]

The State of Missouri several years ago, enacted a similar law. This was upheld by the Supreme Court of Missouri in 1925 as not placing burdens upon Federal Judgments which were not shared by the State judgment in the case of Rhea v. Smith, 308 Mo. 422; 272 S. W. 964. On certiorari from the U. S. Supreme Court, it was held that the Missouri statute was invalid as to Federal Judgments, because the State judgment-holder was not required to obtain, pay for and file a

[2] Acts of Congress 1881, Ch. 729 25 St. at L. 357, U. S. Code Title 28, No. 812, U. S. Comp. Stat. No. 1606.

[3] Acts of 1893, p. 43 Burns 1926, Nos. 664, 665 and 666.

transcript of his judgment so that it might constitute a lien; while such a requirement was imposed upon the holder of a Federal Judgment.[4]

The opinion was written by Chief Justice William Howard Taft and among other things he said:

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

The court observes that the Supreme Court of Missouri held that, as to time, the Federal Judgment holder would not be prejudiced by delay in filing his transcript because the lien attaches from the time of the rendition of the judgment. Judge Taft replies:

"The risk is in the danger that the judgment creditors attorney may neglect to file the transcript, the State judgment holder having a lien without being required to even remember that a transcript should be filed."

By analogy it seems clear that the Indiana Act of 1893 was subject to the same infirmity as the Missouri statute and consequently was void. It may be observed that the Act of Congress does not prohibit the State Legislature from imposing a burden upon Federal Judgments so long as State judgments are required to share an equal load, i. e. pay a uniform fee for marking the transcript or statement and for the recording thereof; or, if no fee is chargeable for either then the duty of procuring and filing such transcript or statement.

It is assumed that the judgment docket of the Circuit Court is the same as that of the Superior Court, in view of Burns Ind. Stat. Ann. 1933, No. 4-1113 (1480), at least so far as Lake County is concerned, and I believe all the other Superior Courts of the State. I find no authority for a separate judgment docket for Superior Courts.

[4] Rhea v. Smith (1927), 274 U. S. 434; 47 Sup. Ct. 698; 71 U. S. L. ed. 139.

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