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Volume 55  
Issue 2 *Dickinson Law Review - Volume 55,*  
*1950-1951*

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1-1-1951

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### **Recommended Citation**

Lyle F. Hilton, *Liens of Judgments Rendered in United States District and Pennsylvania Appellate Courts Upon Real Estate in Pennsylvania*, 55 DICK. L. REV. 169 (1951).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol55/iss2/11>

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## LIENS OF JUDGMENTS RENDERED IN UNITED STATES DISTRICT AND PENNSYLVANIA APPELLATE COURTS UPON REAL ESTATE IN PENNSYLVANIA

In searching titles or supervising the searching of real estate titles, the attorney at law should consider the liens of judgments rendered in the United States District Courts and the Pennsylvania Superior and Supreme Courts. This article is written to answer the question, "What indices must be checked to enable the searcher to determine the existence of such liens on real estate, the title to which is being searched?"

At common law land was not subject to sale on execution and so a judgment attached no lien to land. The Statute of Westminster II, (13 Edw. I) c. 18 gave the writ of *elegit*, or execution, which the courts in England held to make a judgment a lien upon land of the judgment debtor.<sup>1</sup>

In the United States many, but not all, states passed statutes providing that a judgment would be a lien upon all of the judgment debtor's land situate within the territorial jurisdiction of the court which rendered the judgment. The law concerning the existence, attachment and duration of judgment liens was, consequently, not uniform throughout the states and, in the absence of federal legislation the federal courts observed the law of the state wherein the judgment was rendered.<sup>2</sup>

The Act of 1840, July 4, revised statutes 967, was the first federal legislation to guide the courts, providing:

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

In *Brown v. Pierce*, 1868, 7 Wall. 205 (217) the court said ". . . the decisions of this court have established the doctrine that Congress, in adopting the processes of the States, also adopted the modes of process prevailing at that date in the courts of the several States, in respect to the lien of judgments within the limits of their respective jurisdictions."

Subsequently, some states enacted legislation providing for the extension of the lien of judgments rendered in state and county courts by filing a transcript of the judgment in the office of the prothonotary for the county in which the land to which the lien was to attach was situate. The lien of a judgment rendered in a federal court could not be so extended by state legislation<sup>3</sup> and consequently

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<sup>1</sup> *Dartmouth Sav. Bank v. Bates*, 44 Fed. 456 (1890).

<sup>2</sup> *Brown v. Pierce*, 1868. 7 Wall. 205 (217).

<sup>3</sup> *Massingill v. Downs*, 7 How. (U.S.) 760, 12 L.Ed. 903 (1849).

suitors in state courts held an advantage over suitors in federal courts, namely that once judgment was rendered, its lien could be attached to any land within the state.

To overcome this advantage the federal courts held that the lien of a judgment rendered in a federal court was co-extensive with the jurisdiction of the court.<sup>4</sup> This rule reversed the situation, giving suitors in federal courts an advantage over those in state courts.

Congress opened the door to strict equality of liens, as between judgments rendered in state courts and judgments rendered in federal courts, by passing the Act of 1888, August 1, 25 Stat. 357, 28 U.S.C.A. 812, which provides, in effect, "Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time, provided that such State accommodate district court judgments in whatever procedure is prescribed."

It is necessary, in view of the above legislation, that we turn our attention to the laws of Pennsylvania which provide for docketing the indexing judgments rendered in the Pennsylvania Supreme and Superior Courts.

The Act of 1799, March 20, 3 Sm. L. 358 1, 12 P.S. 865, provides: "That . . . no judgment rendered . . . in the said Supreme Court . . . shall be a lien on real estate, excepting in the county in which such judgment shall be rendered. . ."

The Act of 1895, June 24, P.L. 212 8, par. 8, 17 P.S. 192, provides that no judgment rendered for the first time by a Superior Court for the payment of money shall be a lien on realty until the record is returned to the court below and filed at the request of the judgment creditor.

Thus it is seen that Pennsylvania requires docketing and indexing of the judgments of the State Supreme and Superior Courts in the office of the Prothonotary of Common Pleas before such judgment attach as liens to real estate except that judgments of the Pennsylvania Supreme Court are, without docketing in Common Pleas, liens upon real estate situate within the county in which the judgments are rendered. The above legislation cleared the way for legislation restricting District Court judgments and this was immediately enacted.

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<sup>4</sup> *Lombard v. Bayard*, 1 Wall. Jr. C.C. (U.S.) 196, Fed. Cas. 8,469 (1848); *In re McGill*, 6 Pa. 504 (1847).

The Act of 1895, June 24, P.L. 247 provided:

"That the prothonotaries of the several courts of common pleas . . . be and they are hereby authorized and required to enter transcripts of the records of judgments and decrees rendered in the . . . District Courts of the United States within the State, when duly certified, and index the same in the same manner as transcripts of records of judgments and decrees obtained in any of the courts of general jurisdiction of this State are entered and indexed, to make them liens, . . . and no judgment or decree entered in the . . . District or other Court of the United States, shall be a lien on any real estate in any county of this Commonwealth, unless the same be so entered in the court of common pleas of the county wherein such real estate is situate: Provided, that nothing herein contained shall be construed to require the docketing of a judgment or a decree of a United States court, or the filing of a transcript thereof, in or within the same county in which the judgment or decree is rendered by such United States court."

The Act of 1895, *supra*, was repealed by the Act of 1927, April 27, P.L. 477 but was re-enacted as the Act of 1929, May 17, P.L. 1805, 17 P.S. 1932, and as such remains the law.

The only judicial test of the above legislation was *Seventeenth Street Land Company v. Hustead*, 263 Pa. 342, 106 A. 540 (1919) in which case the court held that the lien of a judgment rendered in a federal court attaches to land in the county in which such judgment is rendered without entry in the court of common pleas, this being a specific provision of the Act of 1895, June 24, P.L. 247, *supra*.

It would seem that the scope of the Act of 1929, *supra*, being worded to include judgments of all and any federal courts, is considerably broader than is permitted by the Act of 1888, *supra*, that act naming only the judgments of the United States District Courts as being susceptible to state legislation. However, the District Court is the only Federal court of original jurisdiction the judgments and decrees of which become liens on real estate.<sup>5</sup>

In ruling upon state legislation under the Act of 1888, *supra*, the courts in other jurisdictions have thus far ruled only on the issue of equality of lien as provided for in the state legislation and upon this point it would seem that the Act of 1929, *supra*, would be upheld.<sup>6</sup>

In answer to the initial question two rules are implied by the foregoing discussion:

<sup>5</sup> LADNER, CONVEYANCING IN PENNSYLVANIA, 455 (2nd ed. 1941).

<sup>6</sup> *Dartmouth Sav. Bank v. Bates*, 44 Fed. 456 (1890); *Lineker v. Dillon*, 275 Fed. 460 (1921); *Reah v. Smith*, 274 U.S. 434 (1927); *Rathbone v. Kimball*, 220 N.W. 244 (1928); *In re Jackson Light and Traction Co.*, *Lee v. Newton et al.*, C.C.A. 5th. 269 F. 223 (1920); *Thompson v. Avery*, 11 Utah 214, 39 P. 829 (1895).

1. In counties in which a United States District Court or the Pennsylvania Supreme Court sits, the dockets of these courts must be checked in addition to the judgment docket in the office of the Prothonotary of the Court of Common Pleas.

2. In counties in which neither a United States District Court nor the Pennsylvania Supreme Court sits, the judgment docket in the office of the Prothonotary of the Court of Common Pleas is exhaustive as to judgments the liens of which have attached to real estate within the county.

**Lyle F. Hilton**