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THE PERIOD DURING WHICH A JUDGMENT REMAINS A LIEN ON REALTY IN FLORIDA

JAMES W. DAY

I. INTRODUCTION

It has been stated frequently in the decisions that a judgment obtained in Florida remains a lien for twenty years. These statements, however, are general in character, and the factual settings with reference to which they are made do not involve the question as to whether such a lien can ever extend beyond that period. No statute deals expressly with the duration of the lien of a Florida judgment; and the fact that the lien normally terminates in twenty years is attributable to the provision of Section 95.11 of Florida Statutes (Cum. Supp. 1947) that an action can be brought upon a judgment or decree of a Florida court of record only within twenty years. The problem is presented, therefore, as to whether the time that a judgment remains a lien is extended by any event that increases the period in which an action may be brought on the judgment. The importance of this problem to the title examiner rests on the fact that when a judgment debtor conveys land even for value while the judgment lien continues, his grantee takes the land subject to the lien, as also do subsequent grantees holding under the first grantee.

II. STATUTORY BACKGROUND

When, as in Florida, no period is specifically provided by statute for the continuance of the lien of a judgment, the lien continues while a right

2Massey v. Pineapple Orange Co., 87 Fla. 374, 100 So. 170 (1924).
3Giddens v. McFarlan, 152 Fla. 276, 10 So. 2d 807 (1943).
exists either to obtain an execution on the judgment or to revive the judgment by *scire facias*.4

Section 55.15 of Florida Statutes 1941 entitles a judgment creditor to an execution at any time within three years from the rendition of the judgment. If no execution is issued during that period, the judgment creditor can subsequently revive the judgment by *scire facias* at any time until the right to bring an action on the judgment is barred by the statute of limitations. An execution obtained on the revived judgment can be levied on the land of the judgment debtor until the right to bring an action on the judgment is barred.5

If an execution is taken out within three years after the rendition of a judgment, or apparently if it is taken out later as the result of *scire facias*, the judgment creditor is empowered by Section 55.15 to renew it from time to time for twenty years by returning it to the clerk's office of the original execution.6 This twenty-year period begins with the date the judgment is rendered and not with the time when the execution is issued.7 Since May 22, 1937, however, when Section 55.16 of Florida Statutes 1941 became effective, it has been unnecessary to renew an execution that has been issued.8 This section provides that when a final judgment is rendered, the judgment creditor may obtain an execution by requesting it, and that the execution thus issued remains “valid and effective during the life or effective period of the judgment.” It does not, however, repeal Section 55.15 or obviate the necessity of reviving by *scire facias* a judgment before an execution can issue in an instance in which no execution has been taken out within three years of the rendition of the judgment.9

Prior to the enactment of Section 55.16, Section 55.15 thus fixed at twenty years, without reference to the twenty-year limitation period applicable under Section 95.11 to the bringing of an action on a judgment, the time during which an execution once issued could be renewed. This period, therefore, seemingly would not have been extended by a circum-

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4Lamon v. Gold, 72 W. Va. 618, 79 S. E. 728 (1913); accord, Massey v. Pineapple Orange Co., 87 Fla. 374, 100 So. 170 (1924).
6Tedder v. Morrow, 100 Fla. 1486, 131 So. 387 (1930).
7Accord, Massey v. Pineapple Orange Co., 87 Fla. 374, 100 So. 170 (1924).
STANCE THAT TOLLED THE RUNNING OF THE STATUTE OF LIMITATIONS. EVEN BEFORE THE EFFECTIVE DATE OF SECTION 55.16, HOWEVER, IT WOULD APPEAR THAT AFTER THE EXPIRATION OF THE TWENTY YEARS A NEW EXECUTION WOULD HAVE REMAINED A LIEN DURING THAT TIME. SIMILARLY, IF NO EXECUTION HAD EVER BEEN ISSUED, ONE COULD HAVE BEEN OBTAINED BY SCIRE FACIAS DURING ANY EXTENSION OF THE LIMITATION PERIOD, AND DURING THAT EXTENSION THE LIEN OF THE JUDGMENT WOULD HAVE CONTINUED.

SINCE THE EFFECTIVE DATE OF SECTION 55.16, IT LIKewise SEEMS THAT DURING ANY SUCH EXTENSION AN ISSUED EXECUTION REMAINS EFFECTIVE, AND THAT WHEN NO EXECUTION HAS BEEN ISSUED PREVIOUSLY, ONE CAN BE OBTAINED BY SCIRE FACIAS. THE LIEN OF THE JUDGMENT CONSEQUENTLY CONTINUES DURING THE EXTENSION.

IN FLORIDA ONE WHO PURCHASES LAND FROM A JUDGMENT DEBTOR AT A TIME WHEN THE JUDGMENT IS DORMANT, TAKES IT SUBJECT TO THE LIEN OF THE JUDGMENT; AND IF THE JUDGMENT IS REVIVED THEREAFTER BY SCIRE FACIAS, THE LAND CAN BE SUBJECT TO THE SATISFACTION OF THE JUDGMENT AT ANY TIME WITHIN THE PERIOD LIMITED FOR BRINGING AN ACTION ON THE JUDGMENT.10

IT IS BELIEVED THAT THE CONTINUANCE OF THE LIEN OF A JUDGMENT THROUGH ANY EXTENSION OF THE PERIOD OF LIMITATIONS IS NOT PREVENTED BY SECTIONS 95.28 TO 95.34 OF FLORIDA STATUTES (CUM. SUPP. 1947), ALL OF WHICH BECAME EFFECTIVE ON MAY 4, 1945. THEY PROVIDE THAT WHEN THE FINAL MATURITY OF A MORTGAGE OR OTHER INSTRUMENT ENCUMBERING REAL ESTATE IS ASCERTAINABLE FROM THE RECORD OF THE INSTRUMENT, THE LIEN OF THE INSTRUMENT TERMINATES TWENTY YEARS FROM THAT MATURITY DATE AND THAT NO PROCEEDING CAN BE BEGUN THEREAFTER TO ENFORCE IT UNLESS AN EXTENSION AGREEMENT HAS BEEN RECORDED. SIMILARLY, WHEN THE FINAL MATURITY OF THE OBLIGATION IS NOT ASCERTAINABLE FROM THE RECORD, A LIMITATION PERIOD OF TWENTY YEARS FROM THE DATE OF THE INSTRUMENT IS ESTABLISHED. THESE STATUTES PROVIDE THAT THE PERIODS OF LIMITATION IN QUESTION SHALL NOT BE EXTENDED BY NON-RESIDENCE, DISABILITY, OR PART PAYMENT, OR IN ANY MANNER OTHER THAN BY THE RECORDING OF AN EXTENSION AGREEMENT. THEY SPECIFY THAT THEIR PROVISIONS ARE APPLICABLE TO ALL INSTRUMENTS ENCUMBERING LAND THAT WERE IN EXISTENCE ON MAY 4, 1945, THE ENFORCEMENT OF WHICH WAS NOT BARRED UNDER LAW EXISTING ON THAT DATE, AND ON WHICH ACTIONS WERE NOT COMMENCED BY MAY 4, 1946. THEY EXEMPT FROM ALL OF THEIR PROVISIONS LIENS OR NOTICES OF LIENS UNDER CHAPTERS 84 (MECHANICS’ LIENS) AND 85 (STATUTORY LIENS) OF FLORIDA STATUTES 1941, AND CERTAIN INSTRUMENTS EXECUTED BY PUBLIC-SERVICE CORPORATIONS.

10B. A. LOTT, INC. v. PADGETT, 153 FLA. 304, 14 SO.2D 667 (1943); SEE MASSEY V.
These statutes seek to prevent the liens of "mortgages and other instruments encumbering real estate" from continuing for indefinite periods. The quoted phrase would seem to exclude from their operation not only the lien of a judgment entered in a circuit court prior to June 5, 1939, which under Section 55.08 of Florida Statutes 1941 immediately attached to the land of the defendant in the county where the judgment was rendered, but also the lien of such a judgment that arose in other counties with the recording there of a certified transcript of the judgment. It apparently would likewise exclude the lien of a judgment entered before June 5, 1939, in a county court, county judge's court, or a court of the justice of the peace, which under Section 55.09 of Florida Statutes 1941 attached to the land of a defendant in any county when a transcript of the judgment was filed in that county; and similarly it would seem to exclude the lien of a judgment rendered in any court on or since June 5, 1939, which under section 55.10 of Florida Statutes 1941 arises in any county only when a certified transcript is recorded there in the judgment lien record. These judgments and the filed and recorded transcripts of them appear not to be "mortgages or other instruments encumbering real estate" as that expression is used in the statutes under consideration.

A casual consideration of the provision in those sections exempting from their operation the liens and notices of liens under Chapters 84 (mechanics' liens) and 85 (statutory liens), most of which are no more "instruments encumbering real estate" in the ordinary sense of that term than are judgments, may suggest that the Legislature by the phrase in question intended to exclude judgment liens. It is more probable, however, that the Legislature by expressly excepting the liens under the two chapters meant merely to prevent the arising of a question as to whether the short duration of those liens (which in most instances is not in excess of one year) had been extended by Sections 95.28 to 95.34 to the twenty-year period that they establish.

Even in the unlikely event that judgments or the filed or recorded transcripts of them should be held to be "instruments encumbering land," apparently the lien of some judgments would nevertheless continue for more than twenty years. Sections 95.28 to 95.34 provide that there can be no extension of the twenty-year period from the maturity of the obligation or the date of the instrument in which an action can be brought, except by the recording of an extension agreement. They make this pro-

Pineapple Orange Co., 87 Fla. 374, 380, 100 So. 170, 172 (1924).
vision applicable even to those instruments within their scope that were in existence on their effective date, May 4, 1945, and on which no action was brought within one year thereafter. This phase of their operation is, however, clearly invalid as to any such instrument for which the period for bringing the action had, prior to May 4, 1945, been effectively extended beyond twenty years. To apply the statutes to a situation of this type would violate Section 33 of Article III of the Constitution of Florida, which provides that no statute shall be passed lessening the time within which a civil action may be commenced on any cause of action existing at the time of its passage.\textsuperscript{31}

Since the duration of the lien of at least some judgments and probably that of the lien of all judgments is thus extended by anything that increases the time in which an action can be brought on the judgment, the determination of what events and circumstances increase that time becomes important.

III. CIRCUMSTANCES THAT EXTEND THE DURATION OF A JUDGMENT LIEN

Absence of Judgment Debtor from the State. The period in which an action can be brought on a judgment, and consequently the duration of the lien of the judgment, is in Florida extended by an interval equal to any time that the judgment debtor is absent from the state in the period between the entry of the judgment and the time in which the right to bring an action on the judgment is barred by the statute of limitations. Section 95.07 of Florida Statutes 1941 reads as follows:

"If, when the cause of action shall accrue against a person, he is out of the state, the action may be commenced within the term herein limited after his return to the state; and if after the cause of action shall have accrued he depart from the state, the time of his absence shall not be part of the time limited for the commencement of the action."

This section and Section 95.11, which establishes not only the twenty-year period in which an action can be brought on a judgment but also the

\textsuperscript{31}Cf. Baugher v. Boley, 63 Fla. 75, 58 So. 980 (1912). But cf. Campbell v. Horne, 147 Fla. 523, 525, 3 So.2d 125, 126 (1941) (Dictum that this constitutional provision is not violated by the application of a newly enacted statute of limitations to an existing cause of action that theretofore had not been subject to any limitation period).
various periods in which other types of actions are barred, are in *pari materia*, and each of those periods is subject to extension by the absence of the defendant from the state.\(^\text{12}\)

Whether a general provision for the tolling of the statutes of limitation by the absence of the defendant is applicable to the time in which an action can be brought on a judgment, is a matter of statutory construction. When the duration of the lien of a judgment is specifically fixed by statute without reference to the limitation period for bringing an action on the judgment, a general provision of this type does not extend the time that the judgment remains a lien.\(^\text{13}\) When, however, the duration of a judgment lien is fixed by the statute of limitations as is the case in Florida, the absence of the judgment debtor will extend the time that the judgment remains a lien on his real property.\(^\text{14}\) This extension of the duration of the judgment lien is not prevented by the fact that the land of the judgment debtor in the jurisdiction could have been subjected to the satisfaction of the judgment during his absence.\(^\text{15}\)

The decisions in *Orr v. Allen-Hanford, Inc.*\(^\text{16}\) and *Blackburn v. Venice Inlet Co.*\(^\text{17}\) are not inconsistent with these conclusions. In each the statement was made that while a creditor may satisfy his judgment within twenty years, undue delay by him without sufficient reason may in a shorter period give rise to equitable defenses that will terminate his right. The facts involved in these cases illustrate the type of situation to which the statement is applicable. In the former case a mortgagee in foreclosing his mortgage had not joined as defendants certain judgment creditors of the mortgagor who had obtained their judgments subsequent to the execution of the mortgage. These judgment creditors made no attempt to subject the land to their judgments until seventeen years after the foreclosure sale. Throughout this period a grantee from the purchaser at the

\(^{12}\)Van Deren v. Lory, 87 Fla. 422, 100 So. 794 (1924) (holding that the seven-year period that bars the bringing of an action in Florida on a judgment obtained in another state does not begin to run until the judgment debtor comes to Florida, in an instance when he was neither a resident of Florida nor within the jurisdiction of that state at the time the judgment was obtained elsewhere).

\(^{13}\)Albee v. Curtis, 77 Iowa 644, 42 N. W. 508 (1889).


\(^{15}\)Brittain v. Lankford, 110 Ky. 484, 61 S. W. 1000 (1901); Lamon v. Gold, 72 W. Va. 618, 79 S. E. 728 (1913).

\(^{16}\)158 Fla. 34, 27 So. 2d 823 (1946).

\(^{17}\)38 So. 2d 43 (Fla. 1948).
sale made large expenditures in improving the land. The judgment creditors were held to be precluded from reaching the land by execution, since as subsequent judgment creditors who had not been joined in the foreclosure suit, they were in the position of junior encumbrancers who had not been joined, and consequently could enforce their rights, if they had any, only in equity. The Court implied further that under the circumstances they would be barred in equity by laches.

In the Blackburn case land had been mortgaged in a transaction that was subsequently contended to have been fraudulent as to creditors of the mortgagor. Later in the same year one of these creditors obtained a judgment against the mortgagor. This judgment was assigned to the plaintiff. In a suit brought to foreclose the mortgage the next year, the original judgment creditor was made a party, but the plaintiff, who had not recorded her assignment, was not. The purchaser at the foreclosure sale, who was not shown to have had knowledge of the alleged fraud in the original transaction, spent large sums in improving the land. Approximately eleven years after the foreclosure, the plaintiff filed a creditors' bill to subject the land to the judgment that had been assigned to her. It was held that she was not entitled to relief.

Military Service of a Judgment Debtor or a Judgment Creditor. The time for bringing an action on a judgment and therefore the period that a judgment obtained in Florida remains a lien is extended also under the various federal soldiers' and sailors' civil relief acts by any period in which either the judgment debtor or the judgment creditor was in military service during the time that those acts suspended the statutes of limitations as applied to persons in the armed forces. The act of March 8, 1918, provided that the period of military service of an individual between March 8, 1918, and six months after the termination of the war then being waged, by a treaty of peace as proclaimed by the President, should not be included in computing any period then or thereafter limited by any law for the bringing of any action by or against him or by or against his heirs, personal representatives, or assigns. The acts of October 17, 1940, and October 6, 1942, similarly exclude from the periods of the statutes of limitations applicable to actions by or against an individual or by or against his heirs, personal representatives, or assigns, any time that he spent in military

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[18] 40 STAT. 440 (1918).
service between October 17, 1940, and six months after the termination of all wars in which the United States was engaged on May 15, 1945, by treaties of peace proclaimed by the President.

The duration of the lien of many Florida judgments is extended by the foregoing provisions.

Stay of Execution or Injunction Restraining Enforcement. A stay of execution entered on the record of a judgment tolls the running of a statute limiting the duration of the lien of the judgment.\(^21\) So also does the restraining of the enforcement of the judgment by an injunction obtained either by the judgment debtor\(^22\) or by one who has succeeded to his interest in reality that is subject to the lien.\(^23\) Since the limitation on the duration of the lien is established to prevent the judgment debtor from being prejudiced by the delay of the judgment creditor, it cannot be taken advantage of by the former when he himself has occasioned the delay.\(^24\) The running of the limitation period against a judgment and its accompanying lien is similarly tolled for the time that its enforcement is enjoined, even when the injunction is obtained by one not in privity with the judgment debtor.\(^25\)

Appeal. Section 95.06 of Florida Statutes 1941 provides that if a judgment for the plaintiff in an action started within the permitted period is reversed on appeal, the plaintiff can commence a new action within one year after the reversal. A situation for the application of this statute would be presented by the reversal of a judgment obtained by a judgment creditor in an action brought by him on an existing judgment shortly before his right to bring the action was barred. Since the lien of the original judgment continues in Florida during the time that an action can be brought on that


\(^{22}\) Lindsey v. Norrell, 36 Ark. 545 (1880); Wakefield v. Brown, 38 Minn. 361, 37 N. W. 788 (1888); see Masony and Hurtell v. The United States Bank, 4 Ala. 735, 752 (1843); Anderson v. Tydings, 8 Md. 427, 443 (1855). But cf. Rogers v. Druffel, 46 Cal. 654 (1873) (under specific statute).


\(^{25}\) Bartlett & Waring v. Gayle & Phillips, 6 Ala. 305 (1844); State ex rel. Young v. Royse, 3 Neb. (Unof.) 262, 91 N. W. 559 (1902).
JUDGMENT LIENS ON FLORIDA REALTY

judgment, it would not terminate until one year after the reversal of the new judgment. Even in the absence of such a statute, it is generally held that the time during the pendency of an appeal from a judgment with supersedeas is deducted in the computation of the limitation period applicable to the judgment.\(^\text{26}\) This rule presumably is in effect in Florida as to situations not within the scope of Section 95.06.

IV. CIRCUMSTANCES THAT DO NOT EXTEND THE DURATION OF A JUDGMENT LIEN

Disability of the Judgment Creditor. Under the statutes of Florida, disabilities of the plaintiff toll the running of the period of limitations only in the case of actions for the recovery of real property and have no effect on other causes of action.\(^\text{27}\) Consequently, no disability of a judgment creditor extends the period during which he can bring an action on his judgment or increases the time that the judgment remains a lien.

New Promise or Part Payment. It seems probable that neither a promise to pay a judgment nor a part payment of it would in Florida prolong the lien of the judgment or extend the period during which an action could be brought on the judgment itself. No Florida case deals directly with these matters, and the relevant precedents from other jurisdictions are in conflict.\(^\text{28}\) In the Florida decisions that deny the power of one joint obligor to bind the other by a promise to pay a note or an open account, made either before\(^\text{29}\) or after\(^\text{30}\) the original debt is barred, it has been held, however, that the new promise relied on constitutes a new contract supported by the consideration of the old obligation, and that an


\(^{27}\)Slaughter v. Tyler, 126 Fla. 515, 171 So. 320 (1936) (holding that the minority of the plaintiff did not stay the running of the statute of limitations against her action for medical malpractice, and overruling expressly a dictum to the contrary in Franklin Ins. Co. v. Thorpe, 118 Fla. 832, 836, 160 So. 199, 201 (1935), with reference to an analogous situation).

\(^{28}\)See Note, 21 A. L. R. 1038, 1059-1066 (1922).

\(^{29}\)Tate v. Clements, 16 Fla. 339 (1878).

\(^{30}\)Coker v. Phillips, 89 Fla. 283, 103 So. 612 (1925).
action in which it is sought to take advantage of the new promise must be based on the new contract to which it gives rise. Apparently, therefore, a promise to pay a Florida judgment would at most merely create a new contract on which an action could be brought, and would not affect the duration of the judgment lien or the limitation period applicable to the judgment itself.

It is clear that a part payment of a judgment debt can have no more effect on the duration of the lien of a Florida judgment than would a promise to pay the judgment. A part payment of any obligation already barred by the statute, when unaccompanied by a signed written acknowledgment of the debt as required by Section 95.04 of Florida Statutes 1941, does not revive the liability to pay it.31 Even if a payment on a judgment not yet barred or an acknowledgment of its obligation would give rise to a new contract on which an action could be brought, it would do so only because of the promise to pay that it implied,32 and would not affect the duration of the judgment lien or the running of the statute against the right to bring an action on the judgment.

Appointment of a Receiver. The lien of a judgment is not extended beyond its normal duration by the fact that during its continuance a receiver is appointed at the instance of someone other than the judgment creditor to take charge of the property of the judgment debtor.33 Even after such an appointment the judgment creditor can obtain permission from the court that appointed the receiver, to levy execution on the land in the possession of the latter.34 It has even been held that without such permission the judgment creditor can so levy execution and that if the consent of the court is necessary to entitle the purchaser at the sale to possession of the land, the court will grant it.35 Since under neither holding does the appointment of the receiver prevent the judgment creditor from enforcing the lien of his judgment, that appointment does not affect the period during which the lien continues.

Agreement of Parties. An agreement between a judgment creditor and his debtor that the lien of the judgment will extend beyond its normal termination is probably invalid in Florida. By statute in some states, validity

32Cf. Cosio v. Guerra, 67 Fla. 331, 65 So. 5 (1914).
34See id. at 36.
JUDGMENT LIENS ON FLORIDA REALTY

is given to such an agreement or to the entry of it on the record of the judgment. There is no statute of this type in Florida. In the absence of such a statute and under statutory provisions expressly fixing the duration of a judgment lien, it is held that an agreement between the parties to the judgment cannot extend the duration of the judgment lien. This rule seems equally as appropriate in a statutory setting such as that of Florida, in which the period of continuance of the judgment lien is determined indirectly by the period in which an action can be brought on the judgment.

Judgment in an Action on an Existing Judgment. It is believed that the obtaining of a judgment in an action on an existing judgment does not extend the duration of the lien of the latter. In fact, it is even held in some jurisdictions that in such a situation the original judgment is merged in the new one, with the result that the lien of the original judgment is terminated and the judgment creditor is subordinated to other judgment creditors who have obtained their judgments in the interval between the entry of his two judgments and to purchasers who have during that interval acquired land from the judgment debtor. In other jurisdictions it has been held, however, that merger never occurs until a remedy or evidence of a degree higher than the old obligation has been created, and that since the original judgment is of as high a nature as the judgment obtained in the action on it, the former does not merge in the latter.

Under the latter view, the lien of the original judgment is so preserved that the priority of the judgment creditor over junior judgment creditors and others continues until the time that it would have ceased even if no action had been brought on the judgment. In the opinion of the writer, either this view or such a modification of the opposing one as would continue this priority of the judgment creditor should be adopted. The question is unsettled in Florida, however.

Bertram v. Waterman, 18 Iowa 529 (1865).
The judgment recovered in an action on a judgment creates a lien of the same force and effect upon the real estate then owned by the judgment debtor as does any other judgment.\(^4\) This lien continues for the limitation period that begins on the effective date of the new judgment. Irrespective, however, of the position taken as to the effect of that judgment on the original judgment and on the priority of the judgment creditor under it, the new judgment apparently does not extend the lien of the original judgment as an independent lien beyond the time when it would have terminated if the new judgment had not been obtained.

*Proceedings Supplementary to Execution.* Sections 55.52 to 55.59 of Florida Statutes 1941 authorize a plaintiff whose execution has been returned unsatisfied to institute proceedings supplementary to execution in the court from which it was issued. They provide for the examination of the judgment debtor and other witnesses as to the assets of the former and empower the judge to order the application of any of the non-exempt property of the judgment debtor to the satisfaction of the judgment debt, regardless of whether that property is in his possession or in that of another.

It has been held that the same writ of error cannot be directed both to the final judgment against the defendants rendered in the principal action and to a final judgment or order obtained against only one of those defendants jointly with a third person in a proceeding brought under these statutes.\(^4\) The decision was based on the ground that the principal action and the supplementary proceeding are in legal contemplation separate causes of action. If this concept prevails, it will follow that a judgment or order may be had in a supplementary proceeding brought before the expiration of the period limited for bringing an action on the original judgment even if the proceeding has not been completed when that period terminates. Section 95.11 of Florida Statutes 1941 merely establishes the time within which an action on a judgment must be commenced. It has been held in North Dakota, however, that a supplementary proceeding brought under statutes similar to those of Florida is merely incidental to the main action and that no judgment or order can be obtained in it unless it is both begun and completed before the right to bring an action on the original judgment is barred.\(^4\)

Even under the first of these opposing views, it would seem that a

\(^4\)Chader v. Wilkins, 226 Iowa 417, 284 N. W. 183 (1939).
\(^4\)Merchants Nat. Bank v. Braithwaite, 7 N. D. 358, 75 N. W. 244 (1898).
JUDGMENT LIENS ON FLORIDA REALTY

judgment or order obtained in the supplementary proceeding instituted before and completed after the expiration of the limitation period applicable to the original judgment, would not extend the duration of the lien of the original judgment as an independent lien. Similarly, the duration of that lien as an independent lien would not be extended by the period of pendency of a supplementary proceeding that was both brought and completed before the right to bring an action on the original judgment was barred.

V. STATUTORY CHANGES THAT WOULD REDUCE THE NUMBER OF JUDGMENT LIENS EXTENDING BEYOND A SPECIFIED PERIOD

The duration of the lien of a judgment in Florida is, as already has been stated, fixed by analogy to the statute of limitations. The enactment of a statute providing that the running of the limitation period against the right to bring an action on a judgment should no longer be tolled by events of the sort that theretofore had had that effect, would consequently prevent the extension of the lien of the judgment by the occurrence of such events subsequent to the effective date of the statute.

Even if the statute purported to have a retroactive effect, however, it could not abrogate extensions of the duration of a judgment lien that had been effectuated prior to its enactment. As was stated in the discussion of the Florida statutes fixing the limitation period applicable to mortgages and other instruments encumbering land, Section 33 of Article III of the Constitution of Florida forbids the enactment of any statute that reduces the time within which a civil action may be commenced on any cause of action existing at the time of its passage. Consequently, if the time for bringing an action on a judgment had been extended before the enactment of the statute by some occurrence—for example, the absence of the judgment debtor from the state—the statute could not affect the status existing at the time of its passage. This result would follow not only if the statute was as to its retrospective effect enacted as a mere curative act but also if it contained a limitation provision purporting to require a judgment creditor to bring his action thereafter within a stated period that would terminate before his right to bring it would otherwise have been barred.

If, however, Section 33 of Article III of the present Constitution is eventually replaced by the corresponding provision in the proposed new

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45See note 11 supra.
Constitution prepared under the direction of the Constitution Committee of the Florida State Bar Association, a statute reducing the time for bringing an action on a judgment could be applied retroactively to judgments existing at the time of its passage, provided it gave the judgment creditor a period of at least a year thereafter in which to commence his action. This proposed provision\textsuperscript{48} reads:

"Limitations, reducing time. No statute shall be passed lessening the time within which a civil action may be commenced on any cause of action existing at the time of its passage without providing a period of at least one year within which action may be commenced thereon."

As long, at least, as the present constitutional provision remains unchanged, the replacement of the present method of determining the duration of a judgment lien indirectly from the statute of limitations, by a statute of limitations, by a statute expressly fixing that duration would more effectively lessen the likelihood of a lien's being extended by extraneous circumstances than would a statute of the type just considered.

Such a statute would constitutionally abridge the duration of existing judgment liens in instances in which the holder of the judgment had a reasonable time after the enactment in which he could enforce his lien;\textsuperscript{49} but it would be invalid as to an existing judgment lien on which the new period had run before the passage of the act, unless the act contained a saving clause giving the judgment creditor a reasonable time thereafter for the enforcement of the lien.\textsuperscript{50}

A statute of this sort would, for example, prevent the absence of the judgment debtor from the state from extending the duration of the judgment lien under the provisions of Section 95.07 of Florida Statutes 1941.\textsuperscript{51} It would not, unless it contained an express provision to that effect, prevent extension of the continuance of the lien by a stay of execu--

\textsuperscript{48}Proposed Constitution for Florida, Art II, §27. The suggested change is desirable. Section 33 of Article III of the present constitution renders many statutes designed to remedy defective titles unconstitutional as to some situations with reference to which they otherwise would be upheld. It is believed that nothing similar to the present provision is to be found in the constitution of any other jurisdiction.

\textsuperscript{49}Burwell v. Tullis, 12 Minn. 572 (1867); accord, Henry v. Henry, 31 S. C. 1, 9 S. E. 726 (1889).

\textsuperscript{50}Accord, King v. Belcher, 30 S. C. 381, 9 S. E. 359 (1889); Merchants' Bank v. Ballou, 98 Va. 112, 32 S. E. 481 (1899).

\textsuperscript{51}Accord, Albee v. Curtis, 77 Iowa 644, 42 N. W. 508 (1889).
JUDGMENT LIENS ON FLORIDA REALTY

VI. Conclusion

The title examiner cannot assume that a judgment against a present or former owner of Florida land has ceased to be a lien on it merely because twenty years has elapsed since the judgment was rendered. It is true that nothing will have occurred to extend the lien of most judgments that are more than twenty years old. The lien of the judgment that was sought to be enforced in Massey v. Pineapple Orange Co.,57 for example, had not been extended. It is true, also, that in the ordinary course of events no attempt will be made to enforce a judgment that is twenty years old even if its lien has been extended; but the attempt that was made in the Massey case to enforce a judgment of that age shows that reliance cannot safely be placed on the continued passivity of the holder of an old judgment. Even if no effort is ever made to enforce an old judgment, its presence in the chain of title will give rise to difficulties when the owner of the land attempts to convey or mortgage it. Consequently a title examiner should not approve a title unless he is certain that evidence will remain available to establish that nothing has occurred to extend the lien of an unsatisfied judgment beyond the time of his approval of the title.

57 87 Fla. 374, 100 So. 170 (1924).