

JUSTICE OF THE PEACE: Transcript in oriminal case may be filed with Circuit Clerk as in civil cases.

June 6, 1935.

6-15



Hon. Joseph W. Myers,
Justice of the Peace,
Sikeston, Missouri.

Dear Sir:

This will acknowledge receipt of your request for an opinion of this office reading as follows:

"I am enclosing herewith, a transcript of judgement for cost, rendered in a criminal case, Also the Circuit Clerks' letter.

"I filed the transcript with the Circuit Clerk, and asked for a execution to Dunklin County, See Clerks reply.

"On the advice of H. C. Blanton, U. S. Atty, I am refering this to you as the Attys here are unable to find a specific instruction in the Law for such cases made and provided. Mr. Blanton says your opinion wil prevail in the matter.

"You wil understand, The Pros. witness against whom the Judgement is rendered, J. Mott Douglass lives at Kennett, Dunklin County, Missouri, and out of the jurisdiction of the Scott, J. P. Court.

"I thank you in advance for your kind consideration in the interest you wil take in assisting us Petty Officers in collecting our cost."

June 6, 1935.

You do not state whether the charge lodged against the defendant involved property of the value of more than Thirty Dollars, and so far as your statement of facts indicates we are unable to determine whether it is a misdemeanor or a felony charge.

Section 3444, R. S. Missouri 1929, provides, among other things, as follows:

"In other cases of discharge or acquittal the costs shall be paid by the county, except when the prosecution is commenced by complaint and the prosecuting attorney declines to file information thereon, in which case the proceedings shall be dismissed at the cost of the party filing the complaint."

Your records indicate that the prosecution was instituted on complaint of the prosecuting witness J. Mott Douglass, and that the proceedings were dismissed on January 17, 1935, and that the costs were adjudged and taxed against said prosecuting witness Douglass.

In the case of State ex rel. vs. Justices of Buchanan County Court, 41 Mo. 254, the Supreme Court of this State stated:

"The judgment for costs in every criminal case when there is a conviction, necessarily follows as a part of the punishment inflicted."

Section 11809 R. S. Missouri 1929, provides:

"Justices of the peace may issue fee bills for all services rendered in their courts, and if the person chargeable shall neglect or refuse to pay the amount thereof to the constable or proper officer, within twenty days after the same shall have been demanded by such officer, he may and shall levy such fee bills on the goods and chattels of such person, in the same manner and with like effect as on a fieri facias."

"Fieri facias" is defined in Bouvier's Law Dictionary
as:

"A writ directing the sheriff to cause to be made of the goods and chattels of the judgment debtor the sum or debt recovered. It is the form of execution in common use in levying upon the judgment debtor's personal property."

Section 3446, R. S. Missouri 1929, provides:

"All proceedings upon the trial of misdemeanors before justices of the peace shall be governed by the practice in criminal cases in courts of record, so far as the same may be applicable, and in respect to which no provision is made by statute."

Section 3829, R. S. Missouri 1929, provides that every person who shall institute any prosecution to recover a fine, penalty or forfeiture shall be adjudged to pay all costs if the defendant is acquitted although he may not be entitled to any part of the same. This latter section, we think, does not apply to the matter about which you inquire.

Section 3510, R. S. Missouri 1929, states:

"When the information is based on an affidavit filed with the clerk or delivered to the prosecuting attorney, as provided for in Section 3505, the person who made such affidavit shall be deemed the prosecuting witness * * * and in case the prosecution shall fail from any cause, or the defendant shall be acquitted, such prosecuting witness or prosecutor shall be liable for costs in the case not otherwise adjudged by the court, * * *"

This last section applies to felonies.

Section 4471, R. S. Missouri 1929, defines a felony and says that it is:

"* * * any offense for which the offender, on conviction, shall be liable by law to be punished with death or imprisonment in the penitentiary, and no other."

Section 4473, R. S. Missouri 1929, states:

"The term 'misdemeanor', as used in this or any other statute, shall be construed as including every offense punishable only by fine or imprisonment in a county jail, or both."

A person may sue on a domestic judgment against the judgment defendant within the time it is enforceable by execution. See Sheehan & Loler Transp. Co. v. Sims, 28 Mo. App. 66, and 25 Mo. App. 12.

The chapter on executions under the justices of the peace statute limits the right of an execution issued from the justice of the peace court to levies within the County. (Article V of Chapter 10.)

Section 1144, R. S. Missouri 1929, provides:

"When a transcript of a judgment rendered by a justice of the peace shall have been filed in the office of the clerk of the circuit court of the county where such judgment was rendered, a transcript of the record thereof, certified by the clerk of such court * * * may be filed, docketed and recorded in the office of the clerk of the circuit court of any other county, in the same manner as is provided in this article for filing, docketing and recording judgments of courts of records; and upon such filing, the judgment shall be a lien upon the real estate of the person against whom the judgment was rendered, situate in the county where such certified transcript is filed."

Section 1145, R. S. Missouri 1929, provides:

"The lien created by this article shall exist to the same extent and for the same

time only as the lien of the judgment or decree in the county where the same was rendered; and a transcript of a judgment or decree reviving a judgment or decree, or the lien thereof, may be filed, docketed and recorded in the same manner and with like effect as an original judgment or decree."

Section 1152, R. S. Missouri 1929, provides:

"The party in whose favor any judgment, order or decree is rendered, may have an execution in conformity therewith."

Section 1153, R. S. Missouri 1929, provides:

"Such execution shall be a fieri facias against the goods, chattels and real estate of the party against whom the judgment, order or decree is rendered * * *"

Section 1157, R. S. Missouri 1929, provides:

"Any party entitled to an execution from a court of record may have it directed as provided in the preceding section, or, at his option, he may have it directed to any sheriff in the state of Missouri; * * *"

Section 1156, R. S. Missouri 1929, also bears on the same question.

A judgment is a contract and so regarded in the law, and a judgment for costs in a criminal case is a debt and collection thereof is governed by the rules pertaining to the collection of civil matters.

In 33 Corpus Juris, 1056, the law is stated as follows:

"The cases are numerous in which judgments have been declared to be contracts or debts of record, or specialties. It is only by a legal fiction, however, and for the purpose of enforcing the obligation by contractual remedies, that judgments can be

considered as contracts. Thus an action on a judgment is an action on a contract, irrespective of the nature of the original transaction on which the judgment was founded, and the same provisional remedies may be had as in an action upon an express contract." St. Louis Type Foundry Co. vs. Jackson, 128 Mo. 119; McElroy vs. Ford, 81 Mo. App. 500.

In the case of Lawrence vs. Martin, 22 Calif. 173, it is held that a judgment rendered upon an unassignable cause of action for a tort is a debt, and in the Alabama case of Anniston v. Hurt, 140 Ala. 394, 37 S. 220, 103 Am. St. Rep. 45, it is held that a judgment is a debt although it was obtained in an action for a personal injury.

In the case of Gray vs. Ferreby, 35 Iowa 146, and also of Blose v. Smith, 14 Pa. Dist. 75, it is held that a judgment for costs is a debt.

Section 2300, R. S. Missouri 1929, provides for the procuring of a transcript from the Justice Court of a judgment.

In the case of Carter vs. Exposition Company, 124 Mo. App. 530, it is held that the transcript when filed with the Circuit Clerk for many purposes has the same dignity as that of the court's own judgment and is under its control.

CONCLUSION

We think that if a certified copy of the judgment is filed with the Clerk of the Circuit Court of the County in which the judgment was rendered in the Justice Court and the proper fee is tendered him, that it is his duty to file and record the judgment in his records and that thereupon the interested party may have a certified copy thereof

Hon. Joseph W. Myers

-7-

June 6, 1935.

filed in the office of the Clerk of the Circuit Court of the County where the judgment debtor resides, and that thereupon it becomes a lien against his real property and may be enforced by execution.

Respectfully submitted,

DRAKE WATSON
Assistant Attorney-General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General.

DW:MM