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Notice of Appeal.

Notice of Appeal.

Filed December 11, 1917.

New Jersey Supreme Court.

10

CRUCIBLE STEEL COMPANY OF
AMERICA,

Plaintiff-Appellant,

vs.

POLACK TYRE & RUBBER COM-
PANY,

Defendant-Respondent.

*Action at
Law.*

*On Appeal to
Court of
Errors and
Appeals.*

20

To Messrs. Kessler & Kessler, Attorneys for
Defendant-Respondent:

TAKE NOTICE that Crucible Steel Company of
America appeals to the Court of Errors and
Appeals from the whole of the judgment en-
tered on September 18, 1917, in the New Jersey
Supreme Court in a certain cause therein pend-
ing wherein Crucible Steel Company of Amer-
ica was plaintiff and Polack Tyre & Rubber
Company was defendant.

30

Dated November 8, 1917.

WILLIAM K. FLANAGAN,
Attorney of Plaintiff-Appellant.

40

*Grounds of Appeal.***Grounds of Appeal.**

Filed February 13, 1918.

New Jersey Court of Errors and Appeals

10	CRUCIBLE STEEL COMPANY OF AMERICA, <i>Plaintiff-Appellant,</i> <i>vs.</i> POLACK TYRE & RUBBER COM- PANY, <i>Defendant-Respondent.</i>	} <i>Action at Law.</i> } <i>Grounds of Appeal.</i> } <i>Appeal from New Jersey Supreme Court.</i>
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20 The appellant states the following grounds of appeal:

1. The judgment below is founded upon an act of the Legislature of the State of New Jersey, entitled "An Act for the better protection of garage keepers and automobile repairmen," approved April 14, 1915 (P. L. 1915, p. 556) which is unconstitutional in that it permits the deprivation of property without due process of law contrary to Section 1, Article XIV of the amendments to the Constitution of the United States.

2. The judgment below is founded upon an act of the Legislature of the State of New Jersey, entitled "An Act for the better protection of garage keepers and automobile repairmen" approved April 14, 1915 (P. L. 1915, p. 556) which is unconstitutional in that it is a law impairing the obligation of contracts contrary to Article I, Section X, Paragraph 1 of

40

Grounds of Appeal.

the Constitution of the United States, as well as to Article IV, Section VII, Paragraph 3 of the Constitution of the State of New Jersey.

3. The judgment is founded upon an act of the Legislature of the State of New Jersey, entitled "An Act for the better protection of garage keepers and automobile repairmen" approved April 14, 1915 (P. L. 1915, p. 556) which is unconstitutional in that it is violative of Article IV, Section VII, Paragraph 4 of the Constitution of the State of New Jersey which provides that every law shall embrace but one object and that shall be expressed in the title. 10

4. The said judgment was given for the respondent, Polack Tyre & Rubber Company, and against the appellant, Crucible Steel Company of America, whereas by the law of the land judgment ought to have been given for the said Crucible Steel Company of America and against the said Polack Tyre & Rubber Company. 20

5. The trial judge, at the close of all of the evidence, refused to direct the jury to find a verdict for the said Crucible Steel Company of America, though regularly thereunto moved by it so to do. 30

WILLIAM K. FLANAGAN,
Attorney of Plaintiff-Appellant.

Complaint.

(Writ of Replevin issued September 13, 1916.)

Complaint.

Filed September 28, 1916.

10 The plaintiff, Crucible Steel Company of America, a corporation of the State of New Jersey, with its place of business in the Town of Harrison and County of Hudson and State of New Jersey, says:

1. On the twenty-fifth day of August, 1916, plaintiff was and ever since has been the owner of the following goods and chattels, to wit:

1 Saurer 6½ ton automobile truck No.
2935 State License number 96449

20 of the value of two thousand dollars (\$2,000).

2. On that date, plaintiff was and ever since has been lawfully entitled to the immediate possession of the same.

3. On the said twenty-fifth day of August, 1916, in the said County of Hudson, the defendants wrongfully took said goods and chattels from the possession of the plaintiff and has ever since wrongfully detained and still
30 wrongfully detains same.

4. On the 11th day of September, 1916, plaintiff demanded of the defendants the return of the said goods and chattels.

5. The defendants then and there wrongfully refused to deliver the said goods and chattels to the plaintiff and wrongfully detained the same and still wrongfully detain the same.

40 6. Plaintiff demands possession of the said goods and chattels, or in case same cannot be

Answer.

returned to the plaintiff, then the sum of two thousand dollars (\$2,000) damages for their value and the sum of one thousand dollars (\$1,000.00) for their detention.

PEIRCE & HOOVER,
Attorneys of Plaintiff.

10

(Filed Sep. 28, 1916.)

Answer.

Filed September 22, 1916.

Defendants say that:

1. They deny the truth of the matters contained in the Complaint.

20

2. The defendant, Polack Tyre & Rubber Company, claims a lien on said motor truck, for that on the eleventh day of May, nineteen hundred and sixteen, at the request and with the consent of George A. Felt, who resided at #18 Orange street, in the City of Newark, County of Essex and State of New Jersey, the owner of the said Sauer Motor Truck, they, the said Polack Tyre & Rubber Company, did repair said truck by fixing thereon four (4) European Standard Direct Polack Tyres, thus supplying repairs to said truck in the sum of four hundred, twenty-seven dollars and eighty-eight cents (\$427.88), and that under Chapter 312 of the Laws of 1915, being an act entitled, "An act for the better protection of garage peoples and automobile repairmen," they claim a lien on said motor truck and the right to its possession.

30

40

Reply.

3. That the defendant, Polack Tyre & Rubber Company, did cause said truck to be seized and impounded on or about the twenty-fifth day of August, nineteen hundred and sixteen, through Albert W. Fish, one of the defendants herein, a constable in the City of Newark, New Jersey, who was agent for said Polack Tyre & Rubber Company, to seize said truck under the hereinbefore mentioned lien.

10

Defendant demands possession of said truck, or in case same cannot be returned, then the sum of \$427.88 damages, together with costs and interest.

KESSLER & KESSLER,
Attorneys for Defendants.

20 (Filed Sep. 22, 1916.)

Reply.

Filed September 28, 1916.

(1) The plaintiff denies every allegation in the answer filed herein.

30 (2) Plaintiff, in reply to paragraph 2 of the answer filed herein, denies that defendant, Polack Tire & Rubber Company, has or had any lien on the motor truck mentioned therein, and denies that on the eleventh day of May, nineteen hundred and sixteen, or at any other date, the said George A. Felt was the owner of the said Saurer Motor truck.

(3) Plaintiff further says, in reply to that portion of paragraph 2 of the answer filed
40 herein, that it has no knowledge as to the said

Reply.

repairs to said truck by affixing thereon four European Standard Direct Polack Tires as alleged in the second paragraph of said answer, and requires defendant to make strict proof of the same.

(4) Plaintiff, in further reply to the second paragraph of the answer filed herein denies that the defendants, or either of them, has any lien upon the said motor truck under and by virtue of Chapter 312 of the laws of 1915 of the State of New Jersey, in the said answer mentioned as in said answer set out, superior to the rights of the plaintiff herein. 10

(5) Plaintiff, in reply to the matters set out in the third paragraph of the answer filed herein, says that it admits that the defendant, Polack Tire & Rubber Company, seized said motor truck, but expressly charges that the seizure on the part of the defendant was wrongful and that neither the defendant, Polack Tire & Rubber Company, nor the said Albert W. Fish, had any right under the law to seize the same; that neither of the defendants had any legal lien on the said motor truck superior to the rights of the plaintiff herein and that, at the time of the said seizure, the said motor truck was the property of the plaintiff herein. 20 30

(6) By way of further reply to the answer filed herein, plaintiff urges at the trial of this cause that the statute of the State of New Jersey referred to in the answer filed herein as Chapter 312 of the laws of 1915, being an act entitled "An Act for the Better Protection of Garage Peoples and Automobile Repairmen," and relied upon by the defendants herein as a defense to this suit is unconstitutional and void; 40

Reply.

that the said Act is contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States of America, in that it amounts to a taking of private property without due process of law and is, therefore, void and of no effect as against the plaintiff herein.

10 Plaintiff will further urge, at the trial of this cause, that the said Act of the State of New Jersey, referred to in the answer herein as Chapter 312 of the Laws of 1915, creates no lien upon the goods and chattels mentioned in the writ filed herein superior to the title and rights of the plaintiff herein, and does not entitle the said defendants, or either of them, to the possession of said goods and chattels as against the plaintiff herein.

20 PEIRCE & HOOVER,
Attorneys for Plaintiff.

(Filed Sep. 28, 1916.)

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true transcript of the pleadings in the above stated cause as

30 the same remain on file in my office.

In testimony whereof I have set my
(Seal) hand and the seal of said Court at Trenton, this thirteenth day of February, A. D. nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

William E. Calvert, direct.

Testimony.

Tried April 17, 1917, before Speer, *J.*, and a jury.

Pierce and Hoover for the plaintiff.

Kessler and Kessler for the defendant.

10

WILLIAM E. CALVERT, sworn.

Direct examination by Mr. Pierce.

Q What is your position with the Crucible Steel? A Chief Clerk.

Q Have you got the check with you that the Crucible Steel paid—issued and paid for the Sauer truck involved in this case? A Yes.

Q Will you produce it?

Mr. Kessler. I object unless it can be connected up to show what truck it was paid for and whether this witness knows it was paid for this particular car.

20

The Court. I will admit it now subject to striking it out if it is not connected up.

Q Do you know what truck that check of \$4,160.13, drawn by the Crucible Steel Company of America to the Motor Truck Company of New Jersey, Incorporated, paid for? A It paid for three trucks.

30

Q Did it pay for one Sauer six and a half ton automobile truck Number 2935? A I did.

Mr. Pierce. I offer it in evidence.

(Marked P. 1.)

Mr. Pierce. We offer in evidence a conditional bill of sale dated January 10, 1916, between Crucible Steel Company of America of the first part and George A. Felt

40

William E. Calvert, direct.

party of the second part, which has been duly recorded.

Mr. Kessler. No objection.

(Marked P. 2.)

10

Mr. Pierce. I offer in evidence the original records in the cause entitled "Hudson County Circuit Court, Crucible Steel Company of America vs. George A. Felt; action at law; in replevin;" together with the judgment shown by the record, showing a judgment in favor of the Crucible Steel Company of America for this particular truck, the judgment bearing date May 18, 1916.

(Designated P. 3.)

20

Mr. Pierce. We offer in evidence, if the court please, a bill of sale from George A. Felt, dated May 25, 1916, to Crucible Steel Company of America for two trucks, among others the one involved in this suit.

(Marked P. 4.)

Mr. Pierce. You admit the taking of the truck?

Mr. Kessler. Yes.

30

Q What damages were incurred by the Crucible Steel as a result of taking this truck, Mr. Calvert? A Forty-two dollars for loss of—

Q Forty-two? A That is for the loss of money paid drivers while the truck was idle, and also the cost of guarding the truck.

Q How much was that? A \$27.

Q What else? A That is all I have a statement to show.

Q Was that truck in a workable condition?

40

A It was.

William E. Calvert, direct.

Q Were you there when it was taken? A Yes, sir.

Q Did you see the truck at that time? A Yes, sir.

Q What condition was it in? A It was not in workable condition just at that moment, but it was—it would have been in an hour or so. 10

Q Why do you say that? A Because I saw it.

Q What were you doing with it so that it would be workable within an hour? A We were using it at that time to move the furnace cars in the car type annealing furnaces.

Q You were doing what? A We were using it to pull the cars in and out of the car type annealing furnaces.

Q What did you have to do with the truck in order to enable you to use it in that fashion? A Did not have to do anything especial. 20

Q Was it dismantled in any way? A That work allowed intermissions of a couple of hours and of course that opportunity was used for any repairing.

Q What records have you to show the expense there? A I have our time records.

Mr. Pierce. Do you want those originals put in? 30

Mr. Kessler. I do not care.

A This is a statement of it.

Mr. Pierce. We offer in evidence this statement prepared from the original time records.

Q What is this? A Those are the receipts signed by the men who guarded it.

Mr. Pierce. I offer it. 40

William E. Calvert, direct.

Mr. Kessler. I object to the offer of the record as immaterial. I do not think it is a proper element of damage.

10 *The Court.* What do you think the measure of damage is? He says they had to guard it because you left it in their possession. Apparently if you left it in their possession they were guarding it for you.

Mr. Pierce. The other side admits the taking of the truck.

The Court. Let the witness state what the fact is and get it on the record, that they did seize it and leave it with them.

20 Q Tell us what happened when the defendant came there to take this truck. A He told us that we should not take it out of the plant—leave it on the property; and the question was asked as to whether we could use it about the yard, and while we were using it at that time it was not to our advantage to continue using it at that work.

Q Why did he tell you he seized the truck, and who did seize it? A It was a Mr. Fish, I believe, with the company.

30 Q Who was with Mr. Fish? A Mr. Baldwin of Polack Tire and Rubber Company.

Q Mr. Baldwin has what position with the Polack Tire Company? A I do not know.

Mr. Kessler. We admit that he is their New Jersey manager.

A I understood he was, but I could not say.

40 Q In what way did they seize the truck when they came there? A Simply asked to see the truck and stated that the truck would be

William E. Calvert, cross.

impounded for a period of thirty days, I believe it was.

Q How long? A Thirty days I believe it was.

Q Did they serve any papers on you at all?

The Court. Well, that is the fact about the seizure, is it? 10

Mr. Kessler. We simply state that we impounded it but we never physically touched the car.

A My recollection is that we were not served with any paper.

Mr. Pierce. It is set up in the answer that they took physical possession.

The Court. If they have stated so that is an admission that they cannot deny now. There is no need of proving it. 20

Mr. Pierce. Take the witness.

Cross examination by Mr. Kessler.

Q How do you know that this check went in payment of these three trucks? A Because it was handled by me personally, through our office.

Q Isn't it a fact that this check was given in payment of a note of Mr. A. Feld? A No, sir. 30

Q Who had given a note to the Sterling Motor Car Company? A It was not.

The Court. What is the date of that check?

Mr. Kessler. January 12, 1916.

Q Did your company originally buy these motor trucks from the Sterling Motor Truck 40

William E. Calvert, cross.

Company? A We got them from the Sterling Motor Truck Company.

Q Isn't it a fact that Mr. Feld bought them from the Sterling Motor Truck Company and gave a note in payment and that subsequently you paid the note by this check? A We did
10 not pay the note by that check, no, sir.

Q Isn't it a fact that originally Mr. Feld bought the trucks from the Sterling Motor Truck Company and gave a note for them? A He gave a note, yes, he did.

Q How was it that you came to give a check to the Sterling Motor Truck Company if Mr. Feld had purchased these very trucks? A Simply because we decided to buy the trucks from the Sterling Motor Company.

20 Q But the Sterling Motor Company had already sold the trucks to Mr. Feld, hadn't it? A That is covered by the conditional bill of sale.

Q But the Sterling Motor Company had already sold these trucks to Mr. Feld, hadn't they? A I believe so.

Q Then how did you come to buy these same trucks from the Sterling Motor Company? A It was only on a note.

30 Q Oh, Mr. Feld had bought it on a note? A I understand he did, yes, sir.

Q And after that when the note became due you gave them the check for the trucks? A Before the note became due.

Q Before the note became due you gave them a check for these trucks? A Yes; they billed us for the trucks.

Q How did they come to bill you with the trucks when Mr. Feld purchased them? A Be-
40 cause we agreed to buy them.

William E. Calvert, cross.

Q Was that before or after Mr. Feld had purchased these trucks? A After.

Q Isn't it a fact that the way you did it was to pay Feld's note and take a bill of sale from the Sterling Motor Company for the trucks? A No, sir; we paid the Sterling Motor Truck Company. 10

Q Yes; you paid the note and got a bill of sale from the Sterling Motor Car Company?

Mr. Pierce. I object. The witness said he did not pay the note.

Q Isn't it a fact that you paid the note?

The Court. I will permit the question.

Q Isn't it a fact that you paid the note and received a bill of sale from the Sterling Motor Truck Company? A No, sir; we did not. 20

Q When the constable came there to seize the truck on behalf of the Polack Motor Tire Company where was the truck? A In what we call our annealing building.

Q Were you there when Mr. Fish, the constable, had a talk with the man in charge of the building? A He had no conversation with the man in charge of the building.

Q Did he have the conversation with you? 30
A Yes, sir.

Q And didn't you tell him that the truck was not in condition to be used? A Not just at that—I may have just at that time, yes, sir; I told you a while ago that the truck was temporarily being repaired, which it was.

Q Did you tell him how long it would take to repair the truck? A No, sir.

Q What did Mr. Fish actually do when he made a levy on this truck? A Simply told 40

William E. Calvert, cross.

us that it would be impounded for a period of thirty days.

Q Did he move the truck about at all? A No, sir.

Q Did anybody at his direction move it? A No, sir.

10 Q He left the truck where he found it? A Yes.

Q Why was it necessary for you to expend the sum of \$27 for guarding this truck? A That was when it was replevined; that happened at the time it was replevined.

Q That was after it was replevined by your company? A Yes, sir.

20 Q Why did you have to guard it? A Under the law, I presume; I do not know.

Q Do I understand you correctly that you did not employ a watchman to guard this truck until after your company had replevined it out of the possession of the Polack Tire Company? A Yes.

Q You say this truck was used about the yard right after the levy was made by the Polack Tire Company; is that a fact? A Not immediately; not for a few days, no, sir.

30 Q Was that because you were continuing to repair it? A No, sir.

Q Why hadn't you used it for a few days? A Because we were told not to use it.

Q You had not used it for a few days? A We did not use it for a period of four days.

Q How many days? A I think it was three or four days; I do not remember just exactly; I have the records of it.

40 Q And after that you used it? A The demand was so great we simply had to use it.

William E. Calvert, cross.

Q How many men do you keep on a truck?

A A driver and helper; two men.

Q How much do you pay each one a day?

A How much?

Q Yes. A They are paid by the hour. The drivers are paid 37½ cents an hour.

Q How many hours did he lose when this truck was idle? A Paid on a ten-hour basis when they are not working.

10

Q Wasn't he doing anything while this truck was impounded? A No, sir; not the driver.

Q What about the helper? A The helper was—I believe was not working.

Q Pardon me? A The helper was not working.

Q Are you charging the defendant now with the loss of services of the driver and the helper or the driver alone? A The driver alone.

20

Q How much does the driver get per hour or per week whichever way you pay him? A 37½ cents per hour.

Q On the basis of ten hours?

The Court. \$3.75 a day.

A Yes. Of course he gets paid for overtime, but if he is not working it is on a ten-hour basis.

30

Q This truck was paid up for four days and you were paying him 37½ cents an hour. How do you figure out \$42 as the loss of service of this man? A Four days at \$3.75 plus the \$27 that we paid for guarding the truck.

Q Oh, the \$42 includes the \$27? A It does.

Q You say you had started to guard this truck after your company had issued a replevin and had re-taken possession? A Yes, sir.

40

William E. Calvert, re-direct.

Q Why do you charge this defendant for that? A It was expense that we were put to.

Mr. Kessler. Oh, I withdraw the question. That is all.

Re-direct examination by Mr. Pierce.

10 Q Who did you pay the \$27 to?

Mr. Kessler. I object.

The Court. I will permit him to show who he paid it to.

A It is shown by those two receipts there. I forget the names—from the sheriff's office.

20 Q Just read the receipts. A One dated September the 15th, 1916, for guarding motor truck 2935 replevined by sheriff of Hudson county. That is for the amount of nine dollars and signed by Frederick F. Weil.

Q Who is he? A He was a constable from the Hudson County Sheriff's office.

Q Provided by the sheriff? A Yes.

Q Read the other receipt. A The other is dated September 16, and is for \$18, guarding motor truck 2935, replevined from Polack Tire Company.

30 Q Was that man provided by the sheriff of Hudson county also? A Yes, sir.

The Court. Well, your total expense then was \$42?

A Yes, sir.

Mr. Pierce. I offer in evidence the receipts from the two gentlemen.

Mr. Kessler. I object on the ground that it is immaterial. I do not think it is a proper measure of damage to charge the

40

Charles D. Merz, direct.

defendant. This witness testifies that these people were employed after the replevin.

The Court. I do not see how you can charge that. You had it back then in your possession. You could use it and do what you pleased with it.

Mr. Pierce. We can tax it in the costs. 10

The Court. That is a different proposition.

Mr. Kessler. Will your Honor strike out all the testimony except the fifteen dollars?

The Court. Yes; that leaves fifteen dollars.

Mr. Pierce. May we have an objection?

The Court. Oh, yes, of course.

Q Who told you not to use the truck? A 20
Mr. Fish.

Q Who is Mr. Fish? A He was sent from the—

Q What? A Sent from the court in Newark, I believe.

Q Who was he with? A Mr. Baldwin.

Q He is a constable from the First District Court of Newark? A I believe so.

Q And he was acting for Mr. Baldwin who represented the defendant? A He was, yes. 30

CHARLES D. MERZ, sworn.

Direct examination by Mr. Pierce.

Q I show you a paper purporting to be a demand on Albert W. Fish for Sauer truck 2935, and ask you if you served that demand on either the Polack Tire and Rubber Company or Albert W. Fish? A I served it on the Polack Rubber and Tire Company. 40

W. H. Duerr, direct.

Q Did they or did they not refuse to turn over the truck? A They refused to return it.

Q What date did you serve it? A On the 11th day of September, 1916.

Q That is your affidavit on the back? A Yes, sir.

10 *Mr. Pierce.* I offer it in evidence.
(Marked P. 5.)

Mr. Pierce. There is another young man here who did the same thing. Is it admitted?

Mr. Kessler. Yes.

Mr. Pierce. It is admitted that demand was made on the Polack Tire and also on Albert W. Fish.

20

PLAINTIFF RESTS.

W. H. DUERR, JR., SWORN.

Direct examination by Mr. Kessler.

Q What is your business? A President of the Sterling Motor Truck Company, New Jersey.

Q Do you know Mr. George Feld? A I do.

30 Q Did you ever have any business with Mr. Feld? A Yes, sir.

Q What business? A I sold him some second-hand Sauer trucks.

Q How many? A Six all told.

Q About what time was it that you sold him these trucks? A I cannot remember offhand. The contract was made on December 22, 1915.

Q I show you a check marked Exhibit P-1, and ask you whether that check went through your company? A Yes, it did.

40

W. H. Duerr, cross.

Q And what was that given to your company for? A For three Sauer trucks.

Q Purchased by whom? A George A. Feld.

Q Was that in payment of these trucks or was it in payment of anything else? A That was in payment of three Sauer trucks.

Q Was that in payment of any paper that you had— 10

Mr. Pierce. I object to it as leading. He said it was in payment of the trucks.

The Court. I will permit the question.

Mr. Kessler. I will withdraw the question and frame it in a different way.

Q When Mr. Feld purchased these trucks how did he pay you? A He gave me a note.

Q When this check was given to you how did you apply that check? A In payment of that note. 20

Cross examination by Mr. Pierce.

Q That check is a check of the Crucible Steel Company of America, isn't it? A Yes.

Q And you got the money on that check by putting it in your bank account? A Absolutely.

Q And the money did not come from Mr. Feld, did it? A Mr. Feld handed me— 30

Q Just a minute. The money did not come from Mr. Feld? A No; it came from the Crucible Steel Company.

Q That is all you know about the matter, isn't it? A That is absolutely all I know, yes.

Re-direct examination by Mr. Kessler.

Q Who handed you the check? A George A. Feld. 40

Josiah Baldwin, direct.

Re-cross examination by Mr. Pierce.

Q Will you take a look at Mr. Calvert and tell me if Mr. Calvert did not hand you that check personally? A No; I think Mr. George Feld brought it in my place.

10 Q Why do you say that? A Because it is so long ago I do not quite remember.

Q You do not quite remember; that is all.

JOSIAH BALDWIN, sworn.

Direct examination by Mr. Kessler.

Q You are the general manager for Polack Tire Company for the district of New Jersey. A Yes, sir.

20 Q And have you done any work upon any Sauer trucks for Mr. Feld? A Yes, sir.

Q Have you any record of the work done? A On May the 11th we applied four truck tires.

Q What is the price of those tires? A \$427.88.

Q To what did you apply those tires? A To two double wheels.

30 *Mr. Pierce.* May I ascertain if the witness knows this of his own knowledge.

A Yes, sir; I was right there.

Mr. Pierce. Were you present when they were applied?

The Court. He says he was right there.

Q To what were they applied? A To two dual rear wheels.

40 Q Where is the place of business of the Polack Tire Company? A 51 Stanton street, Newark.

Josiah Baldwin, direct.

Q What kind of a place have you there? A We run a place for applying tires and repairing wheels.

Q What have you there in the place of business, a shop or a store or what? A Yes, we have a shop there and a storehouse where we keep tires; we have also a one hundred and fifty ton press and other tools whereby we can heat bands and shrink them out and repair wheels. 10

Q When was it that you applied these tires on this truck, this Sauer truck? A May 11, 1916.

Q How did the truck come to your place? A The wheels were delivered to our place by Mr. Feld.

Q Do you remember going with the constable to the Crucible Steel yards to attach or levy upon a truck? A Yes, sir. 20

Q Did that truck bear the same wheels on which you applied the tires? A Yes, sir.

Q And how do you know that? A By the numbers on the tires and our wheel numbers.

Q When you arrived at the Crucible Steel yard where was this truck? A It was in one of the buildings; I could not tell you which building.

Q Did you have a talk with Mr. Calvert, the gentleman who was first on the stand for the plaintiff? A Yes. 30

Q What did he say to you in regard to the ability to use that truck at that time, whether he said it or the repair man said it there? A The truck was not in condition to run; they were working on the engine, and if I remember right there was both the radiator and the cylinder off.

Josiah Baldwin, cross.

Cross examination by Mr. Pierce.

Q Have you got a license in the city of Newark to maintain a garage?

Mr. Kessler. I object as immaterial.

Mr. Pierce. It is very material.

10

The Court. Why?

Mr. Pierce. No one but a garage owner or a man who maintains a garage can even claim such a lien.

The Court. Where is the requirement for the license?

Mr. Pierce. There is no requirement in the statute for a license, but it simply goes to show that the man does not maintain a garage.

20

The Court. What goes to show it; that he has not a license?

Mr. Pierce. Yes.

The Court. I do not think so. I do not see any requirement for a license.

Mr. Pierce. I will let it go in for what it is worth.

The Court. What is it worth?

30

Mr. Pierce. It goes to show that no one but a garage keeper can maintain a lien. It is not probative of the fact that he did not keep a garage, because he did not have a license, because he might have violated the law.

The Court. What law?

Mr. Pierce. Another act and the ordinances of the City of Newark require that this man should take a licence.

40

Josiah Baldwin, cross.

The Court. But there is no such ordinance before me.

Mr. Pierce. I know there is not.

The Court. What act requires him to have a license? I know of no such law.

Mr. Pierce. The ordinances of the City of Newark. 10

The Court. You will have to prove such ordinance then. If you have any statute that requires a license I will agree that that is the law, but I know of no such statute, and I do not think there is any. Later on if you desire to prove your ordinance of the City of Newark you may do it, and if you want to ask this witness now whether he has a license to run a garage and afterwards to prove your ordinances I will permit that. It is a mere matter of order of the proof. 20

Q Your business is applying tires and repairing wheels, isn't it? A Yes.

Q Do you keep automobiles on storage? A No, sir; except at times when there is a truck left there over night, we keep it in the yard.

Q Of course you take care of it when it is left there for repair, but otherwise you do not take charge of automobiles? A No, sir. 30

The Court. Furthermore there is nothing in this statute that requires him to keep a garage in order to entitle him to a lien. The act says, in the disjunctive, "All persons or corporations engaged in the business of keeping a garage or place for the storage, maintaining, keeping or repair." If he keeps a place for the repair it is enough, whether it is a garage or not. 40

Motion to direct verdict.

Mr. Pierce. Well, that simplifies the matter if your Honor takes that view of it.

The Court. I do take that view because that is what the statute says.

DEFENDANT RESTS.

10

Mr. Pierce. We move for a direction, if the court please, on the ground, first, that there is nothing to go to the jury on the question of ownership and the right to possession. We have proved it by two or three documents. And, secondly, that the defendant lost its common law lien, if it had any, when it let the truck out of its possession. They did work on it, and as a common law proposition, as I understand it, they would be entitled to retain possession—

20

The Court. This is no question of common law lien; that is entirely out of the case.

30

Mr. Pierce. That is entirely out of the case. Now we claim they took this without due process of law. It is in violation of the constitution of the United States and therefore void. We claim that the act is absolutely unconstitutional; it does not give us a day in court; it does not give up a right to try this by jury; it gives us no method of complying with the constitutional rights under the constitution as provided in the 14th amendment. Indeed the act itself is defective in my notion in the title; it is misleading; it does not set out in the title the purpose of the act. On those grounds we move for a direction, as there is not anything for the jury to consider.

40

Josiah Baldwin, direct.

Mr. Kessler. We ask for a direction of a verdict for the amount of the repair under the statute. (Counsel argue.)

Mr. Kessler. I think counsel both agree that it is not a jury question. If there seems to be any doubt in your Honor's mind you might take it away from the jury and let us submit briefs on it. It is a very interesting proposition. Mr. Baldwin just informs me that he is in position to testify that the Crucible Steel had knowledge of these tires being on there before they got the bill of sale. 10

The Court. You may open the case and I will permit you to prove it.

JOSIAH BALDWIN, recalled. 20

By Mr. Kessler.

Q Did you ever go to the Crucible Steel Company or any of its officers regarding your tires on this car? A Yes.

Q To whom? A To Mr. Calvert.

Q Did you have any conversation with him? A Yes, sir.

Q When was this? A It was two or three days after they seized these trucks. I went to see Mr. Feld first and he said they had taken the trucks away from him and he could not do anything. 30

Q Was that before or after the bill of sale—

Mr. Pierce. I object.

The Court. Objection sustained. That is a conclusion.

Q Can you fix the date? A It was about the 16th or 17th of May. 40

Exhibits P. 1 and P. 2.

Q 16th or 17th of May? A Yes; about that day. I could not say exactly what date.

The Court. Apparently we are wasting a lot of time now.

10 Q Is there any way in which you can ascertain the exact date on which you had a talk with Mr. Calvert or these officers? A I do not believe so now.

Mr. Kessler. Withdraw the witness.

Mr. Pierce. We will submit the matter on brief then, if the court please.

The Court. All right. I think you had better exchange briefs.

20

EXHIBIT P. 1.

Check drawn by Crucible Steel Company of America to the order of The Motor Treck Company of New Jersey, Incorporated, for \$4,160.13.

EXHIBIT P. 2.

30 THIS AGREEMENT, made this 10th day of January, Nineteen hundred and sixteen, between CRUCIBLE STEEL COMPANY OF AMERICA, party of the first part, hereinafter referred to for brevity as CRUCIBLE STEEL Co., and GEORGE A. FELT of party of the second part—

WITNESSETH:

40 1. That CRUCIBLE STEEL CO. has this day agreed to sell and deliver to the party of the second part, and the party of the second part has agreed to buy from CRUCIBLE STEEL Co.

Exhibit P. 2.

three certain 6½-ton Saurer trucks, No. 2935, 3275, 3437 at the agreed price of four thousand, eight hundred dollars (\$4,800.00), which the party of the second part agrees to pay CRUCIBLE STEEL Co. as follows: Ninety-two dollars and thirty-one cents (\$92.31) each week on Monday A. M., until the said sum of four thousand, eight hundred dollars with interest at the rate of six per cent per annum shall be fully paid. 10

2. Crucible Steel Co. shall place the said three trucks in the custody of the party of the second part, it being distinctly and expressly understood and agreed by the parties hereto that the title and ownership of said three trucks shall remain in Crucible Steel Co. until the whole of said purchase price or of any judgment obtained therefore or for part thereof with interest, shall be fully paid. Party of the second part further agrees to use the said trucks in a proper and careful manner and keep same in good order and condition, and to permit the agents or employees of Crucible Steel Co. to enter any house from time to time to examine same. 20

3. Should the party of the second part make default in the payment of the aforesaid installments of the purchase price, or in the performance of the other obligations of this contract on his part to be performed, the whole of said purchase price shall become due and payable, and the said Crucible Steel Co. shall be entitled to sue for and recover the same, but it is distinctly understood and agreed that an unsatisfied judgment shall not be considered as payment or as passing title to the said trucks. 30

4. Upon such breach, if it shall so elect, it shall be lawful for Crucible Steel Co., its agents or servants, to enter any place or places where 40

Exhibit P. 2.

said trucks may be placed and take possession of and remove the same, and the party of the second part does hereby authorize and empower Crucible Steel Co. so to remove the same.

5. Should the said trucks be so removed, it is hereby agreed that Crucible Steel Co. may
10 retain all moneys paid by the party of the second part up to the time of such removal. And it is hereby further agreed that the sums so retained shall be deemed liquidated damages for the breach of this contract and shall be considered by both parties hereto as a fair and just compensation for the deterioration of the trucks, and of the use thereof by the party of the second part, and the party of the second part hereby waives any claim or cause of action against said
20 Crucible Steel Co. consequent upon such removal or for the recovery of any sums paid on such purchase price.

6. Upon the payment in full of said purchase price and interest Crucible Steel Co. agrees to deliver to the party of the second part the original of this agreement as evidence of such payment and that title to said trucks has passed to the party of the second part.

7. The party of the second part shall keep
30 the said trucks insured in the sum of four thousand, eight hundred dollars (\$4,800.00) and assign the policy to Crucible Steel Co., the said Crucible Steel Co. in case of loss by fire, agreeing to pay the said party of the second part the excess of money received from such insurance over the amount of said purchase money then remaining unpaid.

8. The said party of the second part shall not mortgage or assign his interest in this contract;
40 nor in any way encumber said trucks or suffer

Exhibit P. 2.

any charge, lien or encumbrance to be placed thereon.

9. The party of the first part does not guarantee the trucks, but will give party of the second part the advantage of any claims which Crucible Steel Co. may have against manufacturers or dealers.

10

10. No oral contract or agreement contrary to, or in any way modifying the terms and conditions of the foregoing contract has been made; and the parties hereto agree that they will not *not* hold Crucible Steel Co. responsible for any agreement or warranty not expressed on the face of this contract.

WITNESS our respective hands and seals in duplicate this 10th day of January nineteen hundred and sixteen.

20

CRUCIBLE STEEL COMPANY OF AMERICA

By

C. C. RAMSEY, [SEAL]
President.

Witness.

GEO. A. TURVILLE,
Secretary.

30

[SEAL]

GEO. A. FELT, [SEAL]
Purchaser.

WILLIAM E. CALVERT,
As to Geo. A. Felt.

40

Exhibit P. 2.

I have carefully read the foregoing contract, and particularly the clauses contained therein relative to interest, insurance and title to the said trucks and thoroughly understand my obligations thereunder.

10 Witness.

GEO. A. FELT,
Purchaser.

WILLIAM E. CALVERT.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON }^{ss:}

20 Wm. E. Calvert being duly sworn on his oath according to law, deposes and says that he is the subscribing witness to the within instrument; and deponent further says that George A. Felt the person who executed the within instrument in deponent's presence on the date that the same bears date, acknowledged to deponent that he signed, sealed, delivered and executed the same as his voluntary act and deed for the uses and purpuss therein expressed, and that at the same time deponent attested the same in the presence of the said George A. Felt.

30

WILLIAM E. CALVERT.

Sworn and subscribed to before
me this 10th day of January,
1916.

GEO. H. PEIRCE,
Master in Chancery of New Jersey.

40

Exhibit P. 2.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON } ss.

BE IT REMEMBERED that on this 11th day of January, A. D. 1916, before me, the subscriber, H. F. Kress, personally appeared Geo. A. Turville who, being by me duly sworn, doth depose and make proof to my satisfaction he well knows the corporate seal of the corporation named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said Crucible Steel Company of America, and that the same was so affixed thereto and the said instrument signed and delivered by C. C. Ramsey who was at the date of the execution thereof the president of said company, in the presence of said deponent as the voluntary act and deed of the said Crucible Steel Company of America; that said deponent thereupon signed the same as subscribing witness.

CRUCIBLE STEEL COMPANY OF AMERICA,

GEO. A. TURVILLE,
Secretary.

Sworn and subscribed to before me this 11th day of January, 1916.

H. F. KRESS,
Notary Public.

My commission expires February 21, 1919.

Certificate of Prothonotary of Court of Common Pleas, County of Allegheny, attached as to signature, etc., of H. F. Kress.

Exhibit P. 3.

(Endorsed.)

AGREEMENT between Crucible Steel Company of America and George A. Felt. Dated January 10th, 1916.

Peirce & Hoover, attorneys, 765 Broad street, Newark, N. J.

10 Received in office of the Register of the County of Hudson, N. J., at 9:30 o'clock A. M., Jan. 13, 1916, and recorded in Book 356 of Chattels for said county on page 109.

JOHN J. McMAHON,
Register.

20 Received in the Register's office of the County of Essex, N. J., on the 3d day of April, A. D. 1916, at 11:43 o'clock in the forenoon and recorded in Book 341 of CHATTEL MORTGAGES for said county, on pages 527-530.

WALTER A. EVANS,
Register.

EXHIBIT P. 3.

30 THE STATE OF NEW JERSEY, to the (Seal) Sheriff of the County of Hudson, GREETING: We command you that if Crucible Steel Company of America, a corporation shall make you secure, you cause to be taken and delivered to it the following goods and chattels:

3 certain 6½ ton Saurer trucks,
Nos. 2935, 3275, 3437

3 certain 7½ ton Mack trucks
Nos. 3625, 3626, 3627,

40 which George A. Felt took and unjustly detains as is said; and that you summon the said

Exhibit P. 3.

George A. Felt to answer the annexed complaint of Crucible Steel Company of America, a corporation, in an action at law in the Hudson County Circuit Court. And that you notify him that unless he files his answer to said complaint with the clerk of the Hudson County Circuit Court at Jersey City, within twenty days after service upon him of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against him. 10

WITNESS HON. WILLIAM H. SPEER, ESQ., Judge of the Hudson County Circuit Court at Jersey City, this eighteenth day of May, nineteen hundred and sixteen.

JOHN J. McGOVERN,
Clerk. 20

PEIRCE & HOOVER,
Attorneys of Plaintiff,
763 Broad St.,
Newark, N. J.

30

40

Exhibit P. 3.

HUDSON COUNTY CIRCUIT COURT.

10	CRUCIBLE STEEL COMPANY OF AMERICA, a corporation, <i>Plaintiff,</i>	}	<i>Action at Law.</i>
20	<i>vs.</i> GEORGE A. FELT, <i>Defendant.</i>		<i>Complaint.</i>

The plaintiff Crucible Steel Company of America, a corporation of the Town of Harrison, County of Hudson and State of New Jersey, says.

1. It sues the defendant for possession of certain goods and chattels delivered by it to the defendant at Harrison, N. J., on or about the 10th day of January, 1916, and 28th day of September, 1916, under two certain contracts dated January 10th, 1916 and September 28th, 1915 respectively, to wit:

3 certain 6½ ton Saurer trucks,
 Nos. 2935, 3275, 3437
 3 certain 7½ Mach trucks,
 Nos. 3625, 3626, 3627,

valued at the sum of six thousand dollars (\$6,000.00) as evidenced by said contracts, true copies of which are hereto attached and made a part hereof.

2. Under the said contract the plaintiff agreed to sell to the defendant and the defendant agreed to buy from the plaintiff the said goods and chattels.

3. The said contracts were filed in the Register's Office of the County of Essex on the 3rd

Exhibit P. 3.

day of April, 1916, in Book 341, pages 527-530 and pages 530-533.

4. The contract dated January 10th, 1916, specifically provided that the defendant was to pay plaintiff the sum of ninety-two dollars and thirty-one cents each week until the purchase price had been paid.

10

5. The contract dated September 28th, 1915, specifically provided that the defendant was to pay plaintiff the sum of eighty-seven dollars each week until the purchase price had been paid.

6. The said contracts further provided that title to said goods and chattels should remain in Crucible Steel Company of America until the whole of said purchase price had been paid.

7. The said contracts further provided that if default was made in any of the payments, plaintiff should have the immediate right to repossess the said goods and chattels.

20

8. The defendant did default in payments provided for in said contracts and is still in default.

9. On the 18th day of May, 1916 and before serving the writ and complaint in this action the plaintiff demanded of the defendant at Newark, N. J. the return of the said goods and chattels to the plaintiff.

30

10. The defendant then and there refused to deliver the said goods and chattels to the plaintiff and then and there wrongfully detained and still wrongfully detains the same.

Plaintiff demands the possession of the said goods and chattels or in case they cannot be returned to the plaintiff the sum of six thousand

40

Exhibit P. 3.

dollars for their value and the sum of three thousand dollars for their detention.

PEIRCE & HOOVER,
Attorneys of Plaintiff.

10 BY VIRTUE of the annexed Writ, the plaintiff having given sufficient security to prosecute, &c., and no claim of property therein, and no bond being delivered to me by the defendant, I did on the 19th day of May, 1916, replevy and deliver to the said plaintiff the goods and chattels in the said writ mentioned, and summoned the said defendant as within I am commanded.

EUGENE F. KINKEAD,
Sheriff,

20 By WILLIAM FEIGHERY, *S. D. S.*

Served within Writ May 19-16 personally on the defendants, George A. Felt and W. E. Calvert at Crucible Steel Company at South Fourth Street, Harrison.

EUGENE F. KINKEAD,
Sheriff.

By WILLIAM FEIGHERY, *S. D. S.*

30 Filed Clerk's Office,
May 23-16.

Hudson County, N. J.

JOHN J. MCGOVERN,
Clerk.

40 Attached to complaint is a copy of agreement between Crucible Steel Co. and Geo. A. Felt, dated January 10, 1916, similar in all respects to Exhibit P. 2 printed on p. 28 hereof; at-

Exhibit P. 3.

tached also is a copy of agreement between Crucible Steel Co. and Geo. A. Felt, dated September 28, 1915, similar to Exhibit P. 2, except that it covers three other trucks with which we are not concerned in this case.

10

HUDSON COUNTY CIRCUIT COURT.

<p>CRUCIBLE STEEL COMPANY OF AMERICA, a corporation, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>GEORGE A. FELT, <i>Defendant.</i></p>	}	<p><i>Judgment entered July 17, 1916.</i></p> <p><i>Damages .06</i></p> <p><i>Costs.</i></p>	<p>20</p>
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Peirce & Hoover, attorneys.

Judgment by Default In-Replevin in the above entitled cause was entered in this court on the seventeenth day of July, in the year of our Lord, One thousand nine hundred and sixteen, in favor of the plaintiff, Crucible Steel Company of America, a corporation, and against the defendant, George A. Felt, in a plea of Action at Law for the sum of Dollars and Six Cents damages and Dollars and cents cost of suit.

30

Judgment entered and signed this 17th day of July, 1916, in Book 32, page 462.

WILLIAM H. SPEER,
Judge.

40

Exhibit P. 4.

EXHIBIT P. 4.

KNOW ALL MEN BY THESE PRESENTS, That I, George A. Felt, of the City of Newark, County of Essex and State of New Jersey, of the First Part, for and in consideration of the sum of One Dollar and other good and valuable consideration
 10 lawful money of the United States, to me in hand paid, at or before the ensealing and delivery of these presents, by CRUCIBLE STEEL COMPANY OF AMERICA, a corporation, of the Second Part, the receipt whereof is hereby acknowledged have bargained and sold, and by these presents do grant and convey, unto the said party of the second part, its successors and assigns, all the goods and chattels particularly described and mentioned, in the schedule hereto annexed, located
 20 in the plant of the Crucible Steel Company of America at Harrison, New Jersey.

To HAVE AND TO HOLD, the same unto the said party of the second part its successors and assigns forever. AND, I do for myself, my heirs, executors and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the sale of the said goods and chattels hereby sold unto the said
 30 party of the second part, its successors and assigns, against all and every person and persons whomsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the twenty-fifth day of May in the year of our Lord nineteen hundred and sixteen.

GEORGE A. FELT [L. S.]

Sealed and Delivered
 in the presence of

40 WILLIAM E. CALVERT.

Exhibit P. 4.

SCHEDULE.

One (1) Six and one-half (6½) Ton Saurer
Automobile Truck, No. 3274.

One (1) Six and one-half (6½) Ton Saurer
Automobile Truck, No. 3233.

10

GEORGE A. FELT [L. S.]

Witness:

WILLIAM E. CALVERT.

20

30

40

Decision of Judge Speer.

New Jersey Supreme Court.

HUDSON CIRCUIT.

10	<p>CRUCIBLE STEEL COMPANY OF AMERICA,</p> <p style="text-align: center;"><i>vs.</i></p> <p>POLLACK TIRE & RUBBER COM- PANY.</p>	}	<p><i>In Replevin.</i></p> <p><i>Decision.</i></p>
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Peirce & Hoover, Esqs., for plaintiff.

Kessler & Kessler, Esqs., for defendant.

20 WILLIAM H. SPEER, *Circuit Judge*:

I have concluded that the Garage Keepers' Act, Pamph. L 1915, p. 556, is constitutional, at least as against any attack urged in this case. I have furthermore concluded that at the time of seizure under the writ of replevin defendant was entitled, under that act, to assert its lien and to take and hold possession of the truck for the satisfaction thereof, as against the plaintiff. I think and decide that the right to the lien under the Act was prior and paramount to the right to possession of plaintiff for the reasons (1) that a proper construction of the Act makes it so; and (2) because plaintiff was not a *bona fide* and innocent purchaser for value without notice. It would seem reasonably clear that when the legislature essays to give the lien "whether such owner be a conditional vendee or a mortgagor remaining in possession or otherwise," it contemplated just such a case as the present. Such

30

40

Decision of Judge Speer.

statute does not divest, in the present case, any vested right. Plaintiff did not acquire its right until 1916, and then it acquired its title subject to, and in the light of, existing legislation, one phase of which was that the right then and thus acquired would, under the act of 1915, be subject and subsequent to "a lien upon such motor vehicle, or any part thereof, for the sum due" for supplies, repairs, storing, &c. which might thereafter be furnished therefor. 10

This view constrains me to order judgment in favor of defendant for the amount of its counterclaim proven at the trial, with interest.

20

30

40

Judgment.

Judgment.

10 This cause was tried before Judge William H. Speer with a jury, at the Hudson Circuit Court on the 17th day of April, 1917. The Court having heard the parties, withdrew the case from the jury; and finds the issues for the defendant on all the accounts, and further finds its defense of set-off, true, and rendered a general verdict against the plaintiff and for the defendant on the set-off in the sum of four hundred, seventy dollars and ninety-five cents (\$470.95).

WILLIAM H. SPEER,
Judge.

20 Whereupon it is adjudged that the defendant Pollack Tire and Rubber
\$470.95 Company, recover of the plaintiff, Cru-
39.10 cible Steel Company of America, the
— sum of four hundred and seventy dol-
\$510.05 lars and ninety-five cents, and its costs,
which are taxed at the sum of thirty-
nine dollars and ten cents, making in
the whole the sum of five hundred and
ten dollars and five cents.

30 Judgment entered September 18, 1917.

WM. S. GUMMERE,
C. J.

Rule for Substitution.

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

CRUCIBLE STEEL COMPANY OF
AMERICA, a corporation,

*Plaintiff,**vs.*

POLLACK TIRE & RUBBER COM-
PANY, a corporation, and
ALBERT W. FISK,

*Defendants.**Action at
Law.*

10

In Replevin.

RULE FOR SUBSTITUTION.

It is on this 3rd day of December, Nineteen
hundred and seventeen, ORDERED that William K.
Flanagan, Esq., be and he hereby is substituted
as attorney for the plaintiff in the above entitled
action in the place and stead of Messrs. Peirce
& Hoover.

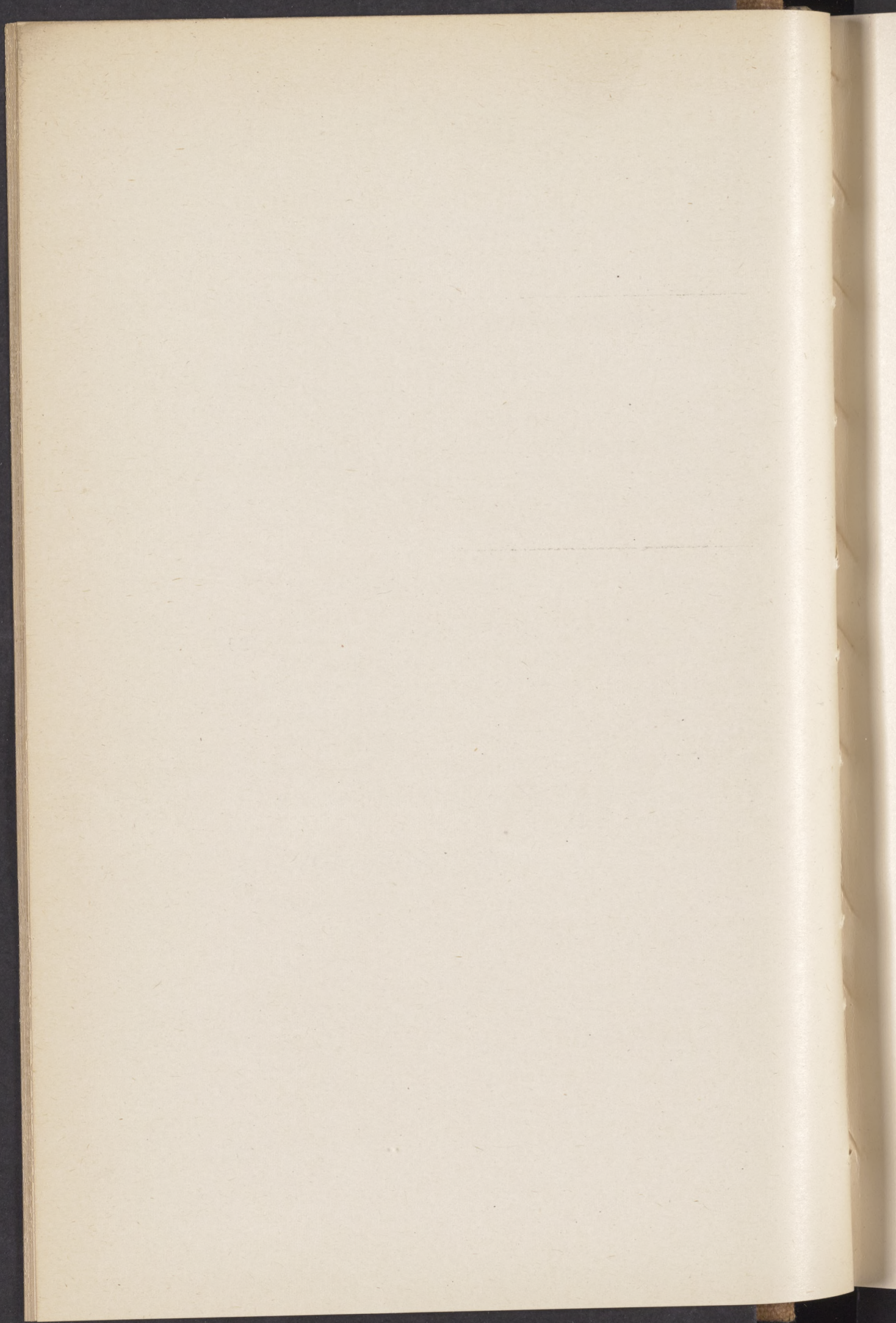
20

We hereby consent to the making and entering
of the above rule.

PEIRCE & HOOVER.

30

40



New Jersey Court of Errors and Appeals

CRUCIBLE STEEL COMPANY OF AMERICA, <i>Plaintiff-Appellant,</i>	}	<i>Action at Law.</i>
<i>vs.</i>		
POLACK TYRE & RUBBER COM- PANY, <i>Defendant-Respondent.</i>	}	<i>On Appeal from Supreme Court.</i>

Brief on Behalf of Respondent.

The facts in this case were all admitted before the trial court judge, and by the consent of counsel, the case was withdrawn from the jury and the only question left for the trial court to determine was the question of constitutionality of the Garage Lien Act of 1915. Counsel agree that if the act were constitutional, the respondent is entitled to recover his counterclaim, and if the act is unconstitutional, the plaintiff was to succeed. The trial court judge held that the act was constitutional, and that is the only question for consideration before this Court.

The situation in this case is similar to the situation in the case of

Sullivan v. Clifton, 55 N. J. L. 324.

This case follows the English cases, the leading one of which is

Williams v. Allsup, 10 C. B., N. S., 416.

In the New Jersey case the Court held that:

“The garage man has a superior right of the mortgagee, because the mortgagee

having allowed the mortgagor to continue in the apparent full ownership of the truck, there arises an implication that the mortgagee has authorized him to make repairs which give an additional value to the truck, and keep it in efficient condition for service."

"The lien attaches to the property itself without any reference to ownership, and overrides all other rights in the property."

The Court will bear in mind that the facts in this case are that the plaintiff sold the trucks under a conditional bill of sale to the person who had the repairs made in the factory of the defendant, and that thereafter, the conditional vendee, after the repairs were made, reconveyed the truck to the original vendor, and, it was held in the case of

Ruppert v. Zang, 73 N. J. L. 216.

"Where a mortgagee permits the mortgagor of chattels to retain and use them, authority is impliedly conferred upon the mortgagor to have necessary repairs done upon the chattels, and the lien of an artificer for repairs done under employment by the mortgagor will have priority over the lien of the mortgage, although the latter be duly recorded."

The act complained of follows the Common Law, with the exception that it permits the truck to be seized after same has gone out of the possession of the person making the repairs. That in itself is not a violation of any constitutional rights complained of by the plaintiff.

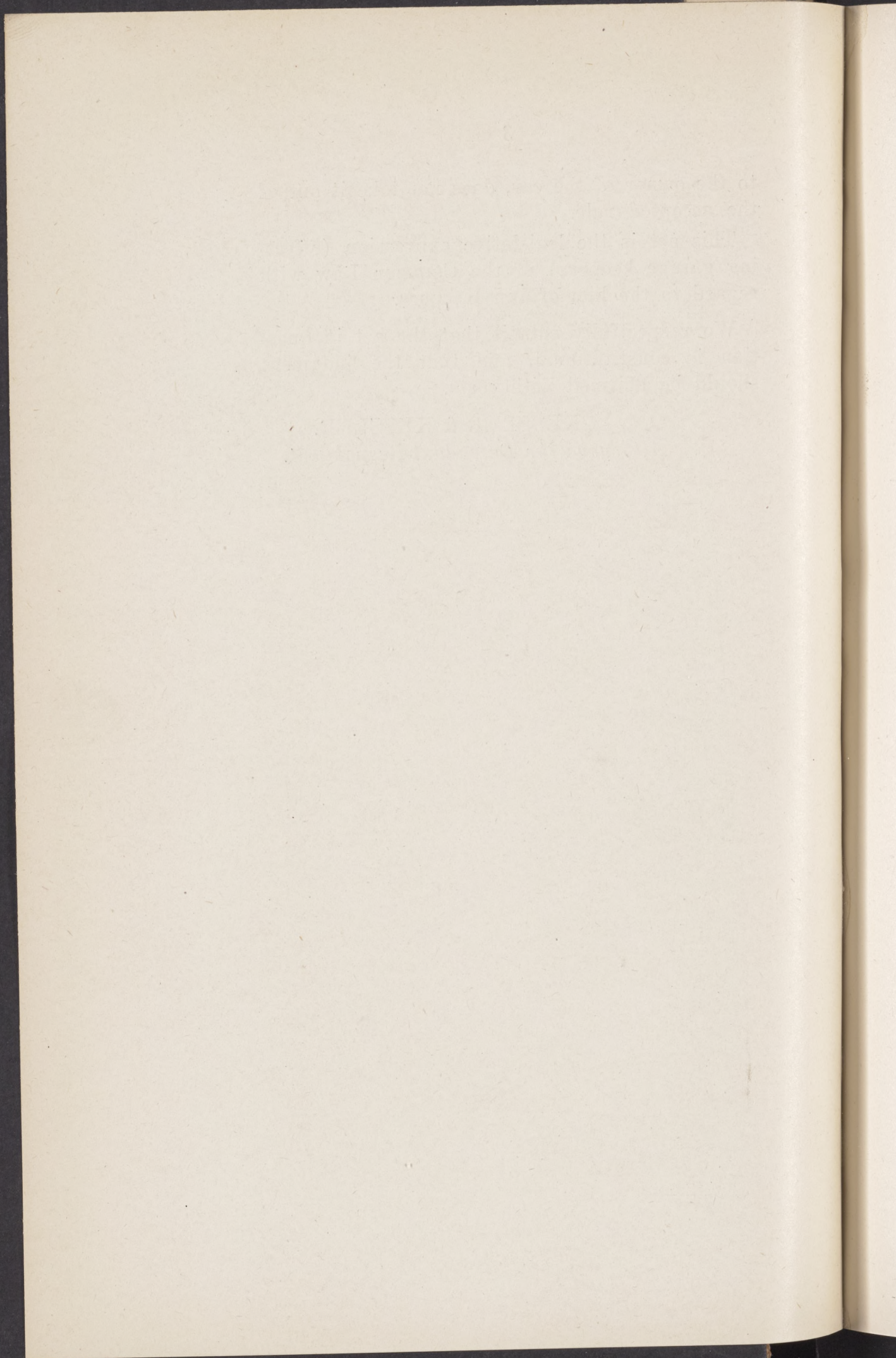
The mere fact that the statute does not provide for the filing of a notice in the County Clerk's office, and that notice be sent by mail

to the owner of the car, does not take it out of the accepted rule.

This act is the legislative expression (effecting garage keepers) of the Common Law with regard to the lien of Inn Keepers.

We respectfully submit that the act in question is constitutional, and that the judgment should be affirmed with costs.

KESSLER & KESSLER,
Attorneys for Defendant-Respondent.



New Jersey Court of Errors and Appeals

CRUCIBLE STEEL COMPANY OF AMERICA, <i>Plaintiff-Appellant,</i>	}	<i>Action at Law.</i>
<i>vs.</i>		
POLACK TYRE & RUBBER COM- PANY, <i>Defendant-Respondent.</i>	}	<i>On Appeal from Supreme Court.</i>

Brief on Behalf of Appellant.

I.

Concise Statement of Case.

On August 25, 1916, the defendant below seized an automobile truck then in the possession of and owned by the plaintiff. The right to seize the truck was claimed to flow from the provisions of Chapter 312 of the Laws of 1915 (P. L. 1915, p. 556), the defendant claiming a lien thereon for the value of certain tires which had been supplied to the truck by it. These tires had been affixed to the two rear wheels by the defendant on May 11, 1916, at the request of George A. Felt, who was then in possession of the vehicle as the conditional vendee thereof, having bought it on January 10, 1916, from the plaintiff by bill of conditional sale; this bill of conditional sale was dated January 10, 1916, and was duly recorded in Hudson County as well as in Essex County. The conditional vendee, having defaulted in the payment of the installments of the purchase price, the truck was returned to the plaintiff which was using it in the conduct of its business at the

time of the seizure. An action in replevin was instituted by the plaintiff in the New Jersey Supreme Court to recover possession of the vehicle. The case was tried before the Honorable William H. Speer at the Hudson Circuit and, at the close of the evidence, the plaintiff requested that a verdict be directed in its favor. The present counsel did not represent the plaintiff in the trial of the case, and does not know whether this application for a directed verdict was refused at that time. However, the record discloses that both parties conceived there were involved only questions of law; the jury was dismissed and the trial judge, after the submission of briefs by both sides, held that the so-called Garage Keepers' Act was constitutional and ordered that judgment be entered in favor of the defendant for the value of the tires. It is apprehended that some objection might be raised to the form of the judgment entered in view of the fact that the action was one in replevin; perhaps the judgment should have gone no further than to award the possession of the truck to the defendant and thus impliedly authorize its sale under the act for the amount of the alleged lien. The appellant desires to waive any irregularity in the form of the judgment, if in fact there be any, and bases its appeal entirely upon the unconstitutionality of the act upon which the judgment is predicated.

II.

Grounds of Appeal.

1. The judgment below is founded upon an act of the Legislature of the State of New Jersey, entitled "An Act for the better protection of garage keepers and automobile repairmen,"

approved April 14, 1915 (P. L. 1915, p. 556), which is unconstitutional in that it permits the deprivation of property without due process of law contrary to Section 1, Article XIV of the amendments to the Constitution of the United States.

2. The judgment below is founded upon an act of the Legislature of the State of New Jersey, entitled "An Act for the better protection of garage keepers and automobile repairmen," approved April 14, 1915 (P. L. 1915, p. 556), which is unconstitutional in that it is a law impairing the obligation of contracts contrary to Article I, Section X, Paragraph 1 of the Constitution of the United States, as well as to Article IV, Section VII, Paragraph 3 of the Constitution of the State of New Jersey.

3. The judgment is founded upon an act of the Legislature of the State of New Jersey, entitled "An Act for the better protection of garage keepers and automobile repairmen," approved April 14, 1915 (P. L. 1915, p. 556), which is unconstitutional in that it is violative of Article IV, Section VII, Paragraph 4 of the Constitution of the State of New Jersey which provides that every law shall embrace but one object and that shall be expressed in the title.

4. The said judgment was given for the respondent, Polack Tyre & Rubber Company, and against the appellant, Crucible Steel Company of America, whereas by the law of the land judgment ought to have been given for the said Crucible Steel Company of America and against the said Polack Tyre & Rubber Company.

5. The trial judge, at the close of all of the evidence, refused to direct the jury to find a verdict for the said Crucible Steel Company of America, though regularly thereunto moved by it so to do.

III.

Statement of the Facts.

The evidence introduced on behalf of the plaintiff disclosed that on January 10, 1916, it was the owner of several automobile trucks, including the one seized by the defendant, and sold them by bill of conditional sale to the said George A. Felt. A copy of this bill of conditional sale appears on page 28 *et seq.* of the printed case. It provides for weekly payments on account of the purchase price, stipulates that the title and ownership of the said trucks shall remain in the plaintiff until the whole of the purchase price or any judgment obtained therefor shall be fully paid, and covenants that upon default in the performance of any of the obligations by the vendee the whole purchase price shall become due and payable, and that the vendor, if it shall elect so to do, may take possession of the said trucks; and the vendee therein authorizes and empowers the vendor to repossess itself of them in case he defaults (Exhibit P. 2, case, pp. 28-30). This bill of conditional sale was recorded in the office of the Register of Hudson County on January 13, 1916, and also in the office of the Register of Essex County on April 3, 1916 (p. 34, ll. 10-20). The vendee defaulted in the payment of the installments of the purchase price and the vendor demanded possession of the trucks from the vendee who refused to deliver the same. Thereupon, and on May 18, 1916, the vendor instituted an action in replevin in the Hudson County Circuit Court and such proceedings were had in the suit that on July 16, 1916, judgment final was entered in favor of the vendor (p. 10, ll. 9-18; Exhibit P. 3, pp. 34-39). In the meantime, and on May 25, 1916, the vendee delivered to the vendor a

bill of sale for two of the trucks, one of which was the one seized by the defendant (p. 10, ll. 19-24; Exhibit P. 4, pp. 40-41). This was the situation when the defendant seized the truck on August 25, 1916.

The testimony adduced by the defendant showed that on May 11, 1916, and at the request of Felt, the conditional vendee, it applied four tires to the truck and that the value thereof was \$427.88 (p. 22, ll. 20-25); that these tires were affixed to the double rear wheels (p. 22, ll. 26, 36); that the wheels themselves to which the tires were applied, were delivered to the defendant by the conditional vendee (p. 23, l. 16); but the truck itself seems never to have been in the defendant's possession prior to the seizure.

The act relied upon to vindicate the judgment below is Chapter 312 of the Laws of 1915 (P. L. 1915, p. 556) and is this:

“An Act for the better protection of garage keepers and automobile repairmen.”

“1. All persons or corporations engaged in the business of keeping a garage or place for the storage, maintenance, keeping or repair of motor vehicles and in connection therewith stores, maintains, keeps or repairs any motor vehicle or furnishes gasoline, accessories or other supplies therefor at the request or with the consent of the owner or his representative, whether such owner be a conditional vendee or a mortgagor remaining in possession or otherwise, has a lien upon such motor vehicle or any part thereof for the sum due for such storing, maintaining, keeping or repairing of such motor vehicle or for furnishing gasoline, accessories or other supplies therefor, and may without process of law detain such motor vehicle at any time it is lawfully in his possession until such sum is paid.

“2. Any person or corporation acquiring a lien under the provision of section one of this act shall not lose such lien by reason of allowing the motor vehicle or part or parts of the motor vehicle to be removed from the control of the person or corporation having such a lien, and in case a motor vehicle or part or parts are so removed the person or corporation having the said lien may, without further process of law, seize the motor vehicle or part or parts thereof wherever the same is or are found within the State of New Jersey.

“3. All such property so held by any such garage keeper or automobile repairmen shall, after the expiration of thirty days from the date of such detention, be sold at public auction, upon notice of said sale being first published for the space of two weeks in some newspaper circulating in the city, borough, town, township or other municipality, in which said garage keeper or automobile repair shop is situated, also after five days' notice of said sale set up in five of the most public places in said city or township, and the proceeds of said sale shall be applied to the payment of such lien and the expenses of such sale; and the balance, if any remaining, shall be paid to the owner of such property or his representatives; and if the said balance is not claimed by said owner within sixty days after said sale, then the balance to be paid over to the overseer of the poor of the said city or township for the support of the poor.

“4. This act shall take effect immediately. Approved April 14, 1915.”

IV.

Argument.

1. *The act permits the deprivation of property without due process of law.*

The first section of the act establishes the lien in favor of a garage keeper or automobile repairman who makes repairs to or supplies materials, etc. for a motor vehicle "at the request or with the consent of the owner or his representative, whether such owner be a conditional vendee or mortgagee remaining in possession *or otherwise.*" The second section provides that the lien shall not be lost by allowing the vehicle to leave the possession of the lienor who is thereby authorized to seize it wherever (and whenever) it may be found in this state. The third section is not entirely clear. It enacts that the property "*so held*" * * * shall, after the expiration of thirty days from the date of such *detention*, be sold at public auction upon publication in a newspaper and the posting of notices in the municipality wherein the lienor is situated. It may be fairly argued that the use of the word "*held*" together with the word "*detention*" in this section refers only to the lien acquired by the possession permitted by the first section and does not authorize a sale where the possession is regained by seizure. If this be so, the appellant must prevail. If this construction be considered too narrow, and the word "*held*" be regarded as sufficiently comprehensive to include possession gained by a seizure, it is submitted that act violates the due process clause. At the outset, it may be observed that an examination of the statutes and decisions of our sister states reveals that a few only have enacted laws creating liens in favor

of garage keepers; and not one of them goes so far as to permit a seizure and sale in the informal way authorized by our act. The first section of our act is practically identical with the New York statute (Birdseye's Con. Laws, Vol. 3, p. 3236) and is undoubtedly taken from it. But the New York Lien Law, which provides for the sale of personal property upon which liens are acquired, requires the giving of notice of the nature of the debt, the value of the property retained, the amount of the lien claimed, the items of such claim, as well as the dates when the work and materials were furnished, and notice of sale; this notice must be served upon the owner within the county or upon the person for whose account the article is held, or by mailing to his address or in such other way as the statute provides. (N. Y. Lien Law, Birdseye's Con. Laws, Vol. 3, p. 3237.) And possession is absolutely essential to the validity of the lien; such was the holding in *Thourot v. Delahaye Import Co.*, 69 Misc. 351, 125 N. Y. S. 827, where the Court said:

“Under the common law possession is essential in order to support a lien upon personal property. * * * There is nothing in the language suggestive of any intention to permit the assertion of a lien independent of possession. * * * It is only under such circumstances that the lienor is in a position to ‘detain’ it. * * * The object of the statute was to give garage owners and those therein specified a lien; but it was not intended as between a lienor and third parties to change the common-law rule as to the necessity of possession in order to preserve the lien.”

See also *Lloyd v. Kilpatrick*, 71 Misc. 19, 127 N. Y. S. 1096.

In other states where similar legislation exists possession must be retained. See Miss. Code of

1916, Sec. 3075; Tenn. Laws 1909, Chap. 150; N. D. Laws 1907, Chap. 168; Minn. Gen. Stats. 1913, Secs. 7053-7057. In no state have we been able to find a statute authorizing the foreclosure of a lien where the property is not in continuous possession of the lienor except where a proper notice has been filed or recorded in some public office thus giving constructive notice to the world.

In *Fiskell v. Morris*, 57 Conn. 547, where the facts were similar to those in our case, the Court said:

“In all cases where statutes have created any right of security on the property of a debtor in the nature of a lien, not depending on possession, they have provided carefully for a registration of the transaction.”

In every other species of lien which we have been able to find, one of two methods must be employed to bring home notice of the alleged claim to those whose rights may be effected. These methods are (1) by proper notice filed in a public office; or (2) by possession hostile to the world. Under the first may be mentioned mechanics' liens, suits in Chancery, where *lis pendens* or notice is filed, and the Martin Act procedure in our state; and in other states, acts similar to these, as well as lumbermen's liens and those created for factors, agisters and livery stable keepers. Under the second, the artisans and other common law and statutory liens which provide for continuous possession. The unanimity of these acts is not a matter of accident but rather a consistent adherence to the well recognized rule that one shall not be deprived of his property without due process of law. Our act is the only instance where an attempt has been made to create a lien without the obser-

vance of one of these methods. Had the legislature provided that after the motor vehicle had gone out of the possession of the lienor, the lien could be perfected by filing a proper notice in the county clerk's office and requiring that an attempt be made to send notice by mail to the owner of the car, the act would perhaps come within the accepted rule. The act creates a lien where the vehicle or any part thereof has been stored, maintained, kept, or repaired, or for which gasoline or other supplies have been furnished at the request or with the consent of the owner or his representative whether such owner be a conditional vendee or a mortgagor remaining in possession *or otherwise*. It would appear then that a bailee who had hired the car for a couple of months could under this legislative sanction divest the owner of his property by taking it to a distant city and incurring a bill for storage, etc. Indeed, one might steal a car and accomplish the same result. One of the vices of the act is that it absolutely negatives the force and effect of our recording acts. A chattel mortgage or bill of conditional sale properly recorded in the appropriate county becomes practically worthless if the chattel mortgagor or conditional vendee has it in his power to render the security worthless. As was said in *McGhee v. Edwards*, 87 Tenn. 506, 11 S. W. 316:

“In arriving at the intention of the legislature in the passage of the act conferring the stable keepers lien, we should regard the object and policy of our legislation with reference to the registration laws. The mortgage, being registered, amounts in law to actual notice to all parties dealing with the property, as fully, to all intents and purposes, as if the fact were placarded on the property itself, so far as the rights of the mortgagor therein are concerned. To per-

mit the mortgagor to encumber it to its full value, and consequent destruction of the mortgagee, is as fatal to the latter's rights and defeats as effectually the policy of our registration laws, as if the former were allowed to sell it to a purchaser who was in fact ignorant of the mortgage. Nor are we able to appreciate any considerations of public policy which lead us to extend to the livery-stable keeper any immunity from the fate of all who deal with property the title to which is matter of record with which they are not only chargeable with knowledge in law but with which they can, through the registry laws, acquaint themselves in fact."

But if it be conceded that it be within the legislature's province to give priority over existing liens to the lien of a garage keeper, it is submitted that this should be allowed only on condition that the owner of the property be given some notice of the claim. The situation created by the act is somewhat analogous to that created by the act for the prevention of cruelty to animals which was declared to be unconstitutional by the Supreme Court in the case of *Goeller Iron Works v. Carey*, 80 N. J. L. 106. There an agent of the society had arrested a servant of the plaintiff for cruelty to an animal which he was driving. At the time of the arrest neither the owner nor any other employee was present. In pursuance of the statute the animal was turned over by the agent to a police officer who presumably turned it over to the defendant and the latter refused to deliver it upon a demand made by the plaintiff unless his expenses for keeping the animal were paid. The act provided that these expenses should be a lien upon the property and should be paid and satisfied before the same could be reclaimed. The trial resulted in

judgment for the defendant which was reversed on error. The Court said:

“There is, however, a phase of the statute which we think exhibits an infringement of the rights of the owner of the property taken under the provisions of the act. This feature consists in the failure of the act to provide for an early actual or constructive notice to the owner of the fact that his property has been taken in custody. If the power to arrest was confined to instances where the person arrested was the owner of the animal cruelly treated, or his servant, the provision of a notification to such owner might not be necessary; but under the provisions of the statute, the animal taken in custody may have been in the possession of a stranger to the owner.

* * * * *

“The statute, however, fixes no time when the order for the sale and for the notice of the sale shall be made. The statute only provides that the application for such order and sale may be made by the person or official then having possession of the property, or by the person who made the arrest. Within what period after the arrest this application shall be made, is not stated. Therefore, the property may be impounded for an indefinite period before it is ordered to be sold, and before there is any notice whatever to the owner. During this time, the value of the property is being destroyed by the expense of keeping it; and notice of the sale of the property provided by the statute becomes of little value to the owner, if the cost of such keep at the time of notice had practically absorbed the value of the property.

“For this reason we think the failure of the statute to provide for a notice of some kind to the owner of the taking of the property, and of its place of custody, is a taking of property without due process of law.”

Again the act fixes no time within which the lien must be asserted; so that, presumably, the ordinary limitation respecting contract actions would apply, *i. e.*, six years. During this time the motor vehicle might have changed hands several times and a charge incurred by the original owner asserted for the first time after the vehicle had reached the hands of an innocent purchaser for value. An examination of the records for chattel mortgages and bills of conditional sale would afford such a purchaser no security if he were at the mércy of every garage keeper and automobile repairman in every municipality of this state. To permit this act to remain upon the books would work incalculable hardship. As was said in *Smith v. Shell Lake Lumber Company*, 68 Wis. 89, 31 N. W. 694:

“The paramount importance and incalculable value of personal property in these modern times make its ready and easy transfer from hand to hand, and the protection of *bona fide* purchasers thereof, absolutely essential to our modern systems of trade and commerce. Secret trusts, liens, and incumbrances, and unknown and concealed claims and interests in and upon personal property, and especially that kind of personal property that enters so largely into the general commerce of a country, would, if enforced by law, work the greatest injustice, and be utterly destructive of the greatest financial interest that any country can have.”

And the right of seizure “without further process of law” conferred by the second section of the act is particularly drastic; for it permits the lienor to take possession of the vehicle wherever it may be found within this state. If the car happens to be a pleasure vehicle, its occupants may be ejected therefrom on a lonely road far from their homes and given the alternative to

pay the amount claimed or submit to the detention of their car. Without descending to levity, we respectfully urge that such "strong arm" methods should not be permitted and that a statute authorizing their adoption should not receive the approval of this court. So far as we have been able to discover, ours is the first statute which permits the seizure of a motor vehicle for an alleged lien without process of law and where the owner has no opportunity to contest the validity of the lien or the amount of the claim upon which it is based.

Furthermore, the third section of the act would seem to permit the real owner of the property to be divested of even the balance of the proceeds of the sale after the lien had been satisfied. It provides that this balance, if any, shall be paid to the "owner" of such property or his representatives and that if the said balance is not claimed within sixty days after the sale it should be paid to the overseer of the poor. In its first section the "owner" may be a conditional vendee or a mortgagor remaining in possession or otherwise; so that if the legislature used the word "owner" in the same sense in both sections of the act, it thereby conferred upon a chattel mortgagor or conditional vendee the right to receive this balance. This is clearly an attempt to take the real owner's property without due process of law and is violative of the constitutional mandate.

2. *The act is a law impairing the obligation of contracts.*

The trial judge's answer to this objection was that the appellant "did not acquire its right until 1916, and then it acquired its title subject to, and in the light of existing legislation, one phase

of which was that the right then and thus acquired would, under the act of 1915, be subject and subsequent to 'a lien upon such motor vehicle, or any part thereof, for the sum due' for supplies, repairs, storing, etc., which might thereafter be furnished therefor." If this be the correct view, then no legislative enactment would impair the obligation of a contract, except where it attempted to modify contracts made before its passage. As we understand it, however, a statute which unreasonably restricts the freedom to contract is objectionable to this constitutional requirement. The appellant entered into the contract of conditional sale with Felt on January 10, 1916. By reason of the conditional vendee's failure of performance and the replevin suit instituted by it in the Hudson Circuit Court, it became legally entitled to the possession of the truck and was actually using it in the conduct of its business on August 25, 1916, when the respondent seized the vehicle. The seizure, without process of law, impaired the contract rights of the appellant and the act authorizing it is therefore unenforceable.

3. *The object of the act is not sufficiently expressed in the title.*

Bearing in mind that in order to comply with the constitutional requirements, the title of an act need not be an index of its contents, it is equally true that the object of an act as expressed in its title must give notice of the effect of the legislation to one conversant with the existing state of the law. This was the theory and ruling of *Sawter v. Shoenthal*, 83 N. J. L. 499. Nothing in the title of this act suggests in the slightest way that the rights of a conditional vendor or chattel mortgagee of a motor vehicle,

who should in other respects comply with the law, might be measurably curtailed if not totally extinguished. When the appellant took its bill of conditional sale on January 10, 1916, it, of course, had knowledge of the law relating to the execution, acknowledgment and recording of the instrument, but the title of this act afforded absolutely no notice to it of the extent to which its contract was thereby modified. True it may *embrace* the legislative purpose, but it does not *express* it; and this is the true criterion. The distinction is pointed out in the well known case of *Rader v. Union*, 39 N. J. L. 509, at p. 515, where Chief Justice Beasley said:

“It is true, that it may be difficult to indicate, by a formula, how specialized the title of a statute must be; but it is not difficult to conclude that it must mean something in the way of being a notice of what is doing. Unless it does this, it can answer no useful end. It is not enough that it embrace the legislative purpose—it must express it; and where the language is too general, it will accomplish the former, but not the latter.”

Tested by these rules, the title of this act cannot be said to give notice of and publicity to the proposed legislation, and is, therefore, not in compliance with the constitution.

4. *The judgment should have been in favor of the plaintiff below and against the defendant.*

5. *The motion to direct a verdict should have prevailed.*

The reasons discussed under the other headings were urged upon the trial for the direction of a verdict (p. 26). Since the jury was dismissed and the trial judge considered the case as having been tried before him without a jury,

his decision should have been in accordance with the views herein expressed.

For the reasons above stated, it is respectfully submitted that the act in question is unconstitutional and that the judgment below should be reversed with costs.

Respectfully submitted,

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with Plaintiff-Appellant.

March Term, 1918.

