

2491

JUDGMENT CREDITOR—ANY MUNICIPAL COURT OF STATE  
—HAS RIGHT TO REQUIRE CLERK OF COURT TO ISSUE EX-  
ECUTION AGAINST PERSONAL PROPERTY OF JUDGMENT  
DEBTOR—FOREIGN COUNTY—DUTY OF SHERIFF TO RE-  
CEIVE AND EXECUTE JUDGMENT.

## SYLLABUS:

A judgment creditor in any municipal court of the state, has a right to require an execution to be issued by the clerk of that court against the personal property of a judgment debtor situated in another county, and it is the duty of the sheriff of such county to receive and execute the same.

Columbus, Ohio, April 14, 1953

Hon. John Rossetti, Prosecuting Attorney  
Stark County, Canton, Ohio

Dear Sir :

I have before me your request for my opinion reading as follows :

“Please render this office an informal opinion on the following question :

‘Where a money judgment has been recovered in the Municipal Court of a foreign county and said Municipal Court in the foreign county issues an execution on property located in Stark County directly to the Sheriff of Stark County, is it proper for the Sheriff to levy on said execution?’

“In the case at hand a judgment was recovered in Cleveland Municipal Court, and the bailiff of that court issued an execution directly to the Sheriff of Stark County. The sheriff requested an opinion from our office as to whether or not it should honor such execution. We gave a tentative opinion to the effect that it was not proper to honor such execution. I am enclosing a copy of our opinion, plus a reply to a later letter supporting the execution received from Cleveland Municipal Court, plus a copy of a still later letter received by our office from Mr. S., Attorney, who secured the judgment in the Cleveland Municipal Court.

“Needless to say, various conflicting attitudes in regard to the legality of the execution have been secured from local attorneys, and all parties concerned, including Mr. S., our Sheriff’s office and our own office, are interested in having this point of law determined.”

The right to an execution for the enforcement of a judgment and the proceedings relative thereto are matters of statutory provision. It is said in 17 Ohio Jurisprudence, page 736:

“Executions and proceedings under them are the subject of minute statutory regulation of which it has been said that no laws, especially in new states, are more frequently reversed and amended than those relating to judgments and executions.”

The act of the General Assembly which became effective June 13, 1951, completely reorganized all of the municipal courts of the state and

repealed all of the laws theretofore enacted establishing municipal courts in a large number of the cities of the state. This new enactment comprises Sections 1581 to 1617, inclusive, of the General Code.

We therefore look to the terms of that act to discover what if any powers are granted to municipal courts relative to executions and what procedure is set forth relative thereto. It might be noted that the municipal court laws theretofore in force differed considerably in their provisions relative to executions. In a number, the section outlining the jurisdiction of the court included a provision substantially as follows:

“The municipal court shall have jurisdiction within the limits of the county \* \* \* to issue execution on its own judgments.”

In some, there was a general provision that the laws relative to the court of common pleas as to various matters of procedure, including “the issuing of execution against personal property,” should apply to the municipal court. Such provision was found in the act creating the Cincinnati Municipal Court and in a number of others. See former Sections 1558-9 and 1558-28. In others there was a provision for county-wide jurisdiction “to issue execution on its own judgments, against property other than realty.”

In the new Municipal Court Act above referred to, we find in Section 1595, General Code, the following:

“Subject to section 1593 of the General Code a municipal court shall have jurisdiction within the limits of the county or counties in which its territory is situated:

“(A) To compel attendance of witnesses in any pending action or proceeding, the same as the court of common pleas;

“(B) To issue executions on its own judgments;

“(C) In any action or proceeding, whether legal or equitable, to enforce the collection of its own judgments; \* \* \*.”

It will be noted that the above provision does not either define or limit the scope of an execution which may be issued from a municipal court, nor does it throw any light upon the character of property which may become the subject of an execution. It does not in terms limit the process of execution to personal property. It does not expressly confine the issuance of the writ to the county in which the court is established.

It appears to me that the matter of enforcement of a judgment of the court by execution and levy is hardly an exercise of the jurisdiction of the court, but is rather a part of its incidental ministerial procedure. The judge of the municipal court having heard a cause, renders his judgment. If the successful party desires to have an execution issued, it does not appear that there is any necessity of coming to the judge of the court relative to its issuance, or that he has any power or duty in the matter. On the contrary, the practice well established in the courts generally, is for the judgment creditor to file a precipe with the clerk, and in response thereto he issues an execution directed to the bailiff or sheriff as the case may be, who proceeds to make the required levy and convert the property into money. The above provision of Section 1595 giving the municipal court county wide jurisdiction "to issue executions on its own judgments" applies, in my opinion to the ministerial functions of the court exercised by the clerk and bailiff and does not prevent the issuance of a writ of execution to another county.

Attention is directed to Section 1603, General Code, which provides:

"\* \* \* In any civil action or proceeding at law in which the subject matter of the action or proceeding is located within the territory or a defendant resides or is served with summons within said territory, the court may issue summons, orders of interpleader, all other writs, and mesne and final process including executions necessary or proper for the complete adjudication of the issues and determination of the action, to the bailiff for service in the county or counties in which the court is situated and to the sheriff of any other county against one or more of the remaining defendants. \* \* \*." (Emphasis added.)

This section does not afford a direct answer to the question we are considering, since it appears to relate to the process of getting service on non-resident parties, but it does indicate that any of the writs referred to, including an execution, may issue to the sheriff of another county.

Going a little further into the Municipal Court Act, we find this provision in Section 1599, General Code:

"In any civil case or proceeding if no special provision is made in sections 1581 to 1617, inclusive, of the General Code, the practice and procedure shall be the same as is provided for in courts of common pleas. If no practice or procedure is provided for in the courts of common pleas, then the practice or procedure of justice of the peace courts shall apply." (Emphasis added.)

The portion of the General Code relating to practice and procedure in the common pleas court is comprised in Title IV of Part Third, of the General Code. Chapter I, of Title IV contains among others, Section 11,653, General Code, which reads as follows :

“An execution is a process of the court, issued by the clerk, and directed to the sheriff of the county. Executions may be issued to the sheriffs of different counties at the same time.”

Inasmuch, therefore, as the Municipal Court Act adopts for the purpose of procedure all of the provisions of the General Code relative to practice and procedure in courts of common pleas, it seems to me that the conclusion is irresistible that the successful party in a municipal court has a right to apply to the clerk of that court for an order of execution, which, according to the statute just quoted, may be issued to the sheriff of any county.

It is true that the judgment of a municipal court does not of itself give a lien upon real estate either within the county or outside thereof ; but neither does a judgment of a court of common pleas. Under the provisions of Section 11,656, any judgment creditor, in order to obtain a lien on real estate, must file with the clerk of the court in the county where the real estate is situated, a certificate of the clerk of the court rendering the judgment, giving the names of the parties, the amount of judgment and other facts required. That statute in its terms relates only to “judgments rendered by any court of general jurisdiction” but Section 11,656-2 extends that right to inferior courts, including municipal courts. It provides in part :

“Judgments of probate courts, *municipal courts*, justices of the peace and other courts inferior to the court of common pleas may be made liens upon lands and tenements of a judgment debtor within any county of this state in the manner provided in section 11656 of the General Code, and not otherwise. The certificate of such judgment shall be made by the clerk of any such court or justice of the peace, as the case may be, \* \* \*. When any certificate of a judgment of any such court made by the clerk of such court or justice of the peace, as the case may be, shall have been filed in the office of the clerk of the court of common pleas of any county, and docketed and indexed therein, execution may be issued out of such court of common pleas upon such judgment and such further proceedings to enforce said judgment may be had, as if the same had been rendered in such court of common pleas.”

(Emphasis added.)

It is possible, however, that a judgment creditor may obtain a lien for satisfaction of his judgment without the filing of such certificate. This is accomplished by seizing the property pursuant to a writ of execution. Provision for this practice is found in Section 11656-1, General Code, which reads as follows :

“Lands and tenements of a judgment debtor shall also be bound with a lien for the satisfaction of any such judgment of any court of general jurisdiction (including district courts of the United States) within this state, without the filing of such certificate as is provided for in the next preceding section, from the time when the same are seized in execution ; and goods and chattels of a judgment debtor shall be bound from the time they are seized in execution.”

It is to be noted that this right of direct seizure and sale of real property pertains only to a judgment of a court of “general jurisdiction” and a writ of execution from a municipal court could, therefore, only be executed on personal property. While this section is found among the procedural statutes governing courts of common pleas, which are, by the terms of Section 1599 *supra*, adopted for municipal courts, yet in so far as it confers a power on courts of “general jurisdiction,” I must conclude that it was intended to exclude municipal courts.

Something should be said as to the special provisions of the law relative to the Cleveland Municipal Court as distinguished from the others. A number of sections of the law give the Cleveland court jurisdiction in actions relating to realty, whereas the others are limited to personalty. For instance in Section 1594, General Code, which sets forth the “original jurisdiction within its territory,” of all municipal courts, the following is included :

“(B) In any action or proceeding at law for the recovery of money or *personal property* of which the the court of common pleas has or may be given jurisdiction ; \* \* \*

“(D) In any action or proceeding for the sale of *personal property* under chattel mortgage, lien, encumbrance, or other charge ; and for the foreclosure and marshalling of liens thereon, and for the rendering of personal judgment therein ;

“(E) In any action of proceeding to enforce the collection of its own judgments, or the judgments rendered by any court within the territory to which such municipal court has succeeded, and to

subject the interest of a judgment debtor in *personal property* to satisfy judgments enforceable by the municipal court; \* \* \*.”  
(Emphasis added.)

The same section gives the Cleveland court the additional power to foreclose mortgages and other liens on real property, and to entertain actions for the recovery of real property.

Likewise, Section 1595, General Code, defining the county wide jurisdiction of all such courts, gives them the power to act:

“(G) In any action or proceeding in the nature of creditors’ bills, and in aid of execution to subject the interest of a judgment debtor in *personal property* to the payment of a judgment of the court;”  
(Emphasis added.)

The Cleveland court is given the additional power, in proceedings in the nature of creditors’ bills, to subject *real or personal property* of the debtor to the satisfaction of a judgment of such court.

However, I do not find in the statutes any special powers given the Cleveland Municipal Court so far as the use of the process of execution is concerned, differing from those enjoyed by municipal courts, generally.

Section 11,666, General Code, makes it the duty of the sheriff, upon receipt of a writ of execution, to “proceed immediately to levy it on the goods and chattels of the debtor.” He is further required, if no chattels can be found, to levy on lands and tenements of the debtor “which are liable to satisfy the judgment.”

It is accordingly my opinion, and you are advised that a judgment creditor in any municipal court of the state, has a right to require an execution to be issued by the clerk of that court against the personal property of a judgment debtor, situated in another county, and that it is the duty of the sheriff of such county to receive and execute the same.

Respectfully,

C. WILLIAM O’NEILL

Attorney General