

DORMANCY AND REVIVAL OF OHIO JUDGMENTS

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Any discussion of the dormancy and revival of judgments must, of necessity, be rather inconclusive. This is so because the case law involved is haphazard and in many instances, non-existent. While it is true that dormancy and revival are statutory creatures, the statutes are confusing and have been infrequently and inconsistently construed. Dormancy and revival might well be called "a dark spot in the law."

DORMANCY

While the problem of dormancy has continually plagued the legal profession, its importance is only fully realized in an economy that is struggling upwards following a serious setback. Thus, in times of economic winter, when judgments are easy to obtain, but hard to enforce, they tend to become frozen and forgotten: but as the economy awakens and money begins to flow, the profession turns its thoughts to those judgments which have become dormant during the winter season.

Only money judgments become dormant,¹ and dormancy only occurs in one of two ways, viz: either by failure to issue execution or file a certificate of judgment within five years from the date of judgment,² or by the death of the judgment creditor.³

The death of the judgment creditor poses no real problem since it is relatively simple to revive the judgment in the name of his personal representative;⁴ but until such a revivor takes place, the issuance and levy of an execution in the name of the deceased judgment creditor, is a nullity.⁵ However, it is interesting to note that the death of the assignee of the judgment creditor does not cause dormancy.⁶

While, technically, the death of the judgment debtor will not cause dormancy, his death effectively stops any advantage that might be gained from the issuance of an execution thereafter. Thus, land actually levied upon prior to the death of the judgment debtor, may be sold within five years after levy without reviving the judgment;⁷ but where an execution

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¹ Moore v. Ogen, 35 Ohio St. 430 (1880).

Weenich v. Slutz, 98 Ohio St. 342, 121 N.E. 643 (1918).

Odell v. Firestone, et al., 22 Ohio L.Rep. 556, 1 Ohio L. Abs. 632 (1923).

Beaumont, Tr., et al. v. Herrick, 24 Ohio St. 445 (1873).

² OHIO REV. CODE §2325.19 (11649).

OHIO REV. CODE §2325.20 (11650).

³ Rankin v. Hannan, Admr., 37 Ohio St. 113 (obiter) (1881).

⁴ OHIO REV. CODE §2325.19 (11649).

⁵ Gist, Admr. v. Beresford, 1 Ohio Cir. Ct. 32, 1 Ohio Cir. Dec. 19 (1885).

⁶ Rankin v. Hannan, Admr., 37 Ohio St. 113 (1881).

⁷ Bigelow, et al. v. Conrad Renker, et al., 25 Ohio St. 542 (1874).

Lash, Admr. v. Miller, 30 Ohio L. Abs. 443, 1 Ohio Supp. 357, 16 Ohio Op. 204 (1939).

is only issued and levied after the death of the judgment debtor, such seizure is void and the judgment must be revived before execution can lawfully issue.⁸ If, however, there are two judgment debtors, an execution issued against both of them after the death of one, will suffice to keep the judgment alive as to the survivor.⁹ Indeed, such an execution should be issued against both in order to conform to the judgment. Such an execution is, of course, a nullity as to the deceased debtor.¹⁰

The mere issuance of an execution, or the filing of a certificate of judgment, either in the county where the judgment was obtained, or in any foreign county, within the five year period, will keep the judgment alive.¹¹ However, it seems clear that in order to preserve a lien acquired in a foreign county, it is necessary to either file a new certificate of judgment in the foreign county, or issue execution to the sheriff of such county within the five year period immediately following the prior filing or issuance.¹² Thus, the issuance of an execution or the filing of a certificate of judgment while the original judgment is alive, in a foreign county other than the foreign county previously filed in or issued to, will not preserve the lien in the first foreign county.¹³

On the other hand, the statute is open to the interpretation that an execution issued to, or a certificate of judgment filed in, any foreign county within the five year period, will preserve the liens acquired under the judgment in the judgment county without the necessity for a second local issuance or filing.¹⁴

If execution is to be relied upon rather than the filing of a certificate of judgment, as a means of keeping the judgment alive, it is not strictly necessary to make an actual levy, but prudence would require that the execution actually reach the sheriff and be returned by him.¹⁵ Thus, where an attorney for a judgment creditor merely took the execution from the clerk's office and returned it to the clerk's office, without an actual delivery to the sheriff, the court held that such action was insufficient to preserve the judgment.¹⁶ On the other hand, the courts have held that actual delivery to the sheriff is sufficient¹⁷ and have intimated,

⁸ *Lash, Admr. v. Miller*, 30 Ohio L. Abs. 443, 1 Ohio Supp. 357, 16 Ohio Op. 204 (1939).

⁹ *Dieboldt Brewing Co. v. Grabski, et al.*, 7 Ohio Cir. Ct. (N.S.) 221, 18 Ohio Cir. Dec. 91 (1905).

¹⁰ See note 8, *supra*.

¹¹ OHIO REV. CODE §2329.07 (11663).

¹² OHIO REV. CODE §2329.07 (11663).

Coal Co. v. National Bank, 55 Ohio St. 233, 45 N.E. 630 (1876).

¹³ OHIO REV. CODE §2329.07 (11663).

¹⁴ OHIO REV. CODE §2329.07 (11663).

¹⁵ *Steel v. Katzenmeyer, et al.*, 5 Ohio Cir. Ct. (N.S.) 25, 16 Ohio Cir. Dec. 400 (1903).

¹⁶ *Kelly v. Vincent*, 8 Ohio St., 416 (1858).

¹⁷ See note 15, *supra*.

by way of dicta, that the mailing of an execution to a sheriff might be sufficient.¹⁸

However, it is not all judgments that fall under the ban of OHIO REV. CODE §2329.07 (11663). Thus, a decree for alimony¹⁹ or child support,²⁰ does not become dormant, and any judgment that is made a specific charge upon real estate is not subject to dormancy.²¹ Likewise, where the court orders the sale of specific land, such order of sale does not become dormant,²² even though the land is not sold for more than five years, since such an order requires the confirmation of the court.²³ It is possible, of course, that undue delay in the latter situation might give rise to laches.

In addition to the types of judgments that do not become dormant, there are some particular situations where judgments would become dormant save for the intervention of a third element. One such situation is where property, upon which there is a judgment and lien, becomes involved in equitable proceedings. In this situation, the judgment does not become dormant as to the specific property and the lien remains in all its original force as to the specific property.²⁴ This is sometimes referred to as the doctrine of equitable execution.²⁵ Thus, where the judgment creditor is made a party defendant in a foreclosure proceeding, and files his answer and cross-petition prior to dormancy, the judgment, for the purpose of the particular proceeding, remains alive and the lien on the specific land involved subsists, even though priority of liens has not been determined at the date of dormancy.²⁶ This is merely another way of saying that the court will not force the judgment creditor to do a vain thing by issuing execution where equity has taken jurisdiction.²⁷ Further, this has been held to be true even where the answer and cross-petition were not filed until after dormancy, but the proceeding was begun prior to dormancy.²⁸ However, in order to take advantage of this doctrine, the

¹⁸ See note 16, *supra*.

¹⁹ *Webster v. Dennis, et al.*, 4 Ohio Cir. Ct. 313, 2 Ohio Cir. Dec. 566 (1890).
Peeke v. Fitzpatrick, et al., 74 Ohio St. 396, 78 N.E. 519 (1906).

Betz v. Betz, 4 Ohio App. 264, 27 Ohio Cir. Dec. 26 (1915).

Lemert v. Lemert, et al., 72 Ohio St. 364, 74 N.E. 194 (1905).

²⁰ *DeCamp v. Beard, Exr.*, 94 Ohio App. 367, 115 N.E. 2d 403 (1953).

²¹ *Smith v. Phillips, et al.*, 5 Ohio N.P. (N.S.) 502, 18 Ohio Dec. 429 (1907).
Moore v. Ogden, 35 Ohio St. 430 (1880).

²² *Beaumont, Tr., et al. v. Herrick*, 24 Ohio St. 445 (1873).

Odell v. Firestone, et al., 22 Ohio L.R. 556, 1 Ohio Law Abs. 632 (1923).

Rankin v. Hannan, Admr., 37 Ohio St. 113 (1881).

²³ *Walters v. Homberg*, 3 Ohio App. 326, 25 Ohio Cir. Dec. 337 (1914).

²⁴ *Lawrence and Skinner v. Belger*, 31 Ohio St. 175 (1877).

Knickerbocker v. Sharfenaker, 29 Ohio L. Abs. 309 (1938).

²⁵ *Knickerbocker v. Sharfenaker*, 29 Ohio L. Abs. 309 (1938).

²⁶ *Dempsey v. Bush, et al.*, 18 Ohio St. 376 (1868).

²⁷ See note 26, *supra*.

²⁸ *Bauman v. Goulet*, 2 Ohio Cir. Ct. (N.S.) 251, 15 Ohio Cir. Dec. 473 (1903).

specific lien must be set up in the equitable proceeding. Thus, where a judgment creditor brought suit to foreclose his mortgage, but failed to set up an additional lien which he held upon the premises, and the judgment under which the lien subsisted became dormant during the pendency of the proceeding, the court held that a subsequent lien holder prevailed.²⁹ Finally, this doctrine is further limited by the rule that where one of several parcels of land involved in an equitable proceeding is not ordered sold, and the judgment becomes dormant, any liens under the judgment and upon such land will be lost.³⁰

Where a creditor's bill is brought and the judgment creditor is either a party defendant or a party plaintiff, the judgment will not become dormant thereafter, so far as the equitable lien thereby created is concerned.³¹ While formerly, a judgment under which there was a lien upon the property of a defendant at the time of his death would not become dormant thereafter, so as to lose the lien,³² the result was changed by statute and today the judgment and lien must be valid and subsisting at the time of the sale of the real estate.³³ When a receiver is appointed for a judgment debtor, such an appointment constitutes an equitable execution and the judgment, being alive at that time, will not become dormant thereafter so as to prevent an equitable action thereon.³⁴ The same is true in the case of an assignment for the benefit of creditors, the assignee occupying the position of an execution creditor.³⁵

Generally speaking, a judgment will not become dormant while a temporary injunction restraining the issuance of an execution is in force.³⁶ However, it has been held that where an individual without actual notice purchases the premises upon which execution has been enjoined, that upon the dissolution of the temporary order, the judgment having become dormant in the meantime, the court will not revive the judgment and lien.³⁷ This, in effect, means that the judgment creditor must look to the injunction bond for relief.³⁸

Normally, after dormancy, a bill in equity will not lie to impress the land with a lien since there is an adequate legal remedy.³⁹ However, where a discharge in bankruptcy had been fraudulently obtained, the judgment debtor retaining an equitable title in the premises, it was held that the judgment creditor could proceed immediately into chancery

²⁹ *Fort, et al. v. Litner*, 31 Ohio St. 215 (1877).

³⁰ *Bish v. Burns, et al.*, 7 Ohio Cir. Ct. 285, 4 Ohio Cir. Dec. 598 (1893).

³¹ *Cincinnati v. Hafer*, 49 Ohio St. 60, 30 N.E. 197 (1892).

³² *Ambrose, et al. v. Byrne*, 61 Ohio St. 146, 55 N.E. 408 (1899).

³³ OHIO-REV. CODE §2127.38 (10510-46).

³⁴ See note 25, *supra*.

³⁵ *Scott, et al. v. Dunn*, 26 Ohio St. 63 (1875).

³⁶ *Welsh v. Childs, et al.*, 17 Ohio St. 319 (1867).

³⁷ *Tucker v. Shade*, 25 Ohio St. 355 (1874).

³⁸ See note 37, *supra*.

³⁹ *Miami Exporting Company Bank v. Turpin, et al.*, 3 Ohio 514 (1828).

without reviving his judgment.⁴⁰ Likewise, it is not necessary to issue an execution on a judgment to preserve a lien in the bankruptcy court following the date of adjudication.⁴¹ Finally, the mere fact that land has been attached, will not prevent dormancy.⁴²

In general then, dormancy may be prevented by the simple expedient of issuing execution or filing a certificate of judgment within the statutory period, or by initiating or becoming a party to equitable proceedings prior to dormancy. However, if a judgment should become dormant, what are the incidents thereof?

INCIDENTS OF DORMANCY

It is well established that an execution upon a dormant judgment is at least voidable,⁴³ and some cases hold that such an execution is totally void.⁴⁴ The proper method to attack such a void or voidable execution is by a motion which seeks to void the execution and to return the property seized to the judgment debtor. The motion should be brought in the county from which the execution issued, that is, the original judgment county.⁴⁵

Just as an execution on a dormant judgment is invalid, so a proceeding-in-aid of execution cannot be brought upon a dormant judgment.⁴⁶

The most disastrous result of allowing a judgment to become dormant, is the loss of all liens and attendant priorities, wherever they may exist.⁴⁷ Thus, if creditor "A" has the first and best lien upon property "X" and creditor "B" has a second valid lien thereon, or perhaps a mortgage which post-dates creditor "A's" lien, and creditor "A" allows his judgment to become dormant, creditor "B" will henceforth have the first and best lien.⁴⁸ Indeed, even in the event of a revivor of creditor "A's" judgment, creditor "B" will still maintain his superior position.⁴⁹

However, a dormant judgment is not a total loss for all purposes. Thus, in the event that the judgment debtor later sues the judgment creditor, the judgment creditor may set off his dormant judgment against

⁴⁰ *Card v. Walbridge, et al.*, 18 Ohio 411 (1849).

⁴¹ *Bode v. Ruehrwein, et al.*, 18 Ohio N.P. (N.S.) 404, 26 Ohio Dec. 441 (1916).

⁴² See note 41, *supra*.

⁴³ *Van Nover v. Eshleman, et al.*, 17 Ohio Cir. Ct. (N.S.) 202, 32 Ohio Cir. Dec. 110 (1910); *Green v. Cutright*, *Wright's Ohio Reports* 738 (1834).

⁴⁴ *Goshorn v. Alexander*, 2 Ohio Dec. Repr. 597, 4 West Law Month 139 (1862).

⁴⁵ See note 43, *supra*.

⁴⁶ *Simpson et al. v. Hook*, 6 Ohio Cir. Ct. 27, Ohio Cir. Dec. 333 (1891).

⁴⁷ OHIO REV. CODE §2329.07 (11663).

⁴⁸ *Miner v. Wallace*, 10 Ohio 404 (1841).

⁴⁹ *Norton v. Beaver, et al.*, 5 Ohio 178 (1831).

the claim of the judgment debtor.⁵⁰ This is so because a judgment, dormant or otherwise, is a debt of record.⁵¹

REVIVAL

The revival of judgments is a little like locking the barn door after the horse is gone. Thus, in many instances, in the intervening period between dormancy and revivor, liens have been lost and subsequent creditors have moved into positions of superiority. Nevertheless, unlike the barn door, lost ground may sometimes be recovered, and it is in these situations that revivor plays an important role.

Just as money judgments alone become dormant,⁵² so only money judgments can be revived. Further, it is clear that such judgments must be "judgments" in the fullest sense of the word. While the statute speaks of "finding" as well as "judgment,"⁵³ the courts have held that a mere finding will not bear revivor. At best, a "finding" is only a cause of action.⁵⁴ Thus, where the amount due was found, the mortgage was ordered foreclosed, the property sold, proceeds applied, and execution for the balance remaining ordered, such a judgment for the deficiency could be revived;⁵⁵ but where the mortgage was foreclosed and the amount due was found, but not put in the form of a judgment, the court held that such a finding could not be revived for the purpose of collecting the deficiency.⁵⁶ Finally, equity will not revive or create a new lien out of a dormant judgment.⁵⁷

Dormant judgments may only be revived within 21 years from the date they became dormant.⁵⁸ The statute makes it clear that the only exceptions to this rule are the disabilities of minority, insanity and imprisonment, and that any action to revive must be instituted within 15 years following the removal of such a disability.⁵⁹ Thus, absence from the state does not toll the statute since service by publication is authorized in the statutes.⁶⁰

Revivor, as a practical matter, may be accomplished by filing a

⁵⁰ *Oliver v. Canan, et al.*, 71 Ohio St. 360, 73 N.E. 466 (1904).

⁵¹ See note 50, *supra*.

⁵² See note 1, *supra*.

⁵³ OHIO REV. CODE §2325.15 (11645).

⁵⁴ *Victor Mortgage Co. v. Arnoff*, 67 Ohio L. Abs. 459, 120 N.E. 2d 615 (1952); *Doyle v. West*, 60 Ohio St. 438, 54 N.E. 469 (1899).

⁵⁵ *Weenick v. Slutz*, 98 Ohio St. 342, 121 N.E. 643 (1918).

⁵⁶ *Doyle v. West*, 60 Ohio St. 438, 54 N.E. 469 (1899).

⁵⁷ See note 39, *supra*.

⁵⁸ OHIO REV. CODE §2325.18 (11648).

Stewart v. Campbell, 97 Ohio St. 335, 120 N.E. 175 (1918).

Weenick v. Slutz, 98 Ohio St. 342, 121 N.E. 643 (1918).

Bartol v. Eckert, 50 Ohio St. 31, 33 N.E. 294 (1893).

⁵⁹ OHIO REV. CODE §2325.18 (11648).

⁶⁰ OHIO REV. CODE §2325.16 (11646).

Bartol v. Eckert, 50 Ohio St. 31, 33 N.E. 294 (1893).

motion and taking a conditional order in the same manner as is provided for reviving actions before judgment.⁶¹ Such a motion is merely an additional proceeding in the original action,⁶² and, of course, must be filed in the common pleas court which had original jurisdiction of the case. The conditional order generally states that unless "sufficient cause be shown to the contrary within — days, the judgment shall stand revived." At the end of the specified time, if the party against whom revivor is sought, has not shown "sufficient cause," the condition goes unfulfilled, and the judgment will stand revived. If, however, the judgment debtor has shown "sufficient cause" within the time allowed, the conditional order will be vacated.

The reviving party must secure regular service on his motion if the party against whom revivor is sought is a resident of the state. Such service may issue to any county in the state and is returnable in the regular way.⁶³ If the party against whom revivor is sought is not a resident of the state, the statute provides for revivor by publication⁶⁴ in conformity with OHIO REV. CODE §2703.18 (11296). However, such publication can only be effected "for judgments or findings in which personal service originally was made on the adverse party."⁶⁵ The Ohio Supreme Court held in the *Sears* case⁶⁶ that the phrase, "personal service," means just that. However, in that case, which was an attachment suit, the original service was by publication only and obviously that service would not suffice under OHIO REV. CODE §2325.16 (11646). It is questionable whether it was necessary for the court to go to the extreme of holding that the equivalent of personal service was invalid under §2325.16, and that only actually handing the summons to the defendant in the original action would suffice, since no service of any type within the state was accomplished in the *Sears* case. However, aside from the latter holding, the *Sears* case is all the more surprising when we consider the fact that the defendant voluntarily entered his appearance in the original attachment suit. As to this point, the court holds that a waiver by means of appearance does not meet the requirements of OHIO REV. CODE §2325.16 (11646) on "personal service." However, in a court of appeals case, which predated the *Sears* case, the court of appeals

⁶¹ OHIO REV. CODE §2325.15 (11645).

OHIO REV. CODE §2325.19 (11649).

OHIO REV. CODE §2325.20 (11650).

OHIO REV. CODE §2311.27 (11403-11404).

⁶² *Bartol v. Eckert*, 50 Ohio St. 31, 33 N.E. 294 (1893).

Foster Screen Co. v. Brigel, 27 Ohio L. Abs. 704, 31 N.E. 2d 699 (1937).

Misner v. Misner, 41 Ohio St. 678 (1885).

Wolf v. Pounsford, 4 Ohio 397 (1831).

⁶³ *Misner v. Misner*, 41 Ohio St. 678 (1885).

⁶⁴ OHIO REV. CODE §2325.16 (11646).

⁶⁵ *Ibid.*

⁶⁶ *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E. 2d 413 (1944).

⁶⁷ *Kaufman v. Hughes*, 24 Ohio L. Abs. 385 (1937).

held that "personal service" did not include the equivalent of personal service,⁶⁷ and in the *Lyon*⁶⁸ case, which cites and relies upon the *Sears* case, the Court of Appeals of Mahoning County held that where resident service was initially had, revivor by publication could not be had. These cases seem to strain the language of §2325.16 to the utmost point. It is debatable whether or not the General Assembly intended that the service necessary to obtain an original judgment had to rise to a higher degree than ordinary so-called personal service, if a revivor by publication were to be permitted. Obviously, however, no revivor by publication will be allowed upon a cognovit judgment,⁶⁹ nor will revivor be allowed upon a suit originally begun by publication, since no personal judgment could be obtained on the latter type of service.⁷⁰

The judgment debtor may interpose any defense to a motion to revive, which arose subsequent to the original judgment and which would relieve the judgment debtor of his liability.⁷¹ Thus, the defenses of payment,⁷² satisfaction,⁷³ settlement,⁷⁴ or the statute of limitations,⁷⁵ are valid, and if proven will necessitate the vacation of the conditional order. However, the original issues cannot be relitigated⁷⁶ and it is immaterial that the original judgment was erroneous or that there was some mistake therein.⁷⁷ Again, any defense that could have been urged at the time that the original judgment was taken, cannot be urged as a showing of cause against a motion to revive.⁷⁸ Of course; it is always competent to show that the original judgment is void,⁷⁹ but if the court rendering the original judgment had jurisdiction of the parties and the subject matter, even if the judgment is voidable, the judgment will be revived.⁸⁰ Thus, a cross-petition which seeks to treat the motion to revive

⁶⁸ *Lyon v. Toriello*, 66 Ohio L. Abs. 100, 116 N.E. 2d 19 (1952).

⁶⁹ See note 67, supra.

⁷⁰ See note 66, supra.

⁷¹ *Nestlerode v. Foster*, 8 Ohio Cir. Ct. 70, 4 Ohio Cir. Dec. 385, 1 Ohio Dec. 429 (1893).

⁷² *Ibid.*

McAllister v. Schlemmer and Grabor Co., 39 Ohio App. 434, 177 N.E. 841 (1930).

⁷³ See note 72, supra.

⁷⁴ *Van Nover v. Eshleman*, 14 Ohio Cir. Ct. (N.S.) 348, 24 Ohio Cir. Dec. 210, *aff'd* 89 Ohio St. 48, 105 N.E. 70 (1911).

⁷⁵ *Ibid.*

Bartol v. Eckert, 50 Ohio St. 31, 33 N.E. 294 (1893).

⁷⁶ See note 72, supra.

⁷⁷ *McAllister v. Schlemmer and Grabor Co.*, 39 Ohio App. 434, 177 N.E. 841 (1930).

⁷⁸ *Jackson, et al. v. Marshall, et al.*, 30 Ohio App. 280, 75 N.E. 78 (1947).

⁷⁹ *Third National Bank, Exr. v. Schaefer, et al.*, 81 Ohio App. 177, 72 N.E. 585 (1947).

⁸⁰ *Mirman v. Webster*, 13 Ohio L. Abs. 734 (1933).

as a petition and sets up a prayer for reformation, will be dismissed.⁸¹ Of course, where the original judgment was founded on the judgment debtor's fraud, a discharge in bankruptcy is not sufficient to show cause;⁸² but where no fraud was involved, a discharge in bankruptcy would be a valid subsequent defense to a motion to revive.⁸³ Finally, where the judgment debtor sought an injunction to prevent revivor and merely filed notice of this fact in answer to the motion to revive, the court of appeals held that the trial court was not in error in reviving the original judgment, since there was no pleading filed in the revivor suit setting forth the judgment debtor's subsequent defenses, and since the reviving court was not required of its own motion, to take cognizance of the equitable proceeding.⁸⁴ On the other hand, the court of appeals, in connection with the aforementioned case, held that a dismissal of the injunction suit was proper since the judgment debtor had an adequate legal remedy.⁸⁵

A surety who has paid a judgment may revive it in his own name.⁸⁶ However, where a surety who had paid the original judgment sought to revive it against a co-surety, the court held that the co-surety was only liable on the original judgment and that the co-surety's subsequent defense of satisfaction was valid.⁸⁷ Finally, where a judgment of ejectment was rendered, and the judgment creditor subsequently put the judgment debtors back into possession under a contract, but the judgment debtors failed to comply with the terms of the contract, the court would not permit the revival of the ejectment judgment, holding that, in effect, the judgment had been satisfied.⁸⁸

It has been suggested that the correct way to introduce defenses other than those allowed in the revivor action proper, is to file not only an answer against the motion to revive, but in addition thereto, and at the same time, to file a motion to vacate the original judgment.⁸⁹

In sum, revivor can be accomplished by motion and conditional order, and the judgment not being void, only defenses which have arisen subsequent to the original judgment may be introduced. The judgment being revived, what are the incidents thereof?

INCIDENTS OF REVIVAL

The revivor of a judgment revives the liens of the judgment.⁹⁰

⁸¹ *Neracher, et al., v. Geier, et al.*, 12 Ohio Cir. Ct. 259, 4 Ohio Cir. Dec. 559, 1 Ohio Dec. 695 (1893).

⁸² *Newshuler v. Maule*, 10 Ohio Cir. Ct. 232, 6 Ohio Cir. Dec. 806 (1895).

⁸³ *Pass v. Webster*, 85 Ohio App. 403, 83 N.E. 2d 116 (1948).

⁸⁴ *Schaeffer, Exr. v. Banker*, 83 Ohio App. 243, 80 N.E. 2d 270 (1947).

⁸⁵ See note 79, *supra*.

⁸⁶ OHIO REV. CODE §1341.07 (12194).

Hill v. King, Exr., 48 Ohio St. 75, 26 N.E. 988 (1891).

⁸⁷ See note 71, *supra*.

⁸⁸ *Lessee of Hough v. Norton et al.*, 9 Ohio 46 (1839).

⁸⁹ See note 77, *supra*.

⁹⁰ *Smith v. Hogg, et al.*, 52 Ohio St. 527, 40 N.E. 406 (1895).

Norton v. Beaver, et al., 5 Ohio 178 (1831).

However, the liens do not date back to the date of the initial or subsequent issuance of execution or filing of a certificate of judgment.⁹¹ The liens only date from the time that the judgment is revived,⁹² and it is almost certain that liens in counties other than the judgment county are not revived when the judgment is revived,⁹³ and that a new issuance of execution or a new filing of a certificate of judgment will be necessary to acquire liens in foreign counties. No new liens are created or acquired during the period of dormancy, nor are any new liens created by the revivor of a judgment. No liens are imposed on lands acquired by the judgment debtor prior to dormancy, but subsequent to the first or subsequent issuance of an execution or the filing of a certificate of judgment, unless a new execution or a new certificate of judgment is filed following the acquisition by the debtor of the new lands.⁹⁴ If a levy is made under the revived judgment, the lien dates from the date of the levy and not from the date of the revivor.⁹⁵

It is not clear whether or not an execution must be issued under a revived judgment before proceedings-in-aid of execution can be brought. One court of appeals holds that if execution was issued prior to dormancy, it is not necessary to issue a new execution after revivor.⁹⁶ However, the better rule would seem, on principle, to be contrary to the above ruling since a revived judgment, except for liens acquired under the judgment prior to dormancy, must be treated for all purposes exactly as an original judgment would be treated.

It is clear that liens can only be revived, and that executions can only issue after the period to show cause has elapsed and the conditional order made absolute. Thus, prior to the amendment of OHIO REV. CODE §2325.17 (11647), the Supreme Court of Ohio held that execution could issue immediately upon the granting of the conditional order.⁹⁷ However, §2325.17 (11647) has now been amended and the word "thereafter" injected into the statute, thus clearly showing that execution cannot issue until the conditional order is made absolute.

⁹¹ Norton v. Beaver, et al., 5 Ohio 178 (1831).

⁹² See note 91, supra.

⁹³ OHIO REV. CODE §2329.07 (11663).

⁹⁴ Smith v. Hogg, et al., 52 Ohio St. 527, 40 N.E. 406 (1895).

⁹⁵ See note 94, supra.

⁹⁶ Bennett v. Allen, 55 Ohio L. Abs. 564, 90 N.E. 2d 607.

⁹⁷ See note 43, supra.