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JUDGMENT LIENS IN OHIO
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The purpose of this article will be to explain: the present law of Ohio relating to liens of judgments; the reasons for the statutory amendments adopted by the 91st General Assembly upon recommendation by the Ohio State Bar Association, which became effective on August 30, 1935, by which the present method of acquiring liens of judgments was established; the objectives which were meant to be accomplished by that legislation, and its effect; and another amendment enacted in 1947 without approval of the Association, which is believed to have been ill advised, and unfortunate in its effect. Finally, consideration will be given to what interests in realty may be subjected to a judgment lien, and some of the judicial rulings concerning such liens in Ohio.

It will be necessary to trace the history of some steps in the development of the law concerning liens of judgments of both federal and state courts, in order to make clear the reasons which led to the adoption of the present practice, and also to correct some misunderstandings of the law which have been found to exist among lawyers and judges, and are believed to have led to some rather serious errors of practice concerning executions, that prevail to a considerable extent.

While it seems unnecessary, for our purpose, even to explore the whole history of Ohio statute law upon the subject, reference must be made to some Ohio statutes which existed at different times before 1935, in order to point out the compelling reasons for the enactment of the amendments of that year; but the scope of the article will be confined to the origin and effect of the present law with respect to liens of judgments in this State, and particularly those of courts of first instance of general jurisdiction, which include the courts of common pleas and the United States district courts within the state. Some mention of the inferior courts must be made, since liens of their judgments are also controlled by one of the sections of the act of 1935, but the judgments of the courts of general jurisdiction will be chiefly considered because the primary reasons for all of this legislation chiefly concern them.

The judgment lien act of 1935\(^1\) was the result of about seven years of study, drafting and revision, followed by persuasion of the legislature, carried on by a special committee of the Ohio State Bar Association, designated originally, and until after enactment of the amendments of 1935 had been accomplished, as the Committee on Federal Judgment Liens—a title whose significance was probably never generally understood, and has been almost entirely forgotten. That significance lay in the important fact that the committee was originally appointed, not primarily for the purpose of devising a new means of establishing liens

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\(^1\) **Ohio Rev. Code** §2329.02 et seq., (§11656, et seq.).
of judgments of Ohio courts, for their own sake, but to draft and procure enactment of legislation to conform judgments of our State courts to those of United States district courts, so as to meet the requirements of the Federal Conformity Act of 1888\(^2\), and thereby to obtain the benefit of that act in this State, confining the liens of federal district court judgments to counties in which they are docketed or registered. It was desired to accomplish this in order to protect land owners, purchasers and mortgagees against the hazard of liens of federal judgments undiscovered because they are not of record in the county where the affected lands are situated, and search for which would otherwise always have to be made at the seats of the district courts of the district in which the lands are located. The priority of this purpose will be more apparent when it is known that the original appointment of the committee was made upon the urgent suggestion of the late Charles C. White, for many years the learned and distinguished Chief Title Officer of The Land Title Abstract and Trust Company, who was deeply concerned about the subject of federal judgment liens; and who was the author of a number of articles urging conformity by the States, after the historic decision of the Supreme Court of the United States in the case of *Rhea v. Smith*\(^3\) had been handed down in 1927.

The title of the committee was changed to Committee on Judgment Liens after the enactment of the 1935 amendments, when it was continued for two or three years to observe the working of the new law and recommend correction of any defects that might appear.

The objectives of the legislative project, some of which developed in the course of the committee's work and were incidental to the original purpose, may be stated, substantially in order of their importance, as follows:

1. To conform liens of judgments of Ohio courts of first instance of general jurisdiction to those of judgments of the federal district courts, so as to meet the requirements of the federal judgment lien act of August 1, 1888\(^4\) as the same had been interpreted by the Supreme Court in *Rhea v. Smith*, thereby making that statute applicable within this State, and so confining the liens of federal judgments to counties in which such judgments are docketed and indexed;

2. To centralize the records of all judgments operating as liens (except execution liens) in each county, so as to minimize the search for such liens;

3. To simplify the procedure for making a judgment a lien upon lands in counties foreign to that in which it is rendered, by making it unnecessary first to discover the judgment debtor's lands in a foreign county and then to


\(^3\) 274 U.S. 434 (1927).

issue and levy a foreign execution, since under the new law a blanket lien can be laid immediately upon all of the debtor's land in a county without first locating the lands and obtaining descriptions, while the foreign execution procedure itself remains intact;

4. To provide a more simple and convenient method of preventing dormancy of judgments, while leaving the old procedure unimpaired; and

5. To provide a more satisfactory procedure for establishing and enforcing liens of judgments of municipal and other inferior courts.

It is believed that these purposes were achieved. The various elements of the original problem, and the solutions provided by the enactments of 1935 and 1939 are discussed below.

While it will be necessary at times to make mention of executions, the subject of this article will be liens of judgments as such, upon real property, not those acquired by seizure in execution.

**Federal Judgment Liens**

It is a generally accepted principle that judgment liens are creatures of statute only. At common law judgments of themselves created no liens upon lands and tenements. However, as to judgments of district (and formerly circuit) courts of the United States, that rule historically requires some rather careful study and slightly agile reasoning to square it with earlier judicial decisions upon the subject; for prior to August 1, 1888 there was no federal statute expressly and directly creating liens for the judgments of those courts, yet the Supreme Court of the United States, reasoning from the apparent intent and practical effect of certain federal statutes, which were held to adopt the judgment lien laws of States and extend their effect to federal judgments, and looking to the assumed necessity of protecting litigants in the federal courts against unfair discrimination in favor of those in state courts, drew from those statutes, which did not in words even mention judgment liens, the conclusion that whenever state court judgments were by state law made liens upon property within the territorial jurisdiction of the courts rendering them, then the judgments of circuit and district courts must operate as liens to the extent of their territorial jurisdiction. Thus in effect, and inferentially, the existing federal statutes on conformity of federal and state procedure, and consequentially certain state lien laws, were found indirectly to create liens unknown to the common law, in respect of judgments of federal courts.

Thus the law stood, though there was some considerable variance of judicial interpretation and application, until August 1, 1888, when an Act of Congress took effect. This act was designed expressly to conform

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5 Massingill v. Downs, 7 How. 760 (U.S. 1849).
the liens of judgments of the federal circuit and district courts to those of state court judgments, so that federal judgments should become liens in the same manner, to the same extent and under the same conditions, and cease to be liens in the same manner and at like periods, as judgments of courts of general jurisdiction of the state, but if and only if the state law provided for the same procedure for obtaining a lien of a federal judgment as for a state judgment.

That Act, however, was itself somewhat variously interpreted and applied, in both state and federal courts, until its construction was conclusively determined by the Supreme Court of the United States in *Rhea v. Smith*. The decision in that case made it clear that the statutes of many states obviously failed to meet the standard of conformity required by the Act of 1888. This soon resulted in a movement to bring Ohio law into conformity, so that liens of federal judgments would be confined within the same territorial limits as those of state judgments, as permitted by the Act.

The Act of 1888 has undergone several textual changes not affecting the rules with which Ohio lawyers need to concern themselves, and its substance, (as well as that of Sections 812 and 814 of Title 28, U. S. Code, as they existed in 1935), is now embodied in Section 1962 of the Judiciary Act of 1948, which reads as follows:

> 1962. Lien. 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. Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish, before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of courts of the State. (Emphasis added.)

Since the new section just quoted reflects some verbal changes from the text of the older sections of the U. S. Code construed in *Rhea v. Smith*, it seems advisable to quote those sections as they existed then, so as to demonstrate that there has been no change of substantial meaning introduced by the revision. The former sections (consolidated and rearranged in present Section 1962), read:

> Sec. 812. Judgments and decrees rendered in a district court of the United States within a State shall be liens

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10 By Rule 54 (a), Federal Rules of Civil Procedure, the term "judgment" now includes "decree".


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,
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\(^{11}\) of this chapter shall be applicable therein
whenever and only whenever the laws of such State shall au-
thorize the judgments and decrees of the United States courts
to be registered, recorded, docketed, indexed or otherwise con-
formed to the rules and regulations relating to the judgments
and decrees of the courts of the State.

Sec. 814. Judgments and decrees rendered in a 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.

Section 812 corresponded to Section 1 of the Act of 1888. Section
814 contained a provision as to dormancy added later. Both of the
sections were consolidated, with slight textual changes of words and
arrangement, in Section 1962 of the Judiciary Act of 1948. It will be
apparent that no changes made affect the subject here discussed.

The Act of 1888, as from time to time amended without sub-
stantial change of its first section, was variously construed by federal
and state courts, and with some liberality in favor of state lien laws, as
to their conformity with the Act, until in 1927 the Supreme Court,
reviewing on \textit{certiorari} a judgment of the Supreme Court of Missouri,
which had sustained a Missouri statute that required the filing of a tran-
script of a federal district court judgment in any county, while making
a state court judgment a lien upon rendition in the county in which it
was rendered (though requiring a filing of a transcript in any other
county), reversed the Missouri judgment; it being held by the Supreme
Court that to establish conformity under the Act of 1888 it was necessary
that the State law provide \textit{exactly the same procedure in all cases} for the
obtaining of liens of federal judgments and those of state courts. Other-
wise, the Supreme Court held, an advantage of convenience would be
accorded to State court litigants over those in the district courts, \textit{in the county where a judgment was rendered}, and even if the procedure was
uniform as to \textit{every other county}, nevertheless conformity was defeated
by even that preference.

Mr. Chief Justice Taft, speaking for the Court,\(^{12}\) said:

It is the inequality which permits \textit{a lien instantly to attach to

\(^{11}\)§813 was repealed. Its subject matter is now covered by Rule 79, and
relates only to keeping of indices by the clerk of the district court.

\(^{12}\)274 U.S. 434, 444, (1927).
the rendition of the judgment in the State court which does not so attach in the Federal court in that same county that prevents compliance with the requirement of Section I of the Act of 1888. (Emphasis added.)

This decision of course superseded all previous conflicting interpretations of the Act, and definitely established the rule which has ever since prevailed: unless exactly the same requirements for attachment of a lien are imposed upon judgments of state courts of general jurisdiction as upon those of district courts, the Act of 1888 does not apply in the state; and as a consequence the rule of Massingill v. Downs, supra, prevails, and a district court judgment will operate as a lien throughout the district.

This brings us to the point where it becomes necessary to examine the law of Ohio as it existed before August 30, 1935.

**Ohio Judgment Liens Prior to 1935**

Before the year 1927, and probably from a time far beyond the memory of any lawyer even then living, judgments of the court of common pleas automatically became liens, upon rendition, on lands and tenements within the county wherein the judgments were entered. Until 1927 a judgment became a lien from the first day of the term at which it was rendered (with certain exceptions); and from 1927, under an amendment enacted in that year, the judgment lien attached from the day on which the judgment was rendered. Liens could also be obtained by seizure of property in execution; and it was necessary to establish liens in foreign counties by that same means.

In 1906 someone apparently discovered the federal Act of 1888, and an attempt was made to take advantage of its provisions, but the attempt was clearly futile. An act passed by the General Assembly in that year purported to provide that a judgment of a district or circuit court of the United States should be a lien upon real estate in any county only when a copy of such judgment had been filed in the office of the clerk of the court of common pleas of that county, for recording, indexing and entry in the execution docket; but no such provision whatever was made with respect to state court judgments. This attempt at conformity under the Act of 1888 failed far more completely than did the Missouri statute stricken down in *Rhea v. Smith*.

This was the status of Ohio law upon the subject when the project of establishing conformity was undertaken by the Ohio State Bar Association in 1928, and until the amendments sponsored by the Association became effective on August 30, 1935. Until that time, very clearly, the Act of 1888 had never applied to judgment liens in this State, and it followed that judgments of the district courts automatically became liens.

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from the date of rendition, upon lands of judgment debtors throughout the respective districts of those courts.

As will now be shown, since August 30, 1935 that is no longer the case, for it may be stated pretty confidently that exact conformity was achieved at that time, and it follows that a district court judgment is now a lien only upon lands in any county wherein a judgment certificate is filed, docketed and indexed in the office of the clerk of the court of common pleas, or, in the case of registered lands, when a certificate or certified copy has been filed for registration in the office of the recorder; and the lien dates from such filing. While it is probably still wise to search the district court docket to avoid overlooking an execution lien, (which is not affected by the 1935 amendments, since a state cannot legislate concerning federal executions), yet such a search is unnecessary for the discovery of judgment liens as such. Neither a district court judgment nor a state court judgment now becomes a lien automatically in any county, by the mere fact of rendition.

The Ohio Law Since August 30, 1935

As amended, effective on the date given above, the statutes relating to the procurement of judgment liens provide in substance:

(a) that a judgment of any court of general jurisdiction within this state (which includes the district courts) shall be a lien on lands in any county from the time when a certificate of the judgment, describing it as specified in the statute, is filed in the office of the clerk of the court of common pleas of that county; or, in the case of lands registered under the land title registration act (commonly known as the Torrens Act), when a certificate or certified copy of the judgment has been filed with the county recorder, to be noted and a memorial entered upon the register of the last certificate of title of the land to be subjected to a lien;[17]

(b) that lands in any county may also be bound with a lien for the satisfaction of a judgment of any court of general jurisdiction in Ohio (including district courts) without the filing of a certificate as above required, by seizure in execution;[18] and

(c) that judgments of probate courts, municipal courts, justices of the peace and other courts inferior to the court

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[10] Ohio Rev. Code §§5309.02 to 5309.98 incl., and §§5310.01-5310.21, incl. (§§8572-1 to 8572-118, inclusive).

[17] Ohio Rev. Code §2329.02 (11656). The attorney general has rendered an opinion (1935 Ops. Atty. Gen. 4712) that filing of certificate with clerk is not required for a judgment lien on registered lands. This seems doubtful, as it defeats to that extent the purpose to centralize records of judgment liens in the clerk's office, and it seems wise to file both a certificate in the clerk's office and a certificate or certified copy in the recorder's office, in view of full provisions of this section.

of common pleas may be made liens upon lands only in the same manner as is provided for the courts of general jurisdiction by the preceding code section, thus abolishing the practice of obtaining liens by filing transcripts from such courts.

It should be noted here that Section 2329.04 contains a further provision, peculiar exclusively to that section concerning inferior courts, that when a certificate of a judgment of any such court has been filed in the office of the clerk in any county, and there docketed and indexed, execution may be issued out of such court of common pleas upon such judgment, and such further proceedings to enforce said judgment may be had, as if the same had been rendered in such court of common pleas. There are no similar provisions concerning judgments of courts of common pleas certified to foreign counties. This point will be discussed later in this article under another caption, because of its significance which has been generally overlooked.

Provisions are made for obtaining liens of judgments of the Ohio Supreme Court and courts of appeals, similar to those for the courts of general jurisdiction, but those will not be particularly discussed, because it is with the latter class of courts that we are chiefly concerned, since it is their judgments which must be conformed under the Act of 1888. It is believed that the only such courts in Ohio are the courts of common pleas and the United States district courts; but the same procedure for obtaining judgment liens was applied to inferior courts, not only for convenience, but as a precaution lest at some time some of those courts might come to be deemed courts of general jurisdiction. The recent general enlargement of the jurisdiction of municipal courts suggests a possible movement in that direction, so that establishment of complete uniformity of procedure seems to have been wise.

Since exactly the same procedure for obtaining liens (not necessarily enforcing them) has been provided for the federal courts as for all Ohio courts which are or could conceivably be classified as courts of first instance of general jurisdiction, the requirements of the Act of 1888, and of the opinion in Rhea v. Smith, seem to have been fully met in Ohio. It was expressly held in that case that appellate courts are not courts of general jurisdiction. Therefore the conclusion seems justified that a district court judgment in Ohio now becomes a lien in the same manner, to the same extent and under the same conditions, and ceases to be a lien in the same manner and time, as a state court judgment. It is rather gratifying to be able to say that Mr. Charles C. White, in an article published upon this subject after enactment of the 1935 legislation, expressed the opinion that the Ohio law "conforms exactly."

As said before, there will be no discussion here of either execution or dormancy of judgments, as it is understood that those subjects will be treated in other articles; except that it may be noted in passing that

19 Ohio Rev. Code §2329.04 (11656-2).
(1) the 1935 amendments did provide a simple and convenient method of obtaining blanket judgment liens upon lands in foreign counties without first searching for and discovering lands of the judgment debtor there and levying execution, by the mere filing of a certificate, and (2) they also provided a similarly convenient means of preventing dormancy.

Repeal of the “One Year Rule” as to Priorities of Judgment Liens and Effect on Priorities

What is believed to have been a very unfortunate piece of legislation was enacted in 1947 by the 97th General Assembly,20 without the sponsorship or approval of the Association, which repealed Section 11708 of the General Code. In fact, upon at least two former occasions the Committee on Judgment Liens had strongly opposed, and had been instrumental in preventing, the repeal of that section, which provided in substance, as interpreted by our Supreme Court,21 that a judgment upon which execution was not levied within one year after its rendition should lose its priority in favor of other judgments, though subsequent in time, upon which levy was so made, or as against other judgments upon which no levies had been made, which latter then stood equal with the first, until one of them gained priority by levy of execution. This law had existed for much more than 100 years without substantial change, and it is submitted now, as was argued then, that it was a very wholesome law, rewarding the diligent judgment creditor and penalizing the dilatory and negligent. It ought never to have been repealed; but it was, and so a judgment lien, once attached, now retains its original priority in order of time, until it is satisfied or becomes dormant.

“Circuity of Liens”: The “Triangular Case”

Brief mention should be made here of a very interesting and once very perplexing problem of priorities, closely related to Ohio Gen. Code §11708, discussed above. This problem arose long ago under that law, but was fully solved by the Ohio Supreme Court, though unfortunately many lawyers seemed not to be aware of that fact; and the repeal of §11708 has almost, though possibly not quite made the problem obsolete, as it relates to judgment liens. This is the problem: a senior judgment, under Ohio Gen. Code §11708, lost its priority as a lien as against other judgments, by failure to levy execution within a year; another lien (not of a judgment), such as a mortgage, junior in time to the first judgment, had attached to land bound by the lien of that judgment; and still later, before execution had been levied on the senior judgment, another judgment had been recovered, and either had been levied or was less than a year old. The result was that (1) the senior judgment lien was superior to the mortgage, but inferior to the lien of the junior judgment, (2) the

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20 122 Ohio Laws 460.
21 Shuee v. Ferguson, 3 Ohio 136 (1827); Sellers v. Corwin, 5 Ohio 398 (1832); see reporter’s note to Farmers Bank v. Commercial Bank, 10 Ohio 71, 74 (1840).
mortgage was inferior to the senior judgment, but superior to the junior judgment, and (3) the junior judgment was superior to the senior judgment, but inferior to the mortgage which preceded it in time. Thus there was a "circuity of liens," or "triangular case," creating a seemingly insoluble problem. However, the Supreme Court simply cut the Gordian knot by very sensibly deciding that in such a situation the parties need not chase each other around the triangle, but that all of the liens should have priority according to their seniority in time. Authorities exemplifying the problem and its solution are cited in a footnote.

As has been said, this rather bizarre problem, even as thus solved, has been rendered nearly obsolete with respect to judgments by the repeal of Ohio Gen. Code §11708, but perhaps not quite. It seems just possible that there may still exist some living judgments antedating the repeal of that section, having mortgages or other non-judgment liens intervening between them, to which the principle of circuity might apply because they may be property interests which vested before the repeal. Probably title examiners should watch for such cases. It should be borne in mind that we are here considering the problem only as it relates to judgment liens. The principle of circuity might arise as among other liens, with no judgment liens involved, in which case the repeal of Ohio Gen. Code §11708 could have no effect.

The effect of Ohio Gen. Code §11708 before its repeal, was considered, and the section was applied, in Waldock v. Bedel, 59 Ohio App. 520 (1938), involving priorities of several judgments, upon three of which executions had not been levied within a year after their respective dates of rendition (or even later), but execution upon a fourth and subsequent judgment had been so levied. Upon the facts stated, the case would seem undoubtedly to have been correctly decided, it having been held that a junior judgment, levied within a year, acquired priority over three senior judgments not so levied, and the appeal involving only these four; but the date of another judgment,—that of the plaintiff Waldock, which apparently was not contested,—is not given in the opinion, nor is anything said about levy of execution, so it is impossible to determine whether that judgment was given its proper priority, or whether there may possibly have existed a "circuity of liens" case, which could have required a different result of the marshaling. No mention is made of Shue v. Ferguson, or of any of the line of authorities to which it belongs, so presumably there was no "triangle"; but on the other hand the court and counsel could have been unaware of those authorities, as some other very eminent Ohio lawyers were found to have been. The court seems to

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22 For decisions on 'circuity of liens,' or so-called 'triangular cases,' see: Choteau v. Thompson, 2 Ohio St. 114, 130 (1853); Holliday v. Franklin Bank, 16 Ohio 534 (1847); Brazee v. Lancaster Bank, 14 Ohio 318 (1846); Fitch v. Mendenhall, 17 Ohio 578 (1848); and Cowen v. Wassman, 64 Ohio App. 84, 93, 17 Ohio Op. 408, 411 (1939); also cases cited in note 21, supra.

23 See footnote 21, supra.
have assumed that the failure to repeal Ohio Gen. Code §11708 may have been due to an oversight, but as shown above, in this the court was much mistaken, and certainly no repeal, either express or implied, was intended by the Committee.

Erroneous Practice as to Issuance of Execution on Judgments Filed in Foreign Counties

It has come to the attention of the writer that a mistaken practice, involving a misinterpretation of Ohio Rev. Code §§2329.02 and 2329.04 (11656 and 11656-2) has grown up in some counties with respect to the issuance of execution upon a common pleas judgment for levy in a foreign county where a certificate of judgment has been filed. It seems to be understood that in such a case the court in the foreign county may issue the execution. This was certainly never intended by the committee which drafted and sponsored the enactment of those sections, and they contain no such provision. The practice is believed to be wholly erroneous and unwarranted.

Ohio Rev. Code §2329.02 (11656) authorizes certification of a judgment of a court of general jurisdiction to another county to establish a lien upon lands in that county, but mentions no other purpose whatever. Nothing is said of issuance of executions.

On the other hand, Ohio Rev. Code §2329.04 (11656-2) authorizing similar issuance of a certificate by a municipal or other inferior court, for filing in any county, for the purpose of obtaining a lien, then provides that, when such a certificate has been filed with the clerk of the court of common pleas in any county "... execution may be issued out of such court ... upon such judgment, and such further proceedings to enforce such judgment may be had as if the same had been rendered by such court. . . ."

There is no corresponding provision, in Ohio Rev. Code §2329.02 (11656) or anywhere else, for issuance of executions upon common pleas judgments, or for their enforcement, in a foreign county, except, of course, that equitable enforcement of the judgment lien by creditor's bill and marshaling of liens, or other appropriate equitable remedies, is available. That provision of Ohio Rev. Code §2329.04 (11656-2) relates exclusively to the inferior courts. It surely seems that the maxim Expressio unius est exclusio alterius clearly forbids the practice here criticized.

There are good reasons for applying this provision to inferior court judgments but not to those of the common pleas:

1. Most important of all, since clearly no court of common pleas can issue an execution upon a district court judgment, (and the Ohio legislature could not give such power), the authorization of such execution by one common pleas court of a judgment of another would create exactly such a discrimination in favor of common pleas judgments as would
defeat conformity and frustrate the chief objective of the
act of 1935;

2. It was desired to retain full control and a complete record
of every common pleas judgment in the court which
rendered it, so that at least to that extent it would be un-
necessary to search beyond the county of origin for ex-
ecutions upon the judgments of its court; and

3. In most cases, at least, an inferior court has no power to
execute its judgments against real estate, so it was necessary
to vest that function in courts which possessed such power,
and it seemed convenient to allow its exercise in the county
where the judgment lien was established, since the inferior
courts are not courts of general jurisdiction, and therefore
their judgments are not required by the federal law to be
conformed like those of the common pleas.

Hence the practice described above is believed to be wholly un-
authorized by law, and it would seem that executions upon common pleas
judgments issued in foreign counties according to that practice must be
void.

PROPERTY SUBJECT TO JUDGMENT LIENS

To determine what property may be subjected to a judgment lien
it is necessary to read both OHIO REV. CODE §§2329.02 (11656)
and 2329.01 (11655) and to read them together, for they are clearly
cognate and in pari materia. Section 2329.01 provides that “Lands and
tenements, including vested legal interests therein, permanent leasehold
estates renewable forever, and goods and chattels . . . shall be subject
to the payment of debts, and liable to be taken on execution. . . .” Section
2329.02 then provides that a judgment lien may be laid upon “lands and
tenements”, and for the definition of those terms it is necessary to look to
the preceding section, where the phrase “lands and tenements” is made to
include “vested legal interests therein”, and to the common law, and
permanent leaseholds are also expressly made subject to execution. Since
the judgment lien is plainly created to aid the execution and enforcement
of judgments, the lien of a judgment must fall upon such “lands and
tenements” as are by the preceding section made subject to levy of
execution, “including vested legal interests therein;” and actually prior
to 1935 OHIO GEN. CODE §11656 commenced with the words “such
lands and tenements,” plainly referring back to the preceding section,
and so confirming the correlation of the two sections. But what are such
“vested legal interests”?

Another bit of legislative and judicial history seems to be called for
here. Prior to the year 1880 the statute then corresponding to the
present OHIO REV. CODE §2329.01 (11655) provided that “lands, tenen-
ments, goods and chattels” should be subject to levy, and this was con-

24 OHIO REV. STAT. (Swan and Critchfield) 1063, §420; 37 OHIO LAWS 44,
§1.
JUDGMENT LIENS IN OHIO

strued by the courts to mean only legal interests. In 1880 this provision was again amended to subject to levy "Lands and tenements, including vested interests therein," and this was held to include vested equitable interests, and hence to include the interest of a vendee in possession of real estate under a contract of purchase, the legal estate being in the vendor. However, in 1925 the legislature performed another somersault, and made this provision read, as it still does: "Lands and tenements, including vested legal interests therein, permanent leasehold estates renewable forever, and goods and chattels. . . ."

But what are legal estates? How about leasehold estates for years not renewable forever? Since leaseholds renewable forever are expressly included among vested legal interests by the words of the statute, and leaseholds for lesser terms are not mentioned, it would seem that logically, under the maxim expressio unius est exclusio alterius, such leaseholds are excluded, even though they certainly are usually vested legal interests. The Supreme Court of Ohio seems to have left this question up in the air unanswered. In Abraham v. Fioramonte the Court said: "A judgment lien does not attach to a leasehold estate prior to the filing of a certificate of such judgment, in accordance with Section 11656, General Code, or seizure by the levy of an execution." That is so obviously true as hardly to have needed to be stated, but what about the converse proposition? Since it is evident that there had been no certificate filed and no execution levied, of course there could be no lien, but it seems possible to draw from the quoted language of the court an inference that if there had been a certificate filed, or an execution levied, a lien would have attached; but if such an inference is permissible it is obiter and without authority. However, the court later seemed to think that such an inference might be drawn, but it did not so decide. In Bank of Ohio v. Lawrence the court noted that the plaintiff was relying upon Abraham v. Fioramonte for support of its claim that by filing a certificate of judgment it had acquired a lien upon the equitable interest of a land contract purchaser, which is so clearly not a legal interest as to be plainly outside the effect of Ohio Rev. Code §2329.01 (11655) and everything said about the Fioramonte case in the Lawrence case is also obiter dictum. But what the court said in the latter case was merely that it was held in the Fioramonte case that "even if a leasehold for a term of years can be construed to be a legal interest in land, a judgment lien does not attach to such lease-

25 See history of this section in Culp v. Jacobs, 123 Ohio St. 109, 174 N.E. 242 (1930). See also: Roads v Symmes, 1 Ohio 281, 313 (1824); Stiles v Murphy, 4 Ohio 92 (1829); Gorrell v. Kelsey, 40 Ohio St. 117 (1883); Smith v. Hogg, 52 Ohio St. 527, 40 N. E. 406 (1895).
26 Ohio Rev. Stat. 5374; 51 Ohio Laws 57.
28 111 Ohio Laws 366, Ohio Rev. Code, 2329.01 (11654).
hold prior to the filing of a certificate of such judgment or seizure by the
levy of an execution." So the court has not yet decided whether or not a
lease for years, not renewable forever, can be subjected to either a
lien or an execution, or whether such a lease is a vested legal interest;
and indeed the point could hardly have been decided in either the Fiora-
monte case or the Lawrence case, for the facts did not call for such a
decision.

The Lawrence case did, however, definitely settle two important
points. (1) Filing a certificate of judgment does not fix a lien upon the
equitable interest of the judgment debtor under a land contract, nor (2)
does it create a lien upon land acquired after filing the certificate, but
a new certificate must be filed after acquisition and before disposition
of the land by the judgment debtor. These decisions are clearly correct.

So it may be concluded that judgments may be made liens, by filing
certificates, upon:

1. Legal estates and vested legal interests in lands, held by
the judgment debtor at the time of filing the certificate,
which would include legal estates in fee simple or fee tail,
estates for life, estates pur autre vie, vested reversions and
vested remainders even though such estates or interests are
liable to defeasance by conditions subsequent, if the legal
title is vested in the judgment debtor when the certificate
is filed;

2. Leasehold estates renewable forever; and possibly leasehold
estates for lesser terms if they are finally held to be vested
legal interests, though in that event it would seem to have
been superfluous for the legislature to have specifically
included "leasehold estates renewable forever"; and

3. Real estate conveyed by the judgment debtor in fraud
of creditors under circumstances which render the con-
veyance void, and the lands subject to execution As to
lands of a decedent it has been held that since title de-
volves upon the heirs or devisees at death, only a judgment
against one or more of the heirs or devisees can be made a
lien, not a judgment against the personal representative.
Of course the latter can be compelled to force sale for pay-
ment of debts.

It must be added that liens may also be obtained by seizure in

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31 Peck v. Chatfield, 24 Ohio App. 176, 179, 156 N.E. 459 (1927); Rhea v.
Dick, 34 Ohio St. 420, 423, (1878); Richey v. Johnston, 30 Ohio St. 282, 294
(1876); 17 O. Jur., Executions §251.

32 Ecker v. Switzer, 17 Ohio App. 90 (1922); Barr v. Hatch, 3 Ohio 527
(1874); Gormley v. Potter, 29 Ohio St. 579, 599 (1876); Myers v. Hegvitt, 16
Ohio 449, 451 (1847); 19 O. Jur., Fraudulent Conveyances §116, Ohio Rev. Code
§1355.02 (§618).

33 Akron Commercial Securities Co. v. Ritzman, Admx, 79 Ohio App. 80,
72 N.E. (2d) 489, (1945).
execution, subject to the same limitations as to the kinds of interests in real property as are stated above.

The above categories probably are not entirely exhaustive. There may be other kinds of interests which do not occur to the writer which should be classified as vested legal interests. If so, they would be subject to a judgment lien acquired while such interests exist.

SEARCH FOR JUDGMENT LIENS

The writer is not an abstracter of titles and feels unqualified to described the techniques of title search, though he has of course examined a great many titles by means of abstracts, and sometimes has found it necessary to supplement the examination of the abstract by examination of records, where the abstract is deficient, as is too often the case.

However, as to a search for judgment liens, examination should be made of (1) the index of judgments and the judgment dockets (and general index of suits and judgments if such an index is kept), in the office of the clerk of the common pleas court of the county where the land is situated, covering a sufficient period of time to be sure that there is no judgment lien in effect, either by original filing of a certificate or by renewal (by filing of a new certificate or by issuing execution, before dormancy), (2) the register of title certificates of registered lands in the office of the county recorder of the county where the land is situated, if the title has been registered, and (3) the indexes and dockets of the United States district courts of the district, in order to discover judgments upon which executions may have been issued without filing a certificate of judgment, and, incidentally, perhaps to verify the county search, since too much precaution is hardly possible.

It should always be remembered that a judgment lien, once obtained by filing a certificate, attaches to land, or vested legal interests therein, held by the judgment debtor at the time of filing the certificate, and continues in effect as to that property until the lien is satisfied or becomes dormant. It does not attach to after-acquired property, and a lien upon such property must be obtained by filing another certificate after acquisition of the property by the judgment debtor and before he disposes of it. Therefore the date of filing is extremely important and should be carefully noted, and compared by the title examiner with dates of conveyances or instruments of title.

Moreover, it should not be forgotten that a judgment lien once obtained and not dormant may be renewed and continued in force either by filing another certificate or by issuing an execution, and for this purpose the execution need not be levied — the land need not be "seized in execution"; for this provision of the old law on dormancy was retained only to preserve to the judgment creditor, as an alternative method of saving the lien, the procedure formerly provided. When it is desired, however, thus to preserve a lien in a foreign county, it would seem that the writ of execution should be issued to and returned by the sheriff of that county, so that there will be a record in each county.
It seems obvious, however, that the simple and convenient filing of a new certificate is much to be preferred to mere issuance of an execution, if only preservation of the judgment lien is desired, without actual levy upon specific property.

ILL-ADVISED ATTEMPT TO AMEND JUDGMENT LIEN LAWS

A bill was introduced in the General Assembly several years ago which if passed would have largely emasculated the judgment lien act of 1935 and defeated some of its most important objectives. Fortunately it was referred to the State Bar Association for study and report while the Assembly was in session, was promptly opposed, and died in the House Judiciary Committee.

Among other features, it would have added, to the requirement of a certificate of judgment, a further requirement of filing an ex parte affidavit by the judgment creditor or his attorney, describing in detail the lands upon which a lien was sought. Not only would this have necessitated search for and discovery of the judgment debtor's lands before they could be bound with a lien, but it would also have made it possible, by a mere affidavit, to create at least an apparent encumbrance upon property not actually owned by the debtor, but only mistakenly supposed to be so owned. Also, it would have deprived the judgment creditor of the great advantage of being able, by the simple filing of a judgment certificate, to bind all lands actually owned by the debtor in any county, without first suffering delay while searching for property and its legal description, during which time the land might be disposed of; when under the present law it can be immediately bound with a blanket lien without any risk of clouding title of a third person's property.

The proposal was most ill-advised, and it was fortunate that it did not slip by the vigilance of the Judiciary Committee. It is to be hoped that no future similar tampering with the lien law will ever be enacted.