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Equitable Liens: Attachment to Realty Benefited by Use of Personalty

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against failure to perform assigned public duties properly; it involves no penalty against the officer and need not be based on a commission of a crime. Conversely, conviction of the crime of neglect of duty is strictly personal and does not of itself effectuate suspension or removal from office. The two procedures are separate and distinct in purpose, nature and result.

As a practical matter the safe procedure is to allege willfulness or corruptness, or both, in all indictments charging neglect of duty or other misconduct in office, whether the indictment be based on statute or common law.

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EQUITABLE LIENS: ATTACHMENT TO REALTY BENEFITED BY USE OF PERSONALTY

Industrial Supply Corp. v. Lee, 48 So.2d 285 (Fla. 1950)

Plaintiff corporation sold to defendant supplies and irrigation equipment, which he used to improve certain citrus groves controlled but not owned by him. Defendant held one of these groves in trust for his minor son. He became insolvent while still partially indebted for such purchases; and plaintiff sought, among other remedies, to impose an equitable lien upon the trust property. The lower court dismissed the bill. On appeal, HELD, the bill contained equity and, subject to proof, an equitable lien could be placed upon the trust property to secure the unpaid purchase price of the equipment and supplies. Reversed and remanded, Justices Sebring and Hobson dissenting.

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commission of any felony, or for drunkenness or incompetency, and the cause of suspension shall be communicated to the officer suspended and to the Senate at its next session. And the Governor, by and with the consent of the Senate, may remove any officer, not liable to impeachment, for any cause above named. Every suspension shall continue until the adjournment of the next session of the Senate, unless the officer suspended shall, upon the recommendation of the Governor, be removed; but the Governor may reinstate the officer so suspended upon satisfactory evidence that the charge or charges against him are untrue. If the Senate shall refuse to remove, or fail to take action before its adjournment, the officer suspended shall resume the duties of the office.

It has been aptly stated that "the words 'equitable lien' are intensely undefined."[1] An equitable lien is not a *jus in re* nor a *jus ad rem* but a right of a special nature over the property; such a lien constitutes a charge or encumbrance, so that the property itself may be sold or sequestered in an equitable action and its proceeds applied on the debt giving rise to the lien.[2]

A few states, before granting an equitable lien, require a showing of intent of some sort to have particular property stand as security.[3] The majority of states, however, recognize that equitable liens arise regardless of any intent to create a lien.[4] When equity impresses this type of lien it does so on the broad and rather vague ground of right and justice as applied to the circumstances and the relationship of the parties. Such a lien is considered analogous to a constructive trust.[5]

The vendor's lien does not derive from the common law but was adopted from the civil law, which applied it to the sale of both real and personal property. Equity has embraced the doctrine only in so far as it applies to realty.[6] Unless there is a statute providing for

[1]Erle, J., in Brunsdon v. Allard, 2 El. & El. 19, 27, 121 Eng. Rep. 8, 11 (Q.B. 1859).

[2]Muhleman & Kayhoe, Inc. v. Brown, 4 Terry 207, 45 A.2d 521 (Del. Super. 1945); Jones v. Carpenter, 90 Fla. 407, 106 So. 127 (1925); International Realty Associates, Inc. v. McAdoo, 87 Fla. 1, 99 So. 117 (1924); Collier v. Bank of Tupelo, 190 Ga. 598, 10 S.E.2d 62 (1940); Damron v. Eldorado, 300 Ill. App. 481, 21 N.E.2d 641 (1939); Miller v. Heisler, 187 S.W.2d 485 (Mo. App. 1945); see 1 BOGERT, TRUSTS AND TRUSTEES 245 (1951); 4 POMEROY, EQUITY JURISPRUDENCE 691 (5th ed. 1941).

[3]Van Sickle v. Keck, 42 N.M. 450, 81 P.2d 707 (1938); Prudential Savings & Loan Ass'n v. Stewart, 189 Wash. 571, 66 P.2d 304 (1937).

[4]*E.g.*, Society of Shakers v. Watson, 68 Fed. 730 (6th Cir. 1895); Johnson v. Craig, 158 Fla. 254, 28 So.2d 696 (1947); Sonneman v. Tuszynski, 139 Fla. 824, 191 So. 18 (1939); Jones v. Carpenter, 90 Fla. 407, 106 So. 127 (1925); Ringo v. McFarland, 232 Ky. 622, 24 S.W.2d 265 (1930); Garrison v. Vermont Mills, 154 N.C. 1, 69 S.E. 743 (1910); *see* Schmid v. First Camden Nat. Bank & Trust Co., 130 N.J. Eq. 254, 266, 22 A.2d 246, 253 (Ct. Err. & App. 1941); Mullens v. George C. Wright Lumber Co., 182 Okla. 355, 357, 77 P.2d 700, 702 (1938). *But cf.* Carter v. Walker, 114 Colo. 231, 157 P.2d 148 (1945).

[5]See 1 BOGERT, TRUSTS AND TRUSTEES 249 (1951). The equitable lien differs from the constructive trust in that the former creates an equitable encumbrance to secure the payment of debt; whereas, by virtue of the latter, equity actually restores the right of possession to the proper owner. While the establishment of a constructive trust will satisfy a claim, an equitable lien only serves to aid in its enforcement.

[6]Malone v. Meres, 91 Fla. 709, 751, 109 So. 677, 692 (1926).

such a lien[7] or a special contract between the vendor and the vendee,[8] the generally settled law is that a seller of personalty cannot assert a lien thereon for the unpaid purchase price after possession and title have passed to the buyer[9] but must look to the personal responsibility of the buyer.[10] On this basis it follows, and the courts have held, that an equitable lien upon real estate does not result from the sale of personal property.[11]

Nevertheless, in the instant case the Court said that the realty benefited can be encumbered as security for the purchase price of the personalty. In *Jones v. Carpenter*,[12] a decision frequently cited in relation to liens of this nature and the only case cited by the Court in the instant opinion, an equitable lien was granted on a homestead that had been improved by paint, shingles and roofing. Defendant, however, the insolvent president of a corporation facing bankruptcy, had embezzled the corporation's funds and used them to pay for the repairs; and the vendor of the chattels had been completely compensated. In denying the defense of homestead against a lien in favor of the bankruptcy trustee, the Court stated that had the corporation loaned the money the result would have been otherwise. Although it indicated in a dictum that any vendor's lien falls within the class of implied equitable liens,[13] numerous Florida cases have defined a vendor's lien as encompassing merely a sale of land,[14] with no mention of personalty.

Considering the liberal application the Florida Court has given

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[7]*E.g.*, MISS. CODE ANN. §337 (1942).

[8]Tyler v. Tyler, 111 Ind. App. 607, 40 N.E.2d 983 (1942); *see* Huycke v. Kramer, 133 Kan. 41, 298 Pac. 787, 790 (1931).

[9]*E.g.*, Denton v. Lindler, 231 Ala. 27, 163 So. 334 (1935); Cade v. Brownlee, 15 Ind. 369 (1860); Huycke v. Kramer, 133 Kan. 41, 298 Pac. 787 (1931); Centola v. Italian Discount & Trust Co., 135 Misc. 697, 238 N.Y. Supp. 245 (N.Y. City Ct. 1929); Lupin v. Marie, 6 Wend. 77, 21 Am. Dec. 256 (N.Y. 1830); James v. Bird's Adm'r, 8 Leigh 510, 31 Am. Dec. 668 (Va. 1837); *see* Malone v. Meres, 91 Fla. 709, 751, 109 So. 677, 692 (1926). *But cf.* Globe Automatic Sprinkler Co. v. Bell, 183 La. 937, 165 So. 150 (1935); 1 JONES, LIENS 41 (3d ed. 1941).

[10]James v. Bird, 8 Leigh 510, 31 Am. Dec. 668 (Va. 1837).

[11]Slack v. Collins, 145 Ind. 569, 42 N.E. 910 (1896); Tyler v. Tyler, 111 Ind. App. 607, 40 N.E.2d 983 (1942).

[12]90 Fla. 407, 106 So. 127 (1925).

[13]*Id.* at 413, 106 So. at 129.

[14]*E.g.*, Johns v. Seeley, 94 Fla. 851, 114 So. 452 (1927); Johnson v. McKinnon, 45 Fla. 388, 34 So. 272 (1903).

to the equitable lien doctrine,[15] the result reached in the instant case is not surprising. The opinion indicates, however, that the existence of the express trust between the defendant and his son was the basis for invoking the jurisdiction of the equity court. Therefore, in the absence of a trust relationship or some other ground for equity jurisdiction, such as fraud, it is still doubtful that a seller of chattels can upon default of his debtor obtain a lien in equity on the chattels or on the land improved by them.

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EQUITY PROCEDURE: LIMITATION OF DISCOVERY

Wofford v. Wofford, 47 So.2d 306 (Fla. 1950)

In a suit for divorce defendant wife moved for an order requiring plaintiff to deliver to defendant all books, records and papers that in any way concerned, affected or pertained to the operation of his businesses. The chancellor entered the order pursuant to Florida Equity Rule 49.[1] On certiorari, HELD, the order was too broad and must be quashed.

Rule 49 has been in existence since June 4, 1931, and was incorporated verbatim into the new Florida Equity Rules. Prior to 1931 the only method by which a party could secure, before trial, documents in the control of the adverse party was through use of a separate bill

[15]Palmer v. Edwards, 51 So.2d 495 (Fla. 1951) (reversing dismissal of bill claiming equitable lien on proceeds of sale of building for value of labor and material used in constructing it); Johnson v. Craig, 158 Fla. 254, 28 So.2d 696 (1946), *rev'd on rehearing*, 158 Fla. 256, 28 So.2d 693 (1947) (directing chancellor to entertain bill for equitable lien on house and lot to extent of value of labor of friends procured by complainant in constructing house); see Thacher v. International Supply Co., 176 Okla. 14, 54 P.2d 376 (1936) (result similar to that of principal case reached on analogous factual situation).

[1]FLA. EQ. R. 49: "On the motion of any party, after reasonable notice, the court may order any other party or parties to produce books, records and papers containing or believed to contain evidence pertinent to the cause of action or defense of the movant which are in the possession or control of the party or parties named in the motion and order, either for inspection before or use at the trial, at such time or times and under such reasonable terms and conditions as may be prescribed by the court in its order on such motion."