

IN RE LACY.

Case No. 7,970.

[4 N. B. R. 62 (Quarto, 15);¹ 3 Am. Law T. 215; 1 Am. Law T. Rep. Bankr. 226.]

District Court, W. D. Texas.

Nov., 1866.

LIENS—RECORD OF PRIORITY—MORTGAGE RECORDED PRIOR TO JUDGMENT
RECOVERED PRIOR TO THE EXECUTION OF THE MORTGAGE—PREFERENCE.

Where a creditor claims a lien by virtue of a judgment against the bankrupt, recovered on 5th November, 1866, but which was not recorded in the clerk's office until 16th October, 1867; and another creditor holds a mortgage executed by bankrupt, and recorded 7th April, 1867, *held*, the mortgage lien has priority over the judgment.

[In the matter of W. Y. Lacy, a bankrupt.]

DUVAL, District Judge. In this case, the question certified to me for decision by the register, G. W. Whitmore, Esq., grows out of a controversy between D. A. Calhoun and J. M. Swanson, creditors of said bankrupt, in regard to the priority of their respective liens upon certain lands of said bankrupt in Anderson county. Calhoun claims a lien by virtue of a judgment recovered against the bankrupt in the district court of Anderson county, on the 5th November, 1866, but which was not recorded in the county clerk's office of said county, until the 16th October, 1867. The lien claimed by Swanson accrues under a mortgage on the land, executed to him by the bankrupt, and recorded in said county, on the 7th April, 1867. On the 12th December, 1868, Calhoun proved up his judgment debt without security, and filed the same with the register, and subsequently, to wit, on the 14th August, 1869, he made new proof of his debt with security. Construing together the three acts of January, 1842, 14th February, 1860, and 9th of November, 1866, in regard to the liens of judgments on real estate, it seems to me there can be no doubt that the mortgage lien in this case had priority over that of the judgment. This construction, I think, is fully borne out by the late decision of the supreme court of Texas in the case of *Scogin v. Perry* [32 Tex. 21]. The decision of the register is, therefore, in all respects affirmed; and the clerk will certify this judgment in the usual manner.

¹ [Reprinted from 4 N. B. R. 62 (Quarto, 15), by permission.]