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ENFORCEMENT OF JUSTICE COURT JUDGMENTS

By ROYAL C. RUBRIGHT, of the Denver Bar

ONE of the widely used methods of enforcing a judgment of a Justice of the Peace Court is that of filing a transcript of such judgment in the District Court and then obtaining an execution on the District Court judgment. The effectiveness of such a device in collecting such judgments is seriously limited by the limited number of years, such procedure is available after rendition of the judgment. There seems to be some question as to exactly how long such a District Court judgment is valid and enforceable.

The decisions of our Supreme Court have shown a change in the development of the law with respect to Justice Court judgments filed in the District Court and then made a basis for execution out of the District Court. The earliest Colorado case involving this point is the case of *Brown v. Bell*, 46 Colo. 163, 103 Pac. 380, 23 L. R. A. (NS) 1096, 133 Am. St. Rep. 54 (1909), wherein the judgment creditor obtained a Justice Court judgment and filed a transcript in the District Court within one year thereafter. The judgment creditor then attempted, at a time which was more than six years after the Justice Court judgment was rendered, to obtain execution out of the District Court. The defense was that the statute of limitations (which is now Section 6492, Compiled Laws 1921) barred such an execution. The court held, however, that an execution might be issued even though the six-year statute of limitations had run against an action on the judgment.

The next case, *Sundin v. Frost*, 71 Colo. 367, 206 Pac. 1071 (1922), involved a slightly different set of facts in that the judgment creditor did not file the transcript of the Justice Court judgment in the District Court until almost ten years after the Justice Court judgment had been rendered. He then sought execution from the District Court. The judgment debtor brought an action to restrain the enforcement of this District Court execution. The court enjoined the enforcement of this execution on the theory that the judgment became dormant and afforded no basis for an action and could not be made the ground for an execution from the District Court by

filing a transcript of such judgment with the clerk of the District Court. The court distinguished the *Brown v. Bell* case on the facts because in the *Brown v. Bell* case the transcript was filed in the District Court before six years had elapsed, while in the instant case the transcript was filed in the District Court after six years had elapsed.

The problem was definitely settled by the case of *Reed v. Flood*, 76 Colo. 139, 230 Pac. 108 (1924), where the facts were almost identical with the *Brown v. Bell* case in that the judgment creditor filed his transcript of the Justice Court judgment with the clerk of the District Court within three years after the judgment was rendered and then sought to have execution issued almost ten years after the Justice Court judgment was rendered. This case presented squarely the problem of how long a Justice Court judgment was effective for purposes of execution out of the District Court. The court very definitely held that the Justice Court judgment was effective for a period of six years after the date of its rendition in the Justice Court. The holding of this case is to the effect that the judgment is "dead" after six years have expired and that no execution could issue on such judgment no matter when the transcript of such judgment was filed in the District Court. The court discussed the *Brown-Bell* and the *Sundin* cases and noted that the *Sundin* case was antagonistic on principle with the *Brown-Bell*; decided to follow the principle enunciated in the *Sundin* case and in effect overruled the decision in the *Brown-Bell* case.

It may therefore safely be said that the *Reed v. Flood* case has definitely established the proposition that an execution cannot issue out of the District Court on a transcript of a judgment which has been rendered by a Justice Court after six years have elapsed from the rendition of Justice Court judgment, and this rule applies no matter when the transcript of the Justice Court judgment is filed in the District Court within or after the six years' period.

In addition to granting a right to convert a Justice Court judgment into a District Court judgment, the statutes (Sec. 254 of the Code—and Sec. 5898, C. L. '21) provide for recording a transcript of the District Court judgment in the office of the Recorder and thus constituting this recorded

transcript a lien on all real property of the judgment debtor for a period of six years.

The case of *Davis Bros. Drug Co. v. Counter*, 75 Colo. 239, 245 (1924), presented the question as to when the lien was created. The court in that case held that when a Justice Court transcript was filed in the District Court and a transcript of the District Court judgment was recorded in the office of the Clerk and Recorder that the six years were computed from the date of rendition of the Justice Court judgment and that the lien did not begin at the time the District Court judgment was rendered.

Since it is a statute of limitations which bars the enforcement of a District Court judgment—based on a transcript from the Justice Court, there is the possibility that the running of the statute of limitations may be suspended by absence of the judgment debtor from the state. In *New England Electric Co. v. Willis Bowes*, 89 Colo. 547, 2 P. (2d) 245, the judgment creditor attempted to secure an execution and levy on a transcript of a Justice Court judgment which was filed in the District Court more than nine years after the Justice Court judgment had been rendered. The defense set up the six-year statute of limitations barred such an execution and levy. The judgment creditor then contended that under Sec. 6417, C. L. '21, the operation of the statute of limitations was suspended because the judgment debtor was out of the state during part of this period. This case presented the question whether a Justice Court judgment was "dead" after six years as the court had said in the *Reed v. Flood* case or whether the running of the statute of limitations might be tolled by the absence of the judgment debtor from the state. The court disposed of the case on the theory that the Act did not operate retrospectively and the absence of the defendant began before the statute was passed. However, the court did intimate that perhaps Section 6417 did not apply to Justice Court judgments and their transcripts in the District Court because Section 6417 refers to "causes of action" and not to "judgments." Some further doubt is cast upon the probable uses of Section 6417 by the language of the court: "After a lapse of six years, the Justice Court judgment was dead.

Thereafter no valid transcript could be filed in the District Court and no execution issued thereon."

In conclusion it would seem that a transcript of a judgment in a Justice of the Peace Court may be filed in the District Court and then a transcript of such District Court judgment may be recorded in the office of the Recorder as a lien against the real property of the judgment debtor, such lien then existing for six years after the date of the rendition of the judgment in the Justice Court; or an execution may issue upon the District Court judgment at any time until six years from the date of the rendition of the judgment in the Justice Court. There is a very slim possibility that the time during which an execution might issue out of the District Court might be extended beyond a six-year period under Section 6417 of the Compiled Laws of 1921 in the event that the judgment debtor was absent from the state during such time, but in the light of the unfavorable language of the court in *The New England Electrical Co. v. Bowes*, this possibility is quite slim indeed.

DID YOU KNOW?

A Massachusetts law makes the promotion of a masked ball illegal?

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The laws of Alabama and Vermont empower a husband to chastise his wife, using "a stick no larger than the thumb" (but do not mention the length of the stick)?

* * * *

A Maine law prohibits the wearing of spiked shoes in public?

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A New York state law makes it unlawful to feed a sparrow?

* * * *

A Los Angeles ordinance makes it unlawful for anyone to shoot at a jackrabbit or a hare from the platform of a trolley car in transit?

* * * *

A law of the town of Kulpoont, Pa., holds it illegal to keep a prisoner in jail on Sundays?