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Court : US Supreme Court

Decided On : 1849

Appeal No. : 48 U.S. 760

Appellant : Massingill

Respondent : Downs

Judgement :

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Massingill v. Downs

48 U.S. (7 How.) 760

ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT

COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

Where a Judgment was obtained in the Circuit Court of the United States for the District of Mississippi in 1839, and in 1841 the State of Mississippi passed a law requiring judgments to be recorded in a particular way in order to make them a lien upon property, this statute did not abrogate the lien which had been acquired under the judgment of 1839, although the latter had not been recorded in the manner required by the statute.

The facts are fully set forth in the opinion of the Court, as delivered by MR. JUSTICE Mc LEAN, to which the reader is referred.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

This action was brought in the Southern District of Mississippi, to try the right of property which had been levied on. The plaintiffs showed a judgment of the circuit court, entered the first Monday of November, 1839, for $3,716.43, with interest &c.;, against one J. J. Chewning and others, on which an execution had been issued and levied upon certain slaves claimed by A. C. Downs. At the time of the levy, the property was in possession of the defendant Chewning. Downs produced a mortgage on the slaves, executed by said Chewning, and regularly recorded, in favor of the "Commercial Railroad Bank of Vicksburg," to show a title in the bank adverse to the right of the plaintiffs. This mortgage bears date subsequent to that of the judgment.

On these facts, the court were requested by plaintiffs to charge

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the jury

"to disregard the mortgage, because of the paramount right of the plaintiffs to have execution of their judgment by means of said levy, although no abstract or brief of the judgment had been recorded or enrolled in the county where the property was situated."

And on this prayer for instruction to the jury, the opinions of the judges were opposed, and at the request of the counsel on both sides the point was certified to this Court.

By the first section of the Act of Mississippi of February 6, 1841, it is provided that

"All judgments and decrees of any circuit, district, or superior court of law or equity holden within this state shall operate as liens from the date of their rendition upon the property of the debtor, being within the county in which the sitting of such court may be holden and not elsewhere, unless upon compliance with the conditions hereinafter enacted."

By the second section,

"That any judgment or decree heretofore rendered shall be a lien from the date of its rendition upon the property of the debtor, situated in any other county than that in which the same was rendered, on condition that an abstract thereof, on or before the first day of July next, be filed in the office of the circuit court of the county in which said property may be situate, in pursuance of the subsequent section of this act."

The third section provides that where an abstract of a judgment or decree is filed in the office of the clerk of the circuit court, which it is made his duty to record, it shall be a lien on the property of the defendant within the county from the time of such filing.

The judgment under which the levy was made was rendered more than a year before the above act was passed.

Prior to the act of 1824, there was no statutory lien of a judgment in Mississippi. A lien was created in that state, as in England, by the delivery of the execution to the sheriff. The Stat. of Westm. 2, or 13 Ed. I, ch. 18, gave the *elegit* which subjected real estate to the payment of debts, and this, as a consequence, it has always been held, gave a lien on the lands of the judgment debtor. 3 Salk. 212; 1 Wils. 39.

"There is no statute in Virginia which in express terms makes a judgment a lien upon the lands of the debtor. As in England, the lien is the consequence of a right to take out an *elegit.* "

United States v. Morrison, 4 Pet. 136. And in *Bank of the United States v. Wooster,* 2 Brock. 252, the Chief Justice says "The lien depends on the right to sue out an *elegit.* "

The same doctrine was held by the Supreme Court of Indiana

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before the act of 1818 of that state, which gave a lien on the real estate of the defendant by the judgment. *Ridge v. Prather,* 1 Blackf. 401.

In North Carolina, the lien on lands is created by the delivery of the execution to the sheriff, there being no statute in that state on the subject. And in other states of the Union the same principle has been long established.

Now in all these cases the lien arises from the power to issue process to subject real estate to the payment of the judgment either by an extension or sale. In Maryland, this rule has been extended by long usage, so that a lien is created by the judgment without execution. *Tayloe v. Thompson,* 5 Pet. 369.

The circuit courts of the United States exercise jurisdiction coextensive with their respective districts. And it has never been supposed that by the Process Act of 19 February, 1828, which adopted the process and modes of proceeding of the state courts, the jurisdiction of the circuit courts was restricted. The "process and modes of proceeding" in the state were adopted by Congress in reference to the jurisdiction of the circuit courts, and not with the view of limiting the jurisdiction of those courts.

In those states where the judgment on the execution of a state court creates a lien only within the county in which the judgment is entered, it has not been doubted that similar proceeding in the circuit court of the United States would create a lien to the extent of its jurisdiction. This has been the practical construction of the

power of the courts of the United States, whether the lien was held to be created by the issuing of process or by express statute. Any other construction would materially affect and in some degree subvert the judicial power of the Union. It would place suitors in the state courts in a much better condition than in the federal courts.

That by the course of practice in Mississippi, the lien of a judgment in the circuit court extended throughout the district, prior to the act of 1841, is not controverted. And the question is whether that act can impair or affect in any respect a judgment rendered in the federal court before its passage. The point certified does not require us to consider whether the law can operate on judgment liens entered subsequent to its date. The plaintiffs in the above judgment acquired a right under the authority of the United States, and that right may be protected from any judgment of the supreme court of the state which shall impair it under the twenty-fifth section of the Judiciary Act.

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It is contended that the lien in Mississippi exists by the statute of the state, and that under the thirty-fourth section of the Judiciary Act of 1789 it is a rule of property, and that it is consequently a rule of decision for the courts of the United States, and that the process act of 1828 has no bearing upon the question.

The above section provides that

"The laws of the several states, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decisions in trials at common law, in the courts of the United States in cases where they apply."

No state statute is of more frequent application in the federal courts than the above section, and it has often been held that the settled construction of a state statute by its supreme court is considered as a part of the statute. And the statute, as thus expounded, is regarded as a rule of decision in the courts of the United

States where it applies "except where the Constitution or acts of Congress otherwise provide."

The thirty-fourth section has never been considered as an act to regulate process. And it is argued that a statutory lien, being a rule of property, is applied to judgments in the circuit courts under this section, without being influenced in any degree by the Process Act.

We have seen that where there is no statutory lien, it is created by issuing and delivering to the sheriff an execution, which authorizes the sale or extension of the real estate of the defendant. In those states, it is the process authorized by the judgment which creates the lien, and in such cases we necessarily look to the nature of the process and the extent of its operation to determine the lien. It must act upon the land of the defendant, and consequently the land must lie within the jurisdiction of the court.

What is a judgment lien? In the argument, it was compared to a mortgage.

"A mortgage is often called a lien for a debt, but it is something more. It is a transfer of the property itself as security for the debt. This is true in law and in equity."

Conard v. Atlantic Insurance Company, 1 Pet. 441. A judgment lien on land constitutes no property or right in the land itself.

"It only confers a right to levy on the same, to the exclusion of other adverse interests subsequent to the judgment, and when the levy is actually made on the same, the title of the creditor for this purpose relates back to the time of the judgment to cut out intermediate encumbrances."

Subject to this charge, the defendant may convey the land. "A judgment creditor has no *jus in re,* but

a mere power to make his general lien effectual by following up the steps of the law." What law? The law which authorizes the judgment, and the issuing of the process through which means the judgment may be satisfied. A failure to do this releases the charge on the property. *Ibid.*

The lien, if not an effect of the judgment, is inseparably connected with it. And this is the case whether the lien was created by the judgment and execution or by statute. And in either case, where the right has attached in the courts of the United States, a state has no power, by legislation or otherwise, to modify or impair it. Retrospective laws of a remedial character may be passed, but no legislative act can change the rights and liabilities of parties, which have been established by a solemn judgment.

This Court therefore direct that it be certified to the circuit court that the right of lien claimed by the plaintiffs under the judgment is paramount to that of the defendant claimed under the mortgage.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Mississippi, and on the point or question on which the judges of the said circuit court were opposed in opinion, and which was certified to this Court for its opinion, agreeably to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof it is the opinion of this Court that the right of lien claimed by the plaintiffs under the judgment is paramount to that of the defendant claimed under the mortgage; whereupon it is now here ordered and adjudged by this Court that it be so certified to the said circuit court.

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