
Massingill et al. v. Downs.

W. AND H. MASSINGILL, PLAINTIFFS, v. A. C. DOWNS,
CLAIMANT.

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.¹

THIS case came up from the Circuit Court of the United States for the Southern District of Mississippi, upon a certificate of division in opinion between the judges thereof.

The facts are fully set forth in the opinion of the court, as delivered by Mr. Justice McLean, to which the reader is referred.

It was argued by *Mr. Sargent* and *Mr. Bell*, for the plaintiff, and *Mr. Lawrence* and *Mr. Badger*, for Downs, the claimant.

Mr. Sargent and *Mr. Bell* made the following points:—

1. When this judgment was entered, it became a lien on all the personal and real property of Chewning, in Mississippi. Hutch. Miss. Code, 881, 282. *Brown v. Clarke*, 4 How., 12; 4 Stat. at L., 184; *Id.*, 278; *Rankin v. Scott*, 12 Wheat., 177; *United States v. Morrison*, 4 Pet., 124; *Burton v. Smith et al.*, 14 Pet., 464; *Tayloe et al v. Thompson*, 5 Pet., 358.

2. The rules of court, so far as they are more than declaratory of the effect of the United States process act of 1828, adopt the State practice of November 25, 1839; they adopt nothing prospectively.

3. The State act of 1841 does not purport to operate on federal judgments. No State statute can operate *proprio vigore* to affect directly or indirectly a judgment of the federal courts. *Wayman v. Southard*, 10 Wheat., 1; *Bank of the United States v. Halsted*, *Id.*, 51.

*761] *4. There had been no adoption by Congress, or the federal courts of Mississippi under the authority of Congress, of the State act requiring the filing of an abstract of judgments in the county where the defendant's property is situated, at the time this execution was levied.

¹ CITED. *United States v. Sturgis*, Law Jour., p. 532, and post *765 n, 14 Fed. Rep., 811. And see 4 Cent. *767 n.

Mr. Lawrence, for the claimant.

Is the law of Mississippi as to the limitation of liens of judgments applicable to the judgments of the federal courts?

We contend that it is, because the lien of a judgment is something affecting property, forming no intrinsic quality of the judgment itself as such, but derived entirely from the sovereignty within whose jurisdiction the property affected by it is situated.

It is said that a State cannot interfere with and control the federal courts in relation to the effect and operation of their judgments; that it would leave those courts entirely at the mercy of the State legislatures.

This is the most plausible, if not the only, argument against us in this case, and a slight examination will show that it is of no real weight.

We do not contend that the States can interfere with the effect of the judgments of the United States courts, either in making them less than judgments in fact or in law, or in preventing the fruition of those judgments by process of execution. Congress has, under the Constitution, the exclusive power to regulate the proceedings in the United States courts; and even where the forms of process used in the States are adopted, it is, after all, but an exercise of the same power of Congress, and not a recognition of any authority over the subject by the States. *Wayman v. Southard*, 10 Wheat., 1.

If, therefore, a State law should enact that a judgment should be no evidence of debt, or should abolish all writs of execution, such a law would not be applicable to the proceedings of the federal courts, because, in the first instance, it would take away the proper intrinsic effect of the judgment itself, and make it, in whole or in part, no judgment; and, in the other instance, it would take from the United States courts a necessary part of the organization of a court, namely, the power to carry into effect its own judgments.

But the lien of a judgment is not an intrinsic quality of the judgment itself, nor is it any part of the process of a court for enforcing a judgment.

1st. A judgment is in effect what it is defined to be in theory, "the sentence of the law given in a court of law."

The lien of a judgment is a quality added to it,—a quality *not in any manner altering it as the sentence of the court, but superadded to it, taking effect on property, [762 qualifying property, restraining the alienation of property; not by an act of appropriation and sale under an execution, (which come under the denomination of "proceedings," and

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are subsequent to the judgment,) but as the effect of the mere existence of the judgment.

Now it is a matter of legal history, that, originally, judgments did not constitute any lien at all on property in England, which proves that the lien of a judgment was no part of the judgment itself.

It is matter of legal history, that even executions could not be levied on lands in England before the Stat. of Westm., 2. Consequently the common law judgments could not affect real property, either by lien or otherwise.

It is true that it has been held in England, that this statute gave a lien on lands as a consequence of the *elegit*, and it has been supposed that therefore a lien was the consequence of every execution. But this by no means follows, for it has never been held that the right of levying an execution on personal property has created a lien on that species of property by the mere rendition of the judgment, as would have been the case if the lien resulted from the right of execution alone. We think that this consequence was peculiar to the writ of *elegit*, which was authorized by the Stat. of Westm., 2. It has never in England been held to result from any other writ of execution. Prior to 1824, judgments did not constitute a lien on property in Mississippi.

It is only by virtue of local law that this lien exists. It is a qualification of property which can only be derived from the sovereignty within whose jurisdiction the property to be affected by it is situated. That sovereignty can confer it or take it away, or modify it when conferred. That sovereignty can attach it to a judgment, or to a bond, or to any thing else. But wherever and however attached, it is a regulation of property emanating, not from the court, but from the local authority. *United States v. Crosby*, 7 Cranch, 115; *Wayman v. Southard*, 10 Wheat., 25; *McCormick v. Sullivan*, 10 Wheat., 192; *United States v. Morrison*, 4 Pet., 136; *Ross v. Duvall*, 13 Pet., 61; *Taylor v. Thompson*, 5 Pet., 367, 368; *Reid v. House*, 2 Humph. (Tenn.), 576; *Thompson v. Phillips*, 1 Baldw., 273, 274; *Manhattan Co. v. Everton*, 6 Paige (N. Y.), 466, 467; *Conard v. Atlantic Ins. Co.*, 1 Pet., 443.

Second, the lien attached to a judgment is not within the meaning of the acts of Congress) any part of the "process" of a court, or of its modes of proceeding.

*763] *If it is, it must be a part either of the final process, or else of the modes of proceeding to carry the judgment into effect.

In *Annis v. Smith*, 16 Pet., 312, 313, this court has laid

down what "process" is, and what "modes of proceeding" are, as those terms are used in the act of 1828.

It is there said that "final process" means all the writs of execution then in use, and "modes of proceeding" are the exercise of all the duties of the ministerial officers of the States prescribed by the laws of the States for the purpose of obtaining the fruits of judgments. See also *United States Bank v. Halstead*, 10 Wheat., 61, 63.

Now a lien is certainly not a writ or precept of any kind. It is no part of the action of the court in a suit, nor is it the exercise of a ministerial duty of an officer of the court, nor even the result of any such exercise of duty. It is no proceeding at all, it implies no action at all; and the whole progress of a suit may go on now, as it did formerly, from the original writ to the satisfaction of the judgment by a sale under execution, without any lien whatever. It is a mere dormant, extrinsic quality, attached to the judgment not by the court, nor in the federal courts by the power creating those courts, but by another power, taking effect not on the judgment itself, but upon property, qualifying that property and restraining its alienation.

But it may be said, that the Circuit Court, in compliance with the law of 1828, did, in 1837, make a rule that the lien of judgments and decrees shall continue as now provided by law, and that the Mississippi act of 1841, now in controversy, has not been adopted.

To this we answer, that if the lien of a judgment is a regulation of property, and not a "process" or "mode of proceeding," then this rule of court can have no effect whatever. It was beyond the power of the court.

Whether or not Congress itself has the power to say what shall or shall not constitute a lien on property within a State, it is not necessary now to inquire, because we say that Congress has not attempted to do it, nor has it authorized the courts to attempt it.

We say, that, under the act of 1828, the Circuit Court of Mississippi had no power, by adoption or the want of adoption, to alter or continue a lien on property.

The act of May, 1828, directed that writs of execution and other final process, issued on judgments and decrees, and the proceedings thereupon, shall be the same in each State as are now used in each State. 4 Stat. at L., 278, 279.

The third section of that act declares, that it shall be in the power of the courts so far to alter final process in said courts as *to conform the same to any change made by the State legislatures for the State courts. [*764

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The thirty-fourth section of the Judiciary Act of 1789 enacts that "the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or prescribe, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply." 1 Stat. at L., 92.

The power of the court, then, in this respect, is confined to the alteration of final process.

The case of *Annis v. Smith* before referred to, (16 Pet., 312, 313,) has settled the meaning of "final process" to be writs of execution. The lien of a judgment not being a writ of execution, the court has no power to adopt it, under the third section of the act of 1828, and, besides, the third section obviously is confined to action in court.

Neither does the act of 1828, in the preceding sections, adopt the lien of judgments, unless it is "final process" or a "proceeding thereupon." But the case of *Annis v. Smith* has settled this latter expression to mean the exercise of a ministerial duty of some officer of the court in the service of "final process."

If this be so, then, under the thirty-fourth section of the Judiciary Act, the United States courts are bound to regard the law of the State upon the subject of the lien of judgments.

(The argument of *Mr. Lawrence* on the constitutionality of the Mississippi statute is omitted, the decision having turned upon the first point.)

Of *Mr. Badger's* argument the reporter has no notes.

Mr. Justice McLEAN 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
 *765] charge *the jury "to disregard the mortgage, because
 of the paramount right of the plaintiffs to have execu-

tion 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 6th, 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 *The 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*.”¹

¹ CITED. *Morsell v. First Nat. Bank*, 1 Otto, 360.

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The same doctrine was held by the Supreme Court of *766] *Indiana 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. (Ind.), 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. *Taylor 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 19th 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 a 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

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Supreme Court of the State which shall impair it, under the twenty-fifth section of the Judiciary Act.

*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."¹

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. The 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

¹ CITED. *Leffingwell v. Warren*, 2 Black, 603.

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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.”¹ Subject to this charge, the defendant may convey the land. “A judgment creditor has *768] 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. *Id.*

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.

¹ FOLLOWED. *Ward v. Chamber-Pierce*, 7 Wall., 217; *Baker v. Morton*, 12 Black, 437. CITED. *Brown v.* 12 Id., 158.