

**Personal Property Tax — Lien Against Real Estate—
Foreclosure Proceedings.**

A tax upon personal property is a lien upon real estate of the owner thereof, even though an action has been brought to foreclose a mortgage on the real estate and a lis pendens filed prior to the first Monday in March.

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My dear Mr. Anderson:

You have asked whether a personal property tax is a lien against the real estate of the owner thereof, where foreclosure of real estate is started and lis pendens filed prior to the first Monday of March.

Section 2152, Revised Codes of 1921, provides:

"Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof."

Section 2153, Revised Codes of 1921, provides:

"Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock m. of the first Monday in March in each year."

Section 2154, Revised Codes of 1921, provides, in part:

"Every tax due upon real property is a lien against the property assessed."

Section 2215, Revised Codes of 1921, provides:

"The deed conveys to the grantee the absolute title to the lands described therein, as of the date of the expiration of the period for redemption, free of all incumbrances, except the lien for taxes which may have attached subsequent to the sale, and except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession, accrued as of the date of the expiration of such period for redemption."

It was evidently the intention of Section 2215 to make any liens upon the land subject to the lien for taxes. That the State has the right to do this, and has done so in a great majority of the states, see the cases compiled in 27 Ann. Cas. 520, and Ann. Cas. 1917A, 1079.

It is held that priority of the lien for taxes will be implied where the legislative intent to give such priority can be gathered from the act.

Osterberg v. Union Trust Co., 93 U. S. 424, 23 Law Ed. 964;
Parker v. Baxter, 2 Gray (Mass.) 185;
Doremus v. Cameron, 49 N. J. Eq. 1, 22 Atl. 802.

The court, in construing a provision in the city charter which provided that assessments for taxes should be and remain a lien on all property, on account of which the assessment should be made, with interest, costs and penalties, "from the time when the taxes were payable," held that a paramount lien would be implied although not expressly given.

Doremus v. Cameron, *supra*.

In Minn. v. Central Trust Co., 94 Fed. 244, 36 C. C. A. 214, the view was taken that the lien for taxes was prior to other liens, although not expressly so provided by the statute. The court said:

"It cannot be inferred that the lien for personal taxes * * * was intended to be subordinate to all prior private liens, because the legislature failed to say that it should be deemed paramount. On the contrary, considering the character of the obligation and the dignity usually accorded to such liens, in public estimation, and above all, considering the necessity which exists for giving them priority in order that the public revenues may be promptly and faithfully collected, we conclude that the inference should be that the lien was intended by the legislature to be superior to all liens, prior or subsequent, claimed by individuals, and that nothing should be allowed to overcome this inference but a plain expression of a different purpose found in the statute itself."

In *Snyder v. Mogart*, 5 Pa. Dist. Ct. 148, the court said:

"The act does not say in express terms that the taxes shall be a prior lien, but when it makes it the duty of 'the officer selling such land to pay said taxes out of the proceeds arising from the sale first after the cost of sale,' it inevitably follows that they must be a first lien. If not a lien, and if not a first lien, they could not be so paid."

See, also:

Burfiend v. Hamilton, 20 Mont. 345.

In the case of *California Loan & Trust Co. v. Weis*, 50 Pac. 697, the court held that, "under the Political Code of California (sec. 3717) declaring a tax upon personal property a lien on the real property of the owner thereof, and section 3788, providing, in case of sale of one's real property for his delinquent taxes, that the deed conveys to the grantee 'the absolute title to the land * * * free of all incumbrances, except the lien for taxes which may have attached subsequent to the sale,' one's personal property tax, as well as his real estate tax, is a lien on his real estate superior to that of a prior mortgage." In this case, after quoting sections of the California Code identical with Sections 2152, 2153 and 2215 of the Revised Codes of 1921, the court said:

"No distinction is made by these laws between the lien which exists upon the land for the tax on personalty and the lien which exists for the tax upon the land itself. 'Every lien' created by this title remains until the taxes are paid or the property sold. The title which the purchaser gets under the enforcement of any tax lien by sale is free from all incumbrances. 'A lien for taxes does not stand upon the footing of an ordinary incumbrance, and is not displaced by a sale under a pre-existing judgment or decree, unless otherwise directed by statute. It attaches to the res, without regard to identical ownership, and when it is enforced by sale pursuant to statute the purchaser takes a valid and unimpeachable title.' *Osterberg v. Trust Co.*, 93 U. S. 424. The mandate of our statutes puts all tax liens upon the same plane, makes them

all paramount to other liens, and, under sale for their enforcement, gives to the purchaser a title free and unincumbered.
* * * No doubt can be entertained but that this is the true and only reasonable interpretation of the effect of our Code provisions. It is held in *Eaton's Appeal*, 83 Pa. St. 152, that a statute which declares that a tax shall continue a lien 'until fully paid and discharged,' *ex proprio vigore* makes the lien superior to that of a judgment obtained before the tax is levied. In this state we not only have language of similar import in section 3716 of the Political Code, but that language is aided so as to remove the need of interpretation by section 3788, which provides that the deed conveys the absolute title, free from all incumbrances."

The ownership of the real estate is not affected by the mere commencement of foreclosure proceedings and the filing of a *lis pendens*.

I am, therefore, of the opinion that a tax upon personal property is a lien upon real estate of the owner thereof, even though an action has been brought to foreclose a mortgage on said real estate and a *lis pendens* filed prior to the first Monday in March of the year for which the taxes are assessed.

You have further asked whether a personal property tax not a lien on real estate constitutes a lien upon the personal property that can be enforced ahead of any mortgage which may be on said property.

This question is fully answered by an opinion of former Attorney General Galen, appearing in Volume 4, Attorney General's Opinions, page 336.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.