

HAWKINS V. FILES.

EXECUTION LIEN: *Superior to prior unrecorded mortgage.*

The lien on land acquired by the levy of an execution, is superior to that of a prior unrecorded mortgage, although the mortgage is subsequently filed for record before the sale of the land.

APPEAL from *Ashley* Circuit Court in Chancery.

51 Ark—27

Hawkins v. Files.

CARROLL D. WOOD, Judge.

On the 3d day of August, 1874, A. W. Files executed to Mildred H. Williams a mortgage on the land in controversy and other property. On the 13th day of April, 1876, J. M. Robinson & Co., recovered a judgment against Files in the United States Circuit Court for the Eastern District of Arkansas, in which said land is situated. Execution was issued on the judgment on the 24th of May, 1876, and was levied on the land in controversy on the 1st day of June, 1876. On the 23d day of June, 1876, Mildred H. Williams, who had neglected to have said mortgage recorded, filed it for record in the proper office and it was duly recorded there on the same day. On the 30th day of June, 1876, the land was sold by the marshal and purchased by Robinson & Co., the plaintiffs in the execution, to whom it was conveyed by the marshal. An assignee of the mortgage brought this suit to foreclose it against Robinson & Co., and against certain persons claiming title to the land in controversy acquired by purchase from Robinson & Co. The court below held that the lien created by the levy of the execution was superior to that of the mortgage and dismissed the appellant's bill as against Robinson & Co.'s vendees.

M. L. Hawkins, pro se.

An unrecorded mortgage is superior to an after-acquired judgment. Jones Mort., [2d ed.] p. 462; see also 16 Ark., 548-9; 28 Id., 85; 33 Id., 336.

J. M. Moore, for appellee.

The lien of a judgment attaches from its date. 12 Ark., 276, and is superior to a subsequent mortgage. 13 Ark., 547. The levy of the execution created a specific lien, 31 Id., 392, which is superior to that of an after-recorded mort-

gage. 9 Ark., 112; 22 Id., 136; 40 Id., 536; 41 Id., 191-2; Mansf. Dig., sec. 4743, and note.

PER CURIAM.

The lien acquired by the levy of an execution upon lands is superior to that of a prior unrecorded mortgage, even though the mortgage be subsequently filed for record before sale. This is in accordance with *Main v. Alexander*, 9 Ark., 112. See annotation to the case cited; also *Dodd v. Parker*, 40 Ark., 536; *Wing v. Ringo*, 49 Ib., 457.

Affirmed.
