# INDEX.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

# New Jersey Supreme Court.

DISTRICT COURT OF THE CITY OF PERTH AMBOY.

THE TOWNSHIP OF CRANBURY,
*Plaintiff,*

*vs.*

CHAMBERLIN & BARCLAY, INC.,
*Defendant.*

NOTICE OF APPEAL.

*To Wilton Applegate, Esq., Attorney of Plaintiff:*

Take notice that the defendant, Chamberlin & Barclay, Inc., hereby appeals to the New Jersey Supreme Court from the judgment rendered in the above stated action.

(Signed) A. V. DAWES,
*Attorney of Defendant.*

Due and legal service of a copy of the within Notice of Appeal is hereby acknowledged this first day of October, 1926.

(Signed) WILTON T. APPLEGATE,
*Attorney of Plaintiff.*

Filed January 8, 1927.
HARRY J. HARDIMAN,
*Clerk.*

PERTH AMBOY DISTRICT COURT.

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| CRANBURY TOWNSHIP, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY, *Plaintiff,* *vs.* CHAMBERLIN & BARCLAY, INC., A CORPORATION ORGANIZED UNDER THE LAWS OF NEW JERSEY, *Defendant.* | Action in Tort. |

## STATE OF DEMAND.

The plaintiff, a municipal corporation of the County of Middlesex and the State of New Jersey, demands the sum of two hundred ($200.00) dollars from the defendants for this:

That on or about March 25, 1925, the said defendant Chamberlin & Barclay, Inc., sold all the goods and chattels assessed in the name of a certain George R. Thompson, of the said Township of Cranbury, on which taxes were due totaling the sum of ninety-nine dollars and fourteen ($99.14) cents, by virtue of a foreclosure of a certain chattel mortgage given the said Chamberlin & Barclay, Inc., by the said George R. Thompson; although the said Chamberlin & Barclay, Inc., were officially informed of the fact that the taxes were due on the said chattels and demand was made of the said Chamberlin & Barclay, Inc., by the official tax collector of the municipality for the payment of the said taxes and in spite also of the fact that the said tax collector officially made a levy by means of a distress warrant on the said chattels before the same



were sold for the purpose of collecting the taxes due as stated.

Wherefore, the said Township of Cranbury demands from the said Chamberlin & Barclay, Inc., the sum of ninety-nine dollars and fourteen ($99.14) cents, with legal interest from March 25, 1925, and costs of suit to be taxed.

(Signed) WILTON T. APPLEGATE,
*Attorney for Plaintiff.*

Service of a copy of the within Summons and State of Demand is acknowledged this 29th day of April, A. D. 1926.

CHAMBERLIN & BARCLAY, INC.,
By (signed) E. S. BARCLAY,
*Vice-President.*

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DISTRICT COURT OF THE CITY OF PERTH AMBOY.

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| CRANBURY TOWNSHIP, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY, *Plaintiff,* *vs.* CHAMBERLIN & BARCLAY, INC., A CORPORATION ORGANIZED UNDER THE LAWS OF NEW JERSEY, *Defendant.* | In Tort. Demand $200. |

## TRANSCRIPT.

Wilton T. Applegate, Plaintiff's Attorney; A. V. Dawes, Defendant's Attorney.

Summons, $1.50; service, 60 cents; trial fee, $1.50; bond, $1.00.

Summons was issued tested April 28th, A. D. 1926, returnable May 10th, A. D. 1926.

Service of a copy of the within summons and state of demand is acknowledged this 29th day of April, A. D. 1926.

CHAMBERLIN & BARCLAY, INC.,
By E. S. BARCLAY,
*Vice-President.*

Plaintiff's demand was filed April 28th, A. D. 1926.

May 10th, A. D. 1926—This cause adjourned until May 17th, June 7th, June 14th, June 28th, July 26th August 23d, August 30th, September 16th.

September 16th, A. D. 1926—This cause was called at ten o'clock in the forenoon.

Plaintiff appeared by Wilton T. Applegate. Defendant appeared by A. V. Dawes.

State of facts filed May 17th, 1926.

Notice of appeal filed January 8th, 1927.

Bond filed January 8th, 1927.

Judgment was rendered for plaintiff for the sum of $102.04 damages, and $8.70 costs of suit.

Transcript, 50 cents.

I, Harry J. Hardiman, do hereby certify that this is a true and correct copy of the docket entry in above case.

December 31st, A. D. 1926, transcript for docketing was issued.

HARRY J. HARDIMAN,
[SEAL] *Clerk District Court of the City of Perth Amboy, New Jersey.*



DISTRICT COURT OF THE CITY OF PERTH AMBOY.

THE TOWNSHIP OF CRANBURY, A MUNICIPAL CORPORATION,
*Plaintiff,*

*vs.*

CHAMBERLIN & BARCLAY, INC.,
*Defendants.*

## STATE OF FACTS.

The following are the agreed State of Facts:

The defendant, Chamberlin & Barclay, Inc., held two chattel mortgages covering all the goods and chattels of George R. Thompson, in the Township of Cranbury, County of Middlesex and State of New Jersey, one dated March 12, 1922, and the other dated May 6, 1925, to secure the sums of $1,450 and $389.02 respectively, and which were duly verified according to law, and duly recorded in the Clerk's office of the County of Middlesex, and that there was due upon the said chattel mortgages the sum of the principal of the mortgages.

That the defendant, by virtue of the said chattel mortgages, duly sold the goods and chattels covered by the said chattel mortgages, and did not raise from the said sale sufficient to pay the amounts due on the said chattel mortgages.

There was due to the Township of Cranbury on the day of the sale for taxes the sum of $99.14, assessed against the said George R. Thompson for the years 1924 and 1925, and on the day of the chattel mortgage sale, the collector distrained the goods covered by the chattel mortgages, but before the sale, March 31, 1926, by making an inventory of the goods and after that the said sale took place.

The validity of the mortgages of Chamberlin & Barclay, Inc., is admitted, and the question is whether or

not the taxes become a paramount lien over the chattel mortgages held by the defendant.

If the chattel mortgages are a paramount lien over the taxes on personal property, the defendant is entitled to judgment.

If not, the plaintiff is entitled to judgment in the sum of $99.14.

(Signed) WILTON T. APPLEGATE,
*Attorney for Plaintiff.*

(Signed) A. V. DAWES,
*Attorney of Defendant.*

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NEW JERSEY SUPREME COURT.

THE TOWNSHIP OF CRANBURY,
*Plaintiff and Respondent,*

*vs.*

CHAMBERLIN & BARCLAY, INC.,
*Defendant and Appellant.*

## STATE OF FACTS FOR APPEAL.

The following are the the agreed state of facts:

The defendant, Chamberlin & Barclay, Inc., held two chattel mortgages covering all the goods and chattels of George R. Thompson in the Township of Cranbury, County of Middlesex and State of New Jersey, one dated March 12, 1922, and the other dated May 6, 1925, to secure the sum of fourteen hundred and fifty dollars ($1450), and three hundred and eighty-nine dollars and two cents ($389.02), respectively, and which were duly verified according to law, and duly recorded in the Clerk's office of the County of Middlesex and that there was due upon the said chattel mortgages the sum of the principal of the mortgages.



That the defendant, by virtue of the said chattel mortgages, duly sold the goods and chattels covered by the said chattel mortgages, and did not raise from the said sale sufficient to pay the amounts due on the said chattel mortgages.

There was due to the Township of Cranbury on the day of the sale, for taxes, the sum of $99.14 assessed against the said George R. Thompson for the years 1924 and 1925, and on the day of the chattel mortgage sale, the collector distrained the goods covered by the chattel mortgages, but before the sale, March 31, 1926, and after that the sale took place.

The validity of the mortgages of Chamberlin & Barclay, Inc., is admitted, and the question is whether or not the taxes become a paramount lien over the chattel mortgages held by the defendant.

If the chattel mortgages are a paramount lien over the taxes on personal property, the defendant is entitled to judgment. If not, the plaintiff is entitled to judgment in the sum of $99.14. Judgment was given for the plaintiff for the sum of taxes plus interest and costs.

The parties hereto, by their respective attorneys, submit the above as the State of the Case for Appeal, and they further admit that the defendant duly appealed to the Supreme Court of the State of New Jersey from the judgment rendered in the above cause, and duly gave security, and that the reasons for appeal were duly served.

WILTON T. APPLEGATE,
*Attorney for the Plaintiff.*

A. V. DAWES,
*Attorney of the Defendant.*

NEW JERSEY SUPREME COURT.

THE TOWNSHIP OF CRANBURY,
*Plaintiff and Respondent,*

*vs.*

CHAMBERLIN & BARCLAY, INC.,
*Defendant and Appellant.*

## REASONS FOR REVERSAL.

The defendant-appellant hereby assigns the following reasons for reversing the judgment rendered in the above cause in the District Court of the City of Perth Amboy:

1. That the Court erroneously adjudged that the taxes assessed upon the personal property of George Thompson became and were a paramount lien over the chattel mortgages held by the appellant upon the goods and chattels of George Thompson, delinquent taxpayer, which chattel mortgages were duly recorded in the Clerk's office of the County of Middlesex, and were valid liens against creditors which chattel mortgages were duly recorded prior to the assessment of the taxes levied by the plaintiff-respondent.

2. That the State of Facts submitted to the Court below, the judgment should have been in favor of the defendant and against the plaintiff.

AARON V. DAWES,
*Attorney of Appellant.*

Endorsed:
Filed January 7, 1927.
Service of the above duly admitted by
WILTON T. APPLEGATE,
*Attorney of Plaintiff-Respondent.*



NEW JERSEY SUPREME CFURT.

THE TOWNSHIP OF CRANBURY,
*Plaintiff-Respondent,*
*vs.*
CHAMBERLIN & BARCLAY, INC.,
*Defendant-Appellant.*

## OPINION.

Decided January 5, 1928.

On appeal from the District Court of the city of Perth Amboy.

Before Justices KALISCH, KATZENBACH and LLOYD.

For the appellant, *Aaron V. Dawes.*

For the respondent, *Wilton T. Applegate.*

PER CURIAM.

The plaintiff below recovered a judgment against the defendant below, in the Perth Amboy District Court, for the sum of $102.04, with costs. From this judgment the defendant below appeals to this court.

The facts agreed upon between counsel of the respective litigants, presenting the legal question involved in this appeal, are as follows: "The defendant, Chamberlin & Barclay, Incorporated, held two chattel mortgages covering all the goods and chattels of George R. Thompson in the township of Cranbury, county of Middlesex and State of New Jersey. One dated March 12th, 1922, and the other dated May 6th, 1925, to secure the sum of $1,450 and $389.02, respectfully, and which were duly verified according to law, and duly recorded in the clerk's office of the county of Middlesex, and that there was due upon said chattel mortgage the sum of the principal of the mortgages."

"That the defendant, by virtue of the said chattel mortgage, duly sold the goods and chattels covered by the said chattel mortgages, and did not raise from the said sale sufficient to pay the amounts due on the said chattel mortgages."

"There was due to the township of Cranbury on the day of the sale, for taxes, the sum of $99.14 assessed against the said George R. Thompson for the years 1924 and 1925, and on the day of the chattel mortgage sale, the collector distrained the goods covered by the chattel mortgages, but before the sale of March 31st, 1926, and after that the sale took place."

"The validity of the mortgages of Chamberlin & Barclay, Incorporated, is admitted, and the question is whether or not the taxes become a paramount lien over the chattel mortgages held by the defendant."

"If the chattel mortgages are a paramount lien over the taxes on personal property, the defendant is entitled to judgment. If not, the plaintiff is entitled to judgment in the sum of $99.14."

The latter figure represents the exact amount of the taxes without interest added.

It is undoubtedly the settled law in this state that taxes or assessments do not become liens upon property, except by virtue of express legislation, and are collectible only in the manner provided by the statute.

For the appellant it is argued that there is no statute in this State which makes taxes or assessments, levied against personal property a first lien or charge upon personal property, and the mortgagee, therefore, was entitled to collect, out of the proceeds of the sale of the property, the whole amount due it, regardless of the fact that there had been, prior to such sale, taxes levied upon the property and a distress warrant issued to collect the same, and though the proceeds derived from such sale were insufficient to satisfy the distress warrant.

By section 513, page 870 of the laws of 1918, it is provided: "No tax or assessment imposed or levied in this State shall be set aside or reversed in any court of law or equity in any action, suit or proceeding for any irregularity or defect in form or illegality in assessing, laying or levying any such tax assessment, or in the proceeding for collecting the same, if the person against whom or the property up which such tax or assessment



is assessed or laid is, in fact, liable to taxation for assessment in respect to the purpose for which such tax or assessment is levied, assessed or laid; and the court in which any action, suit or proceeding is, or shall be pending to review any such tax or assessment, is required to amend all irregularities or errors or defects, and is empowered if need be to ascertain and determine for what sum such person or property was legally liable for taxation or assessment, and by order or decree to fix the amount thereof, and the sum so fixed shall be the amount of tax or assessment for which such person or property shall be liable, and the same shall be and remain a first lien or charge upon the property and person, and collectible in the manner provided by law, the same as if such tax or assessment had been legally levied, assessed or imposed in the first instance * * *."

We think this language is sufficiently explicit to constitute a tax or assessment, regularly levied in the first instance, against person or property, a first lien upon personal property. We must attach some significance to that part of the section which declares that "the same shall be and remain a first lien upon the property and person, and collectible in the manner provided by law, the same as if such tax or assessment had been legally levied, assessed or imposed in the first instance * * *."

To adopt any other view would necessarily invoke as interpretation of the statute, which would lead to an absurdity, namely that where a tax or assessment is irregularly assessed and levied against a person or upon personal property, such irregularity can be cured, and when this is done renders such tax or assessment a first lien upon the personal property irregularly levied against, whereas in a case where the tax or assessment is regularly levied, in the first instance, such tax or assessment does not become a first lien upon the property assessed or taxed.

To give effect to the contention of counsel of appellant would not only exempt all personal property upon which chattel mortgages and other liens created by the

acts of the parties existed, but would tend to open the door wide to the evasion of payment of taxes and assessments by parties creating liens upon property prior to the date when such taxes or assessments become liens.

We have, therefore, reached the conclusion that from a consideration of the questions raised and argued in the brief of counsel of appellant, that the tax, levied by the township of Cranbury, was a prior lien to the chattel mortgages existing on the property.

Judgment is affirmed, with costs.

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NEW JERSEY SUPREME COURT.

THE TOWNSHIP OF CRANBURY, IN THE COUNTY OF MIDDLESEX,
*Plaintiff-Respondent,*
*vs.*
CHAMBERLIN & BARCLAY, INC.,
*Prosecutor-Appellant.*

## JUDGMENT OF AFFIRMANCE.

(*Filed March 21, 1928.*)

The Court having inspected the transcript and proceedings of the District Court of the City of Perth Amboy, returned with the certiorari in this cause, the reasons for reversing the judgment below, and heard the argument of counsel thereon, and having duly considered the same, do order that the judgment of the District Court of the City of Perth Amboy be in all things affirmed with costs, and the record remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered March 17, 1928, on motion of

WILTON T. APPLEGATE,
*Attorney of Plaintiff-Respondent.*



NEW JERSEY SUPREME COURT.

THE TOWNSHIP OF CRANBURY, IN THE COUNTY OF MIDDLESEX,
*Plaintiff-Respondent,*
*vs.*
CHAMBERLIN & BARCLAY, INC.,
*Prosecutor-Appellant.*

## NOTICE OF APPEAL—APPEAL.

*To the Township of Cranbury in the County of Middlesex and Wilton T. Applegate, Esq., its attorney:*

Chamberlin & Barclay, Inc., hereby gives notice that it appeals to the Court of Errors and Appeals of the State of New Jersey, as the last resort in all causes, from the judgment entered in the Supreme Court in this State affirming the judgment of the District Court of the City of Perth Amboy brought up by certiorari into the Supreme Court:

And the said Chamberlin & Barclay, Inc., hereby states its ground of appeal that the Supreme Court erred in giving judgment of affirmance of the proceedings and judgment of the District Court of the City of Perth Amboy, whereas the Supreme Court should have reversed the judgment of the said District Court of the City of Perth Amboy.

A. V. DAWES,
*Attorney of Appellant.*

MacCrellish & Quigley Co., Printers, Trenton, N. J.

# NEW JERSEY
# Court of Errors and Appeals

THE TOWNSHIP OF CRANBURY,
*Plaintiff and Respondent,*
*vs.*
CHAMBERLIN & BARCLAY, INC.,
*Defendant and Appellant.*

## BRIEF FOR DEFENDANT-APPELLANT

### INTRODUCTORY STATEMENT.

The Township of Cranbury brought its action in the District Court of Perth Amboy against Chamberlin & Barclay, Inc., to recover the amount of personal taxes assessed against one George R. Thompson for the years 1924 and 1925, respectively, alleging that on the thirty-first day of March, 1926, the collector had distrained the goods and chattels belonging to Thompson and that the defendant had converted the same to its own use.

The defendant at the time held two chattel mortgages executed by Thompson covering all his goods and chattels, one dated March 12, 1922, and the other May 6, 1925, to secure sums of $1,450 and $389.02, respectively, admittedly valid chattel mortgages and on the same day that the distraint was made sold the same at public sale under its two mortgages and realized less than the

amount due to the defendant. The District Court of Perth Amboy gave judgment in favor of the Township and the defendant appealed to the Supreme Court. The Supreme Court affirmed the judgment below and this appeal was taken from the judgment of the Supreme Court. The question involved is whether or not under the Statutes of New Jersey these taxes on personal property were superior liens to the mortgage liens of the defendant. The Supreme Court held that they were such prior liens under Section 513, p. 870 of the Laws of 1918, which Section 513 will be found also in 4th Comp. Stats., p. 5171, and also is incorporated in the Tax Act in Section 39, p. 5124 of 4th Comp. Stats. This statute reads as follows:

> "No tax or assessment imposed or levied in this State shall be set aside or reversed in any court of law or equity in any action, suit or proceeding for any irregularity or defect in form, or illegality in assessing, laying or levying any such tax or assessment, or in the proceeding for collecting the same if the person against whom or the property upon which such tax or assessment is assessed or laid is, in fact, liable to taxation or assessment in respect to the purposes for which such tax or assessment is levied, assessed or laid; and the court in which any action, suit or proceeding is or shall be pending to review any such tax or assessment is required to amend all irregularities or errors, or defects, and is empowered, if need be, to ascertain and determine for what sum such person or property was legally liable to taxation or assessment, and by order or decree to fix the amount thereof; and the sum so fixed shall be the amount of tax or assessment for which such person or property shall be liable and the same shall be and remain a first lien or charge upon the property and persons, and collectible in the manner provided by law, the same as if such tax or assessment had been legally



> levied, assessed or imposed in the first instance by the city, town, township, commissioner, board or other authority attempting to make, impose or levy the same; it shall be the duty of the court to make proper levy, imposition or assessment in all cases in which there may lawfully be an assessment, imposition or levy; and such court is hereby given full and ample authority to make a lawful levy, assessment or imposition."

The opinion held that a lien was to be implied from the language that "the sum so fixed * * * shall be and remain a first lien or charge upon the property and persons."

## ARGUMENT.

The statute just cited was passed for the purpose of rendering ineffectual technical objections to taxes which otherwise were validly imposed. Chief Justice Beasley in *Conover* v. *Honce*, 46 N. J. L., 346, said respecting this act, "As I read that act, its effect is to destroy, root and branch, the power to defeat such a proceeding except upon a meritorious ground. The express purpose of this law, therefore, is to prevent for the future the frustration of taxation on the ground of erroneous procedure." Justice Depue said in *State* v. *Montclair and Greenwood Lake R. R. Company*, 43 N. J. L., 524, at 528 respecting this act, "This act should be liberally construed. It was designed to correct the evils arising from the frequent evasions of taxation by means of errors and omissions in the form and manner of assessment." The construction of this act should be confined to the mischief which the legislature was intending to suppress and the construction thereof should be within the language and not beyond. The language of the statute which in substance directs the court to ascertain for what sum such person or property was legally liable to taxation or assessment and the sum so fixed shall be the amount of tax or assessment for which such person or property shall be liable can only be given effect to by canvassing

other provisions of the statute to ascertain when there is a lien for taxes. Mr. Justice Parker in *Reynolds* v. *Paterson,* 49 N. J. L., 380, said that this very act "does not give the court original power to tax or assess, but only to apply the provisions of existing valid laws to the case before the court." The paragraph of the statute stressed in the opinion of the Supreme Court declares in substance that the sum found by the court shall be and remain a first lien or charge upon property and persons and therefore it would seem as if the construction of the Supreme Court of this statute has deleted therefrom the words "charge" and "persons." Taxes upon real estate are a first lien by the express provision of the statute. Personal taxes become a charge upon personal property when there is a distraint or seizure of the goods and chattels of the taxpayer and are a charge upon the person by the provision of the statute that in a deficiency of personal property, imprisonment of the delinquent taxpayer is provided for. The case of *Wrightstown* v. *Salvation Army,* 97 N. J. L., 89, holds that taxes upon real estate cannot be collected from the taxpayer personally but only in the manner provided by law would seem by the construction placed upon the statute by the Supreme Court to have been wrongly decided. The provisions of the tax law relative to "charges" and personal liability for taxes are as follows:

Section 202 of 2d Cum. Comp. Stats., p. 3483 (Laws of 1918, p. 848, Sec. 202):

> "All property, real and personal, within the jurisdiction of this State, not expressly exempted by this act or excluded from its operation, shall be subject to taxation annually under this act at its true value, and shall be valued by the assessors of the respective taxing districts. Property omitted by the assessors may be assessed as hereinafter provided. All property shall be assessed to the owners thereof with reference to the amount owned on the first day of October in each year, and the persons so assessed for the personal property shall be personally liable for the taxes thereon."



Section 606 of 2d Cum. Comp. Stats., p. 3502 (Laws of 1918, p. 874, Sec. 606):

> "It shall be the duty of the collector, in person or by deputy, forthwith after the first day of December to enforce the payment of all taxes on personal property and poll taxes and dog taxes by distress and sale of any of the goods and chattels of the delinquent in the county; * * * if goods and chattels of the delinquent cannot be found, or not sufficient to make all the money required to pay taxes on personal property and poll tax and dog tax, then it shall be the duty of the collector in person or by deputy, to take the body of the delinquent and unless the tax is at once paid, with costs, to deliver the same to the sheriff or jailer of the county, to be kept in close and safe custody until payment be made of the amount due on said taxes, with costs * * *"

Section 607 of 2d Cum. Comp. Stats., p. 3503 (Laws of 1918, p. 875, Sec. 607):

> "Where goods and chattels have been distrained, the collector shall give public notice of the time and place of sale and of the property to be sold, the name of the delinquent and the amount of his tax in default, at least five days previous to the day of sale by advertisement posted in at least five public places in the taxing district where such sale is to be made; such sale shall be at public auction and, if practicable, no more property shall be sold than is sufficient to pay the tax, interest and costs due * * *."

It is respectfully submitted that these sections do not give any lien upon the personal property of the delinquent taxpayer until after distraint has been made of his goods and chattels. *Linn* v. *O'Neil,* 55 N. J. L., 58, holds that "taxes become a lien on property only by force of legislation."

*Archibald* v. *Maureth,* 92 N. J. Eq., 357, it is held that "Taxes become liens on property only by express legislation and can be collected only in the manner provided by statute and that the existence of a tax lien must not be left to doubtful construction." AGAIN THE EXISTENCE OF A LIEN FOR TAXES DOES NOT IMPLY A PRIOR LIEN.

*Blackwell* v. *West Amwell,* 43 N. J. L., 165 at 166, the Court said: "There is no question but that in the absence of statutory provisions to the contrary a sale of land for taxes passes such estate only as the owner had at the time of the assessment. The estate acquired by the mortgagee prior to the assessment is not affected by such sale."

In *Dows Trustee, etc.,* v. *Drew,* 27 N. J. Eq., 442, it was decided that in the absence of an express legislative declaration that a tax levied against a mortgagor on mortgaged premises subsequent to the execution and registry of a mortgage was not a paramount superseding lien to the mortgage. Taxes levied subsequent to the registry of a mortgage do not have priority over it without express legislation giving them priority.

In this case on appeal to the Court of Errors and Appeals, 28 N. J. Eq., 459, it was said: "Under a sale of lands for the payment of taxes the estate only which the owner had at the time of the assessment passes. The estate acquired by a mortgagee prior to the assessment is not affected by such sale." It is also well settled in this State in *Freeholders of Middlesex County* v. *State Bank,* 30 N. J. Eq., 311, that this State does not possess the Crown's common law prerogative to have its debts paid in preference to the debts of other creditors.

It has been expressly held in New Jersey that tax liens stand as to preference, in order of their priority. *Evans* v. *Walsh,* 41 N. J. L., 281, seems to be dispositive of the question of lien. There was an execution in the sheriff's hands issued after tax warrant was placed in the collector's hands. The execution was first levied but the court determined that the placing of the tax warrant in



the collector's hands created an inchoate lien on the goods and chattels. It will be noticed that the superior lien of the municipality was sustained because it had issued its tax warrant and placed it in the officer's hands before the execution was delivered to the sheriff.

That there is no lien for personal taxes until distraint was expressly decided in the Court of Chancery in *Manzo* v. *Manzo,* 133 Atl. 190. The question in that was was as to the priority of liens between creditors and the municipality in a case in which a partnership was being wound up through receivership proceedings, the court held that taxes became a lien upon personal property on and after December second of the taxable year on the theory that the municipal authorities would have distrained the goods except that they were in *custodia legis* and that a receiver appointed on December third of the taxable year took title subordinate to the tax lien, whereas had the receivership proceedings eventuated in a receiver before December second, the municipal lien for taxes would have been subordinated to the receiver's title. Of course, the Court held that the creditors of the partnership had their lien upon the partnership goods fixed by the decree of dissolution and the appointment of a receiver and this occurred in the case cited on December third of the taxable year. Furthermore, in *Mullins et al.* v. *Mayor and Aldermen of Jersey City,* 61 N. J. L., 135, the Superme Court, speaking through Mr. Justice Dixon, said:

> "In executing such a warrant, the city collector is not confined to the property for which the tax was assessed. The warrant commands him to make the tax 'of the goods and chattels of the person named therein,' "

and Vice-Chancellor Emery, in *Duryee* v. *U. S. Credit System Co., supra,* at page 312 (37 A. 156), says that:

> "The personal property thus taxed, as well as other personal property, might be levied upon and sold under the warrant, previous to the expiration of the year during which the lien continued."

See also

*Broeck* v. *Jersey City,* 44 N. J. L., 156.

The Supreme Court opinion runs athwart the express provision of the tax act, to wit: that a chattel mortgagor may by claiming a deduction from his taxes of a chattel mortgage debt be relieved of the payment of taxes to the amount of the debt and the amount so deducted shall be a personal liability of the chattel mortgagee.

Section 302 of 2d Cum. Comp. Stats., 3489 (Laws of 1918, p. 853, Sec. 302), provides that:

> "The assessor shall each year ascertain by diligent inquiry and by the oath of persons to be assessed and others, according to the best of his ability and judgment, the names of all the persons taxable in his district and the true value of all the personal property therein. Every inhabitant of the taxing district, and every owner of personal property located in said district shall, on application of the assessor, forthwith render a true account of his name and personal property, money, effects and credits, and the assessor shall set down in a list in proper columns the names, the value of the personal estate assessed to each one, including the amount of the collectible debts due to him, except debts secured by mortgage on real estate in New Jersey, * * *"

Section 303, p. 3489, *ibid.,* provides that:

> "After making the valuation of the personal property for which any person shall be assessed, the assessor may deduct from such valuation all debts bona fide due and owing from such person to creditors residing in the State, but no such deduction shall be made unless the debtor shall make claim therefor in writing under oath and therein set forth the debts owing by him * * * No mortgage on personal property, or on both personal and real property, or the debts secured by such mortgage, shall be assessed for taxation unless a deduction therefor shall have been



> claimed by the owner of such mortgaged property and allowed by the assessor. * * *"

The tax statute has thus provided a complete method whereby the chattel mortgagee is liable for the tax to the extent of his mortgage debt. The conclusive presumption is that this is the only remedy against the chattel mortgagee.

In *Conover* v. *Honce,* 46 N. J. L., 347 at 349, it was held that a mortgagor who failed to claim the deduction against the mortgage upon his farm and make the appropriate affidavit, forfeits his right to have a deduction made therefor. The Chief Justice said at page 350 "It is in this way alone that he can make his claim." This statute prescribes a method whereby the chattel mortgagee may be compelled to pay the tax on the mortgage debt and by implication therefore it forbids any other method for collecting the tax so far as his lien is concerned. By implication it establishes the mortgage lien as valid.

It is respectfully submitted that the tax lien established in the Supreme Court is inconsistent with the provisions of the section of the statute last quoted. If there be, as is supposed in the Supreme Court, a paramount lien for personal taxes upon the personal property of the tax delinquent and if the statute stands that the chattel mortgagee may be compelled personally to pay so much of the taxes of the chattel mortgagor as represents the debt secured by the chattel mortgage, then the position of a chattel mortgage is precarious. Taxes are assessed on personal property as of the first day of October of the year preceding the second day of December on which date taxes may be distrained for non-papyment. The taxpayer may be in happy financial circumstances in October of the preceding year, but the whirligig of time may bring in reverses and when the taxes become payable in the December of the next year they may exceed the value of the property covered by the lien of the chattel mortgage.

Lastly, the legislation of this State respecting taxation of personal property has embodied a consistent public policy not to make the goods and chattels of a delinquent taxpayer chargeable with the tax unless the same have been seized under a distress. The legislature tried its hand in 1888 in making personal property taxes a lien but repealed the law in 1903, see P. L. 1888, p. 119; P. L. 1903, p. 443. Such was the legislative wisdom and experience with making personal property taxes a lien upon personal taxes. This law was discussed in *Duryee* v. *U. S. Credit System Co.*, 55 Eq., 311.

It is respectfully submitted that the decision below should be reversed.

AARON V. DAWES,
*Counsel of Chamberlin & Barclay, Inc.*

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

# Court of Errors and Appeals

THE TOWNSHIP OF CRANBURY,
*Plaintiff and Respondent.*
*vs.*
CHAMBERLIN & BARCLAY, INC.,
*Defendant and Appellant.*

## BRIEF FOR PLAINTIFF-RESPONDENT.

On March 31st, 1925, a levy, in proper legal manner, was made under a distress warrant on goods and chattels of George R. Thompson for taxes due the Township of Cranbury for the years 1924 and 1925. There were two valid chattel mortgages in existence against this property at the time of the levy and a sale was had under these mortgages by Chamberlin & Barclay, Inc. The sale under the chattel mortgages took place after the distress levy had been made.

It is agreed that if the distraint gave a lien prior to that of the chattel mortgages, the judgment of the District Court of Perth Amboy and of the New Jersey Supreme Court should be affirmed.

The only question raised is one as to the interpretation of Section 513, page 870 of the Laws of 1918. The provisions of this act make taxes a first lien, even in cases of technical defects in assessing or leveying taxes. Certainly, if taxes on personal property are a first lien by statutory provision when there has been some irregu-

larity or defect in form, or illegality in assessing, laying or levying such tax or assessment, or in the proceeding for collecting the same, the Legislature intended that such tax on personal property would be a first lien if the proceeding were in every respect, regular.

The mortgages can surely be in no better position than an owner, regarding taxes. Otherwise, all taxes on personal property could be avoided by a chattel mortgage. If the defendants were the owners of the chattels taxed, they could not evade the tax and to contend that an interest as mortgagee permits an evasion of a tax proper in all other respects is to state an absurdity which would end the collection of any tax on personalty.

"Where there is a divesture of the title to the property, the city may not distrain; otherwise, it may." (*Clark Rec.*, 513, *March* v. *Burt*, 22, *Federal Rep.* 180.)

Defendant-appellant makes the point that a chattel mortgagee can be made liable for the tax to the extent of his mortgage debt. This provision, designed to settle tax relations between the mortgagor and the mortgagee, cannot, by a stretch of imagination, be tortured into giving the chattel mortgagee a better position than that of complete ownership. The provision clearly shows an intention to give a lien upon mortgaged chattels

Everything that could be done by the Township of Cranbury, in the instant case, was done. To put a mortgagee in a better position than the owner of chattels would open the door to defeating all taxes on personal property. The existence of a chattel mortgage does not and cannot exempt personal property from tax liens.

WILTON T. APPLEGATE,
*Attorney for Plaintiff and Respondent.*