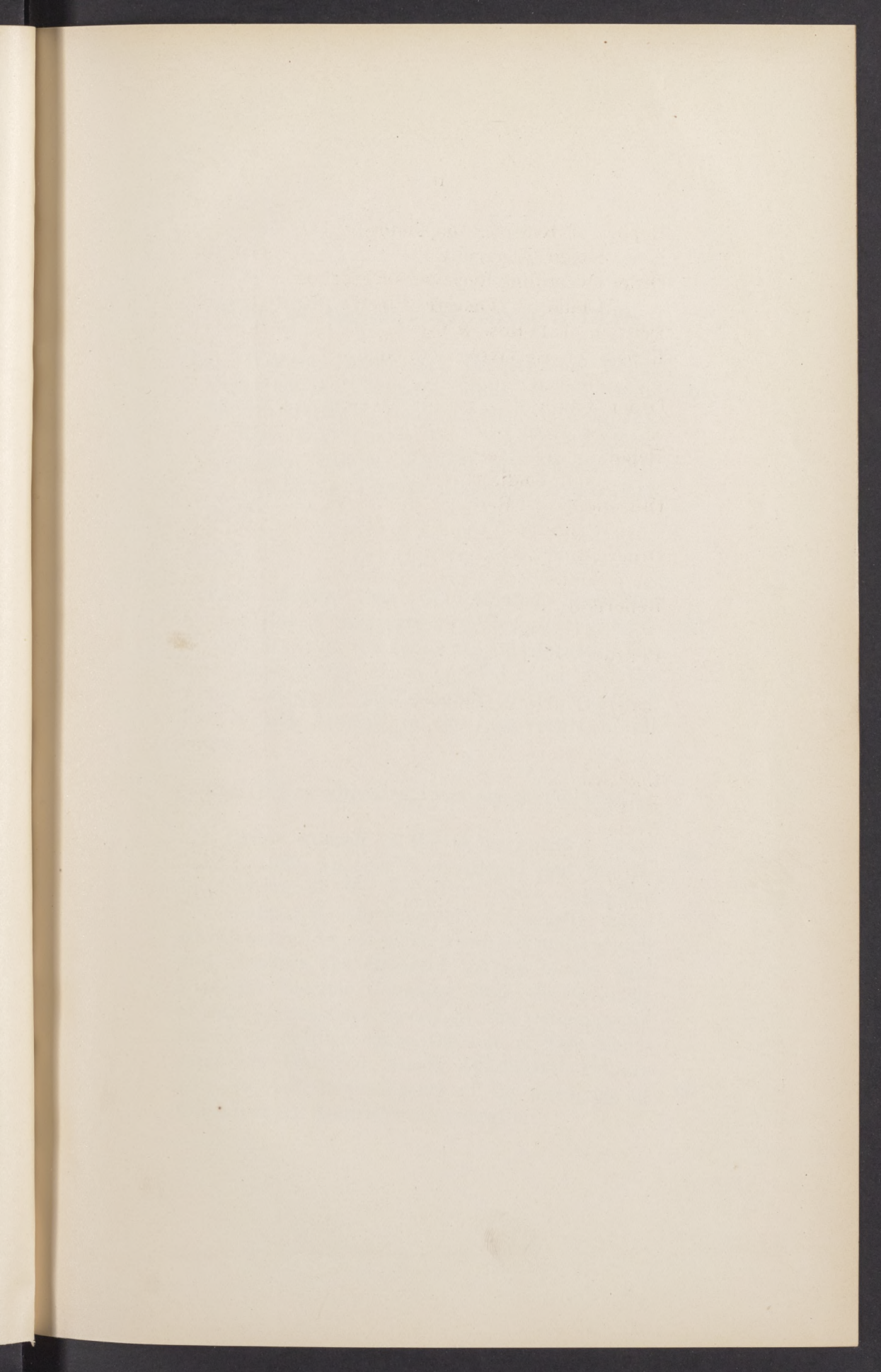
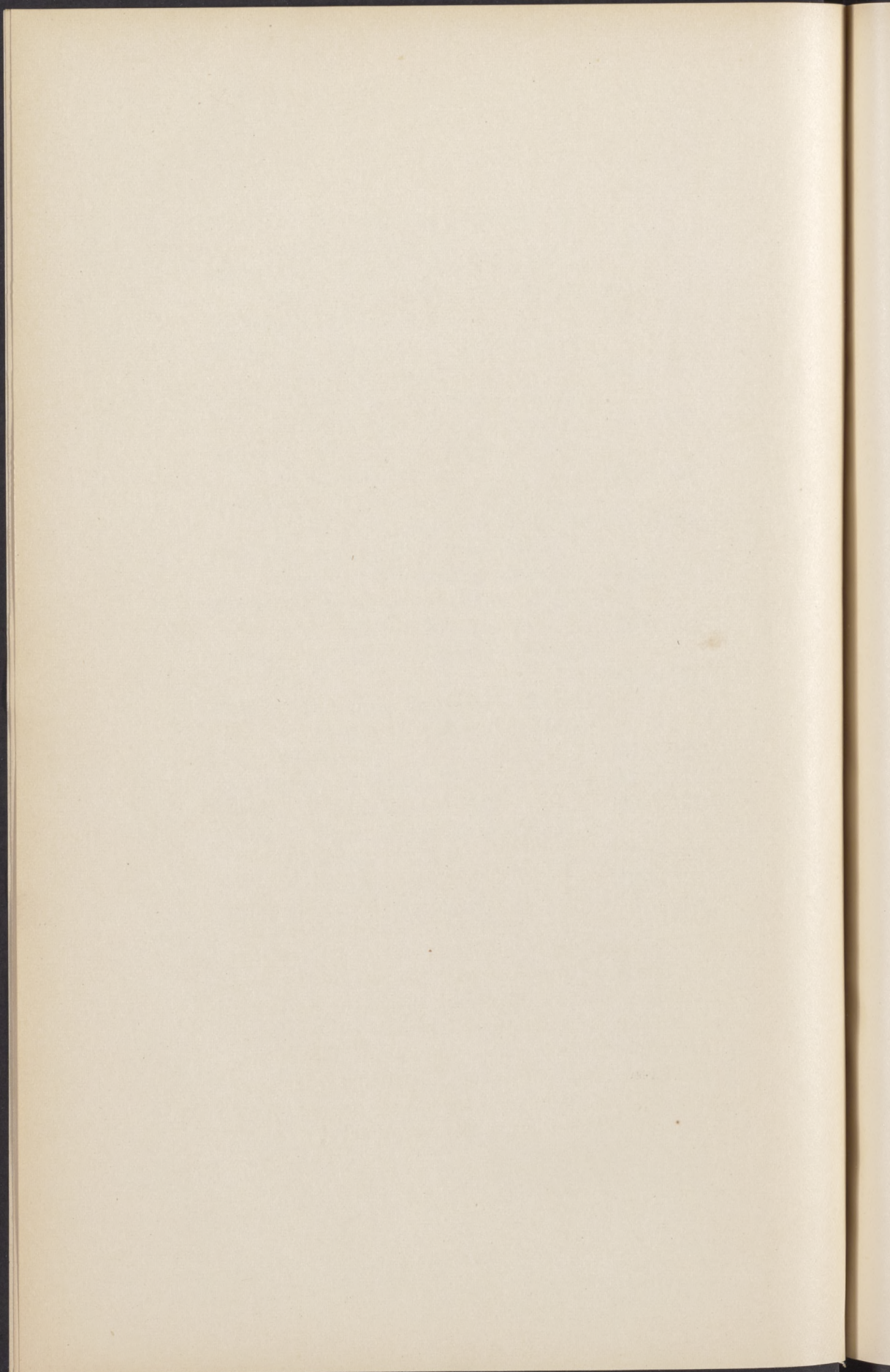


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Notice of Appeal, Filed August 7, 1929.

To: Warren Dixon, Jr., Receiver of Regna
Construction Company; John H. Sheridan, 10
Mervin Herzfeld, Domestic Electric Company,
J. Rose & Company, Inc., Wasmuth-Endicott
Company, Joseph Neidorff and Samuel Mil-
nis, trading as Liberty Lighting Fixture Com-
pany:

Sirs:

Take Notice that Consolidated Securities
Corporation, a corporation of New Jersey, here- 20
by appeals from the following Interlocutory Or-
ders made in the above entitled cause and the
whole and every part thereof to the Court of
Errors and Appeals in the last resort in all
causes.

The Orders appealed from are as follows:

1. Order entered in the above entitled cause 30
July 1, 1929, wherein it is ordered that the de-
termination of the Receiver herein regarding
the conditional sale contract of Domestic Elec-
tric Company be set aside, reversed and vacated
and directing the Receiver to pay to the said
Domestic Electric Company from the proceeds
of sale of premises owned by the defendant in
the above entitled cause, the sum of Two Thou-
sand Six Hundred Ninety (\$2,690.00) Dollars 40
with interest, in preference of the mortgage of
Consolidated Securities Corporation.

Notice of Appeal, Filed August 7, 1929

10 2. Order entered in the above entitled cause July 1, 1929, confirming determination of the Receiver herein as to the conditional sale contract of J. Rose & Company, Inc., and directing said Receiver to pay to the said J. Rose & Company, Inc., the sum of Nine Hundred Thirty-six (\$936.00) Dollars, with interest, in preference to the mortgage of the Consolidated Securities Corporation.

20 3. Order entered in the above entitled cause July 1, 1929, wherein it is ordered that the determination of the Receiver herein regarding the conditional sale contract of Wasmuth-Endicott Company be set aside, reversed and vacated, and directing the Receiver to pay to the said Wasmuth-Endicott Company from the proceeds of sale of premises owned by the defendant in the above entitled cause, the sum of Two Thousand Four Hundred Forty (\$2,440.00) Dollars with interest in preference of the mortgage of the Consolidated Securities Corporation.

30 4. Order entered in the above entitled cause July 1, 1929, wherein it is ordered that the determination of the Receiver herein regarding the conditional sale contract of Liberty Lighting Fixture Company be set aside, reversed and vacated, and directing the Receiver to pay to the said Liberty Lighting Fixture Company from the proceeds of sale of premises owned by the defendant in the above entitled cause, the sum One Thousand Seventy-four Dollars and
40 Fifty (\$1,074.50) Cents with interest, in prefer-

Notice of Appeal, Filed August 7, 1929

ence of the mortgage of the Consolidated Securities Corporation.

5. An Order entered in the above entitled cause July 1, 1929, wherein and whereby a sale held by said Receiver on September 15, 1928, is confirmed and the said Receiver directed to execute a deed to John H. Sheridan and Mervin Herzfeld, purchasers at said sale. 10

Dated, August 2, 1929.

RINALDI & SHANLEY,
Solicitors for Consolidated
Securities Corporation.
G. FRANK SHANLEY,
Of Counsel with Consolidated
Securities Corporation. 20

I conceive there is good cause of appeal in the above entitled cause.

G. FRANK SHANLEY,
Of Counsel with Consolidated
Securities Corporation.

30

40

Petition of Appeal, Filed August 22, 1929.

To the Honorable Court of Errors and Appeals
in the Last Resort in All Causes:

10 The petition of Consolidated Securities Corporation, a corporation of New Jersey, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by five certain Interlocutory Orders made in the Court of Chancery of New Jersey by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, each order bearing date July 1, 1929, in a certain cause in said Court of Chancery wherein Elbert M. Crown, trading as Charles T. Walker Company, is complainant and Regna Construction Company is defendant, in this respect, to wit:

20 (a) An Order entered in said cause July 1, 1929, directing that the Receiver appointed in the above mentioned cause pay Domestic Electric Company from the proceeds of sale of the premises owned by said Receiver, the sum of Two Thousand Six Hundred Ninety (\$2,690.00) Dollars with interest, in preference of the mortgages of the Consolidated Securities Corporation.

30 (b) Order entered in said cause July 1, 1929, directing that the Receiver appointed in the above mentioned cause pay to J. Rose & Company, Inc., from the proceeds of sale of the premises owned by said Receiver, the sum of
40 Nine Hundred Thirty-six (\$936.00) Dollars with

Petition of Appeal, Filed August 22, 1929

interest, in preference of the mortgages of the Consolidated Securities Corporation.

(c) Order entered in said cause July 1, 1929, wherein it is ordered that the Receiver appointed in the above mentioned cause pay to Wasmuth-Endicott Company, from the proceeds of sale of the premises owned by the Receiver, the sum of Two Thousand Four Hundred Forty (\$2,440.00) Dollars with interest, in preference of the mortgages of the Consolidated Securities Corporation. 10

(d) Order entered in said cause July 1, 1929, wherein it is ordered that the receiver appointed in the above mentioned cause pay to Liberty Lighting Fixture Company, from the proceeds of sale of the premises owned by the Receiver, the sum of One Thousand Seventy-four Dollars and Fifty (\$1,074.50) Cents with interest, in preference of the mortgages of the Consolidated Securities Corporation. 20

(e) An Order entered in said cause July 1, 1929, wherein and whereby a sale held by said Receiver on September 15, 1928, is confirmed and the said Receiver directed to execute a deed to John H. Sheridan and Mervin Herzfeld, purchasers at said sale. 30

2. Petitioner appeals from the above mentioned Orders of the Chancellor on the ground that the same and each of them are erroneous in that:

(a) The Orders directing the payment of the amount due on the conditional sales contracts of Domestic Electric Company, J. Rose & Company, Inc., Wasmuth-Endicott Company and 40

Petition of Appeal

Liberty Lighting Fixture Company, in preference of the mortgages of the Consolidated Securities Corporation are contrary to law, in that:

10 (1) The reservation of title by the sellers under their conditional sale contracts was void as against this appellant in accordance with the provisions of the First Paragraph of Section 7 of an Act of the Legislature of New Jersey, entitled, "An Act Concerning Conditional Sales and to Make Uniform the Law Relating There-

20 to," P. L. 1919, page 461; and the mortgages held by this appellant are liens on the premises covered thereby prior and paramount to the aforesaid conditional sales contracts.

(2) The remedies of the holders of the aforesaid conditional sales contracts are provided for by Sections 16 to 24, both inclusive, of an Act of the Legislature of New Jersey entitled "An Act Concerning Conditional Sales and to Make Uniform the Law Relating Thereto," P. L. 1919, page 461; and by the provisions of said

30 act are not entitled to have the amount due on their said contracts paid out of the proceeds of the sale held by the Receiver.

(3) Section 7 of an Act of the Legislature of the State of New Jersey entitled "An Act Concerning Conditional Sales and to Make Uniform the Law Relating Thereto," P. L. 1919, page 461, Approved April 15, 1919, is unconstitutional, being violative of Art. IV, Section VII,

40 Placitum 4 of the Constitution of New Jersey, as amended in that said Section 7 of the "Act Concerning Conditional Sales and to Make Uniform the Law Relating Thereto," P. L.

Petition of Appeal

1919, page 461, Approved April 15, 1919; embraces an object which is not expressed in the title of said Act.

(b) The Order of the Chancellor entered July 1, 1929, which directs that the sale held by the Receiver herein September 15, 1928, whereby John H. Sheridan and Mervin Herzfeld purchased said property, should be confirmed, being the Order referred to in Paragraph One, Section (e), of this Petition of Appeal is erroneous, in that: 10

(1) The sale held by said Receiver was free and clear of all liens and encumbrances whatsoever and at said sale the Receiver claimed title to the whole of premises covered by this appellant's mortgages, including the fixtures sold under conditional sales contracts. This appellant bid at said sale to protect its mortgages, relying upon the representations of the Receiver and thereby was led to believe that its mortgages were liens prior and paramount to the lien or encumbrances of the conditional sale contracts hereinabove referred to. 20 30

(2) It is inequitable that the proceeds of said sale of real estate should be applied to the payment of the amount due on the conditional sale contracts in preference to the lien of the mortgages of this appellant, thereby impairing the security of this appellant's mortgages.

(3) The title to the property covered by this appellant's mortgages is not vested in said Receiver and said Receiver cannot convey the said premises in the same manner as represented by him at said sale. 40

Petition of Appeal

10 (4) The said sale was conducted in an irregular and improper manner in that, the bidders at said sale and particularly this appellant, were led to believe by the Receiver's representations at said sale, that he was vested with title to the whole of said premises including the fixtures sold under conditional sale contracts, and subsequently, it was found by the Chancellor that the said Receiver did not have title to the said fixtures and was thereby unable to convey the premises in accordance with the conditions under which the same were sold.

20 (5) The fund created by the bidding of this appellant in order to protect the amount due on its mortgages, is depleted by the payment of the amount due to the conditional vendors and there is and will be, under this sale, insufficient moneys in the hands of the Receiver to pay the amount due on the mortgages of this appellant and all claims having priority thereto.

(6) The price for which said property was sold is inadequate.

30 Petitioner therefore prays, that the said Orders of said Chancellor may be wholly reversed, set aside and for nothing holden and that petitioner may have such other relief in the premises as to this court shall seem proper.

And your Petitioner will ever pray, &c.

RINALDI & SHANLEY,

Solicitors for Appellant.

G. FRANK SHANLEY,

Of Counsel with Appellant.

40

(Endorsed): Filed Aug. 22, 1929, Joseph F. S. Fitzpatrick, Clerk.

**Answer to Petition of Appeal, Filed August 28,
1929.**

The answer of Warren Dixon, Jr., Receiver of Regna Construction Company, one of the above named appellees, to the petition of appeal of Consolidated Securities Corporation above named appellant. 10

1. This appellee not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that five certain orders were made and entered on July 1, 1929, in the Court of Chancery of New Jersey in the above entitled cause, for the purposes in said petition mentioned and therein set forth; but as to the form and substance of said orders this appellee begs leave to refer thereto when the same shall be produced. 20

2. This appellee admits the truth of the matters contained in subdivisions A, C and D in paragraph 1 and this appellee feels himself aggrieved by said orders and has appealed therefrom to this court.

3. This appellee is advised and believes that the said orders mentioned and referred to in subdivisions C and E in paragraph 1 are agreeable to equity. 30

4. This appellee admits the truth of the allegations contained in paragraph 2A and subdivisions 1, 2 and 3 thereof insofar as the same relates to the conditional sales contract of Domestic Electric Company, Wasmuth Endicott Company and Liberty Lighting Fixture Com- 40

Answer to Petition of Appeal

pany and joins in said grounds of appeal and this appellee avers that the order of the Court of Chancery in so far as the same relates to conditional sales of J. Rose & Company is agreeable to equity.

10

5. This appellee denies the allegations contained in paragraph 2B and subdivisions thereof and appellee is advised and believes that the said orders are agreeable to equity and therefore prays that the same may be affirmed.

SAMUEL TARTALSKY,

Of Counsel with Warren Dixon, Jr.,
Receiver, Appellee.

20

**Answer to Petition of Appeal, Filed August 29,
1929.**

The answer of Wasmuth-Endicott Company, respondent, to the petition of appeal of Consolidated Securities Corporation, appellant:

30 This respondent not acknowledging all or any of the matters which, in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that five certain interlocutory orders were on the first day of July nineteen hundred and twenty-nine made and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent
40 prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said orders are agreeable to

Answer to Petition of Appeal

equity and it prays that the same, or particularly the order mentioned in paragraph two of the petition of appeal, may be affirmed with costs to be adjudged to this respondent.

CAREY & LANE, 10
Solicitors for and of Counsel with
Wasmuth-Endicott Company, Respondent.

**Answer to Petition of Appeal, Filed Sept. 9th,
1929.**

The answer of J. Rose & Company, Inc., the above named appellee, to the petition of Consolidated Securities Corporation, the above named appellant. 20

This appellee not admitting the truth of all or any of the matters in the said petition of appeal contained, in answer thereto nevertheless admits that a certain order was on the 1st day of July, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purpose in said petition mentioned and as therein set forth; but as to the substance and form of said order, this appellee begs leave to refer thereto when the same shall be produced. 30

This appellee is advised and believes that said order is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this appellee.

MEISTERMAN & KATCHEN, 40
Solicitors of Appellee.
SAMUEL G. MEISTERMAN,
Of Counsel.

**Answer to Petition of Appeal, Filed Sept. 9th,
1929.**

Consolidated Securities Corporation, Appel-
lant:

Domestic Electric Co., Inc., Respondent:

10 The answer of Domestic Electric Co., Inc., a
corporation, the above named respondent, to the
petition of appeal of Consolidated Securities Cor-
poration, above named appellant.

20 This respondent, nevertheless admits that an
order was on July 1, 1929. made and entered in
the Court of Chancery of New Jersey, in the
above entitled cause, for the purposes in said
petition mentioned and as therein set forth; but
as to the substance and form of said order,
this respondent begs leave to refer thereto
when the same shall be produced.

This respondent is advised and believes that
the said order is agreeable to equity; and it
prays that the same may be affirmed with costs
to be taxed in favor of this respondent.

GREEN & GREEN,
Solicitors for and of Counsel
with Respondent, Domes-
tic Electric Co., Inc.

30

40

**Answer to Petition of Appeal, Filed Sept.
11th, 1929.**

The answer of Joseph Neidorff and Samuel Milnis, partners trading as the Liberty Lighting Fixture Company, to the petition of appeal of Consolidated Securities Corporation, a corporation of New Jersey, the appellant in the above entitled cause, respectfully show that: 10

1. That these appellees, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that the five orders were on July 1st, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause for the purposes in the said petition mentioned, and as therein set forth; but as to the substance and form of the said five orders, these appellees beg leave to refer thereto when the same shall be produced. 20

2. These appellees are advised and believe that the said orders are agreeable to equity, particularly the order referred to in paragraph "D" of the petition which reads as follows:

"Order entered in said cause July 1, 1929, wherein it is ordered that the receiver appointed in the above mentioned cause pay to Liberty Lighting Fixture Company, from the proceeds of sale of the premises owned by the Receiver, the sum of \$1,074.50 with interest, in preference of the mortgages of the Consolidated Securities Corporation." 30

These Appellees pray that the same may be affirmed with costs in favor of these appellees. 40

CHAS. RUBENSTEIN,
Solicitor for and of Counsel with Appellees.

Answer to Petition of Appeal.

The answer of Antonio Sellitto, Pellegrino Sellitto and Guisepe Cianfrone, partners trading as West New York Stone Works, and John H. Sheridan, appellees, to the petition of appeal of Consolidated Securities Corporation.

10 These appellees, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admit that five certain orders were, on July 12, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause, each for the purposes in said petition mentioned and set forth, but as to the substance and form of said orders and each and every one
20 of them, these appellees beg leave to refer thereto when the same shall be produced.

These appellees are advised and believe that the said orders are and each is agreeable to equity, and they pray that the same may be affirmed with costs to be taxed in the favor of these appellees.

BURKE, SHERIDAN & HOURIGAN,
Solicitors with Appellees.

30 John G. Sheridan,
Of counsel.

Bill of Complaint, Filed June 22, 1928.

IN CHANCERY OF NEW JERSEY.

To His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey.

The complainant, Elbert M. Crown, trading as Charles P. Walker Shade Co., of Jersey City, Hudson County, New Jersey, on behalf of himself and all other unsatisfied creditors of Regna Construction Company, a corporation of the State of New Jersey, who shall come in and contribute to the expense of this suit, respectfully shows that:

1. That he is a creditor of Regna Construction Company, a corporation of the State of New Jersey, the defendant in this suit in the sum of One hundred and fifty-eight dollars sixty-six cents (\$158.66) together with interest, for merchandise consisting of window shades and labor and materials performed by the said complainant at the instance and request of the defendant, in certain lands and premises owned by the said defendant and situate on Mt. Vernon Avenue, Ridgefield Park, Bergen County, New Jersey, and that no part of the said debt has been paid, although the same is now past due.

2. Said debt was created in the following manner. On or about February 18th, 1928, while the defendant was constructing and erecting a building upon lands and premises owned by it in said Ridgefield Park, it ordered of complainant two hundred and twenty-four

Bill of Complaint

shades at the cost of eight dollars and fifty cents per dozen to be furnished and installed in said building and in accordance with said order the said complainant did furnish and install said window shades in said premises, first work being done on or about March 7th, 1928, and all the work, labor and materials furnished by complainant to defendant was completed on or about March 28, 1928. Said complainant on frequent occasions since said March 28, 1928, demanded payment of the said indebtedness of the officers of the said defendant corporation, but said defendant has declined to comply and Fred Regna an officer in said corporation informed the agent and servant of this complainant that the corporation is unable to pay.

3. Defendant corporation is engaged in the business of erecting and constructing buildings and generally in the real estate development business. To the best of complainant's knowledge and information the said corporation is the owner of the land and premises situate on Mt. Vernon Avenue, Ridgefield Park, Bergen County, New Jersey. The building erected on said premises is a family apartment. The following mortgages are at present liens against the said premises. A first mortgage for \$8,000.00 held by Charles Enders and wife; a second mortgage for \$30,000.00 held by Consolidated Mortgage Loan Company, a corporation; a third mortgage for \$9,500.00 held by Harry C. Leidinger; a fourth mortgage for \$20,000.00 held by Consolidated Mortgage Loan

Bill of Complaint

Company and a fifth mortgage for \$85,000.00 held by Fidelity Union Title & Mortgage Company, a corporation. This complainant charges that the said mortgage made and executed by defendant to Fidelity Union Title & Mortgage Company for \$85,000.00 was intended to be a first and paramount lien on said premises, but said defendant was unable to deliver to said Fidelity Union Title & Mortgage Company releases of all the persons, firms or corporations who rendered and performed work, labor, services and materials in the erection, construction and completion of said premises by reason of the failure of the said defendant to pay to the said materialmen and laborers in full and in due course of business the debts and claims of the said materialmen and laborers for the materials furnished and labor performed by them.

Complainant further shows that there have been filed against the said building numerous mechanics' lien claims, some of which are as follows: By George F. Brewster & Son, Inc., two lien claims, one for \$9,903.99 and the other for \$1,370.00; by Decker Brothers one for \$2,716.00; by West New York Stone Works for \$1,832; by Bogota Sheet Metal Co. for \$516, and by Peter C. Nelson for \$546. That in the aggregate the mechanics' liens filed against said premises in the office of the County Clerk of Bergen County are about Sixteen thousand eight hundred and eighty-five (\$16,885) Dollars.

Complainant further shows that there are judgments against said corporation which according to the records of the County Clerk of

Bill of Complaint

10 Bergen County aggregate about \$12,829. Some of the judgment-creditors are as follows: New Jersey Sash Door & Trim Co. for \$1,742; two judgments by Highwood Coal Co., one for \$1,378.85, and the other for \$729; a judgment in favor of Bergen Supply Co. for \$2,004, and one for \$2,217.70 in favor of Bergen Building Block Co.

20 Complainant further shows that on or about June 6, 1928, there was filed in the Bergen County Clerk's Office an assignment of the rents of said premises effective on July 1st, 1928. Said assignment of rents was given to Joseph Simon to secure the payment of the sum of Five hundred (\$500) Dollars.

30 Complainant further shows that in addition to the parties who filed mechanics' lien claims, there are many other persons, firms or corporation who are entitled to file and claim a lien against said premises for materials furnished and labor performed, who have not filed their claims; among such creditors, is James T. Hunter of Jersey City, whose claim aggregates about \$5,200 for heating materials and supplies installed in said premises.

Complainant further shows that said building is not reasonably worth more than One hundred and twenty thousand (\$120,000) Dollars and under present market conditions and at a forced sale said premises could not be sold for that price.

40 4. Complainant further shows that said defendant was the owner of seven two-story buildings on Forrest Avenue, in the City of Engle-

Bill of Complaint

wood, occupied as a store and dwelling apartment. Said premises were encumbered by a first mortgage for \$7,000 on each building held by Lincoln Mortgage Company and a second mortgage for \$2,400 on each of said buildings. The said defendant by deed dated May 31st, 1928 and recorded in the Bergen County Clerk's Office on or about June 6th, 1928, conveyed said premises to Anthony Marzullo and William Forsthall, as trustees, for creditors who had performed work and labor and had furnished materials in and to said premises. That said conveyance was made because said defendant was unable to pay its said creditors in full in due course of business. 10 20

5. Complainant further shows that said defendant is insolvent and has been for some time past and that it is unable to pay its creditors in full in due course of business. Defendant is unable to meet its matured or maturing obligations or any substantial part thereof and the business of said corporation is being conducted at a loss greatly prejudicial to the interests of its creditors and stockholders so that its business cannot be conducted with safety to the public and to the advantage of the stockholders and creditors. 30

6. Complainant further charges that the defendant has defaulted in the payment of the obligation to Consolidated Mortgage Loan Company, the mortgagee on the lands and premises in Ridgely Park, and that said mortgagee threatens and is about to institute foreclosure 40

Bill of Complaint

proceedings, and said defendant is unable to pay the said mortgagee whatever moneys may lawfully be due to it.

10 7. Complainant further charges that said defendant has issued negotiable paper to creditors which negotiable paper when presented was dishonored and protested because of the inability of said defendant to pay the same.

20 8. Complainant believes that unless a receiver is appointed forthwith to take possession of the assets and administer the same under the supervision of this court, that the assets of the corporation may be sold and disposed of for a sum less than its reasonable value with great loss to the creditors and that the said lands and premises may be sold under foreclosure sale.

30 9. Complainant further shows that other creditors are about to bring suit against the defendant on their several claims and demands and complainant fears that the property of the defendant corporation will be sold by judgment-creditors and the assets of the corporation dissipated through vexatious and costly litigation by reason whereof complainant fears that the business of defendant will be obstructed and suspended thereby causing great and irreparable injury and loss to the complainant and to defendant and its stockholders. That it is essential for the protection of the rights of creditors of defendant and in order to prevent immediate and irreparable injury that a receiver
40 be appointed to preserve and protect its assets so that they can be held together, operated

Bill of Complaint

and ultimately sold or otherwise disposed of as an active and going entirety. That any attempt by complainant to enforce his claim at law as a mechanic lien or general claimant will precipitate similar action on the part of other creditors of defendant, which in turn will lead to wasteful strife and controversy. Complainant believes that such strife and controversy can be avoided and the property of defendant corporation preserved for equitable distribution among those entitled thereto and that said property can be disposed of advantageously, through the intervention of this Honorable Court by the appointment of a receiver or receivers. The continuance of the business of the defendant corporation as a whole under the direction of this Honorable Court is essential in order that hereafter the assets of the defendant corporation may, if possible, be sold as a going concern and in the event the company will not have sufficient funds to enable its business to be conducted properly, then that the receiver or receivers to be appointed by the authority of this Court borrow the necessary funds subject to the approval of the Court.

10. Complainant further shows that various judgments, mechanics liens were filed against said corporation while the said defendant was insolvent and within four months prior to the date hereof.

Complainant further charges that the said mortgagees on the lands and premises situate in Ridgefield Park, New Jersey did not pay or advance to the defendant the principal sums of

Bill of Complaint

said mortgages and that the charges for mortgage loans on said premises were excessive, unconscionable unfair and usurious.

Complainant is without adequate remedy in the courts of law and therefore prays:

10

1. That the said defendant, Regna Construction Company, a corporation, may answer this bill of complaint without oath and each statement therein made.

20

2. That it may be decreed that the defendant corporation is unable to meet its matured and maturing obligations and will not in the future be or become able to meet such matured or maturing obligations or any substantial part thereof and that the business of defendant corporation has been and is being operated at a loss greatly prejudicial to the interest of its stockholders and creditors so that its business cannot be conducted with safety to the public and advantage to its stockholders.

30

3. That an injunction issue from this Honorable Court restraining the said defendant corporation and its officers and servants and agents from exercising any of its rights, privileges of franchises, granted by the State of New Jersey to said corporation and from carrying on or consummating any of the assets and property and from paying out, selling, assigning or transferring any of its assets, accounts receivable, moneys, funds, lands and tenements or effects except to a Receiver appointed by this Court, until the Court shall otherwise order.

40

4. That the assets of the said defendant cor-

Bill of Complaint

poration and the rights of complainant and the other creditors and stockholders be ascertained.

5. That the Court fully administer the funds being the entire assets of the defendant corporation and for the purpose marshal and ascertain all of its assets, liens and priorities, if any, existing on all parts thereof and enforce the lawful liens and rights of all the creditors and stockholders of the said defendant corporation as they may be finally ascertained. 10

6. That a receiver may be appointed to take charge and control of the assets and property of the corporation under the supervision of this Honorable Court with full power to manage the assets and property of the corporation and to contest the validity and priority of mortgages, lien and claims against the said corporation. 20

7. That a writ of subpoena may issue, commanding the said defendant to answer the Bill of Complaint and to abide by such decree as this Court may make in the premises.

8. That the complainant may have such other and further relief as the nature of the case may require. 30

O'BRIEN & TARTALSKY,
Solicitors for Complainant.

SAMUEL TARTALSKY,
Of Counsel.

Bill of Complaint

State of New Jersey,
County of Hudson, ss:

Elbert M. Crown, of full age being duly sworn according to law on his oath deposes and says:

10 I am the complainant mentioned in the foregoing bill of complaint;

I am a creditor of Regna Construction Company, a corporation of the State of New Jersey, who is defendant in this suit in the sum of \$158.66 together with interest for merchandise consisting of window shades and labor and materials performed by the deponent to defendant, in certain lands and premises owned by the
20 said defendant and situate on Mt. Vernon Avenue, Ridgefield Park, Bergen County, New Jersey, and that no part of the said debt has been paid, although the same is now past due.

On or about February 18th, 1928, while the defendant was constructing and erecting a building upon lands and premises owned by it in said Ridgefield Park, it ordered of deponent two hundred and twenty-four shades at the cost of eight dollars and fifty cents per dozen to be
30 furnished and installed in said building and in accordance with said order the said deponent did furnish and install said window shades in said premises, first work being done on or about March 7th, 1928 and all the work, labor and materials furnished by deponent to defendant was completed on or about March 28, 1928. Said deponent on frequent occasions since said March 28, 1928, demanded payment of the said
40 indebtedness of the officers of the said defend-

Bill of Complaint

ant corporation, but said defendant has declined to comply and Fred Regna an officer of said corporation informed the agent and servant of this deponent that the corporation is unable to pay.

Defendant corporation is engaged in the business of erecting and constructing buildings and generally in the real estate development business. To the best of deponent's knowledge and information the said corporation is the owner of the land and premises situate on Mt. Vernon Avenue, Ridgefield Park, Bergen County, New Jersey. The building erected on said premises is a thirty family apartment. The following mortgages are at present liens against the said premises. A first mortgage for \$8,000.00 held by Charles Enders and wife; a second mortgage for \$30,000 held by Consolidated Mortgage Loan Company, a corporation; a third mortgage for \$9,500 held by Harry C. Leidinger; a fourth mortgage for \$20,000 held by Consolidated Mortgage Loan Company and a fifth mortgage for \$85,000 held by Fidelity Union Title & Mortgage Company, a corporation. This deponent charges that the said mortgage made and executed by defendant to Fidelity Union Title & Mortgage Company for \$85,000 was intended to be a first and paramount lien on said premises, but said defendant was unable to deliver to said Fidelity Union Title & Mortgage Company releases of all the persons, firms or corporations who rendered and performed work, labor, services and materials in the erection, construction and completion of said premises

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Bill of Complaint

by reason of the failure of the said defendant to pay to the said materialmen and laborers in full and in due course of business the debts and claims of the said materialmen and laborers for the materials furnished and labor performed by them.

10 Deponent further says that there have been filed against the said building numerous mechanics' lien claims some of which are as follows: By George F. Brewster & Son, Inc., two lien claims, one for \$9,903.99 and the other for \$1,370; by Decker Brothers one for \$2,716; by West New York Stone Works for \$1,832; by Bogota Sheet Metal Co. for \$516, and by Peter
20 C. Nelson for \$546. That in the aggregate the mechanics' liens filed against said premises in the office of the County Clerk of Bergen County are about Sixteen thousand eight hundred and eighty-five (\$16,885) Dollars.

Deponent further says that there are judgments against said corporation which according to the records of the County Clerk of Bergen County aggregate about \$12,829. Some of the judgment-creditors are as follows: New Jersey
30 Sash Door & Trim Co. for \$1,742; two judgments of Highwood Coal Co. one for \$1,378.85 and the other for \$729; a judgment in favor of Bergen Supply Co. for \$2,004 and one for \$2,217.70 in favor of Bergen Building Block Co.

Deponent further says that on or about June 6, 1928, there was filed in the Bergen County Clerk's Office an assignment of the rents of said premises effective on July 1st, 1928. Said assignment of rents was given to Joseph Simon
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Bill of Complaint

to secure the payment of the sum of Five hundred (\$500) Dollars.

Deponent further says that in addition to the parties who filed mechanics lien claims, there are many other persons, firms or corporations who are entitled to file and claim a lien against said premises for materials furnished and labor performed, who have not filed their claims; among such creditors, is James T. Hunter of Jersey City, whose claims aggregates about \$5,200 for heating materials and supplies installed in said premises. 10

Deponent further says that said building is not reasonably worth more then One hundred and twenty thousand (\$120,000) Dollars and under present market conditions and at a forced sale said premises could not be sold for that price. 20

Deponent further says that said defendant was the owner of seven two-story buildings on Forrest Avenue, in the City of Englewood, occupied as a store and dwelling apartment. Said premises were encumbered by a first mortgage for \$7,000 on each building held by Lincoln Mortgage Company and a second mortgage for \$2,400 on each of said building. The said defendant by deed dated May 31st, 1928 and recorded in the Bergen County Clerk's Office on or about June 6th, 1928, conveyed said premises to Anthony Marzullo and William Forsthall, as trustees, for creditors who had performed work and labor and had furnished materials in and to said premises. That said conveyance was made because said defendant was unable to pay 30 40

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its said creditors in full in due course of business.

10 Deponent further says that said defendant is insolvent and has been for some time past and that it is unable to pay its creditors in full in due course of business. Defendant is unable to meet its matured or maturing obligations or any substantial part thereof and the business of said corporation is being conducted at a loss greatly prejudicial to the interests of its creditors and stockholders so that its business cannot be conducted with safety to the public and to the advantage of the stockholders and creditors.

20 Deponent further charges that the defendant has defaulted in the payment of the obligation to Consolidated Mortgage Loan Company, the mortgagee on the lands and premises in Ridgefield Park, and that said mortgagee threatens and is about to institute foreclosure proceedings, and said defendant is unable to pay the said mortgagee whatever moneys may lawfully be due to it.

30 Deponent further says that said defendant has issued negotiable paper to creditors which negotiable paper when presented was dishonored and protested because of the inability of said defendant to pay the same.

40 Deponent believes that unless a receiver is appointed forthwith to take possession of the assets and administer the same under the supervision of this court, that the assets of the corporation may be sold and disposed of for a sum less than its reasonable value with great

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loss to the creditors and that the said lands and premises may be sold under foreclosure sale.

Deponent further says that other creditors are about to bring suit against the defendant on their several claims and demands and deponent fears that the property of the defendant corporation will be sold by judgment-creditors and the assets of the corporation dissipated through vexatious and costly litigation by reason whereof deponent fears that the business of defendant will be obstructed and suspended thereby causing great and irreparable injury and loss to the deponent and to defendant and its stockholders. That it is essential for the protection of the rights of creditors of defendant and in order to prevent immediate and irreparable injury that a receiver be appointed to preserve and protect its assets so that they can be held together, operated and ultimately sold or otherwise disposed of as an active and good entirety. That any attempt by defendant to enforce his claim at law as a mechanic lien or general claimant will precipitate similar action on the part of other creditors of defendant, which in turn will lead to wasteful strife and controversy. Deponent believes that such strife and controversy can be avoided and the property of defendant corporation preserved for equitable distribution among those entitled thereto and that said property can be disposed of advantageously, through the intervention of this honorable Court by the appointment of a receiver or receivers. The continuance of the

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Bill of Complaint

business of the defendant corporation as a whole under the direction of this honorable Court is essential in order that hereafter the assets of defendant corporation may, if possible, be sold as a going concern and in the event the company will not have sufficient funds to enable its business to be conducted properly, then that the receiver or receivers to be appointed by the authority of this Court borrow the necessary funds subject to the approval of the Court.

Deponent further says that various judgments mechanics liens were filed against said corporation while the said defendant was insolvent and within four months prior to the date hereof.

Deponent further says that the said mortgages on the lands and premises situate in Ridgefield Park, New Jersey, did not pay or advance to the defendant the principal sums of said mortgages and that the charges for mortgage loans on said premises were excessive, unconscionable, unfair and usurious.

ELBERT M. CROWN.

Sworn and subscribed to before me at
Jersey City, this June 22, 1928.

Henry Karlburg,
Notary Public,
New Jersey.

**Order to Show Cause and Appointing Receiver,
Filed June 22, 1928.**

This matter being opened to the Court by Samuel Tartalsky, of the firm of O'Brien & Tartalsky, of Counsel for the Complainant, and upon reading and filing the Bill of Complaint and the affidavit thereto annexed, and the Court having found from the Bill and Affidavit as a matter of fact that the defendant is unable to meet its current obligations or to continue its business with safety to the public or advantage to the stockholders and that the said corporation is insolvent and its business is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders and praying that a Receiver for the defendant corporation should be appointed by this Court to take charge of and administer all of its assets and property, it is on this Twenty-second day of June, 1928;

Ordered that Warren Dixon, Jr., be and he is hereby appointed custodial Receiver of the said defendant, Regna Construction Company, and of all of its assets and property of every kind, nature and description wheresoever situated, with full power and authority to demand, sue for, collect and receive, and take into his possession all the goods and chattels, right and credits, moneys and effects, lands and tenements, books, papers, choses in action and all other property of and belonging to the said defendant, Regna Construction Company, or to which it may be entitled, and to do and perform all the duties imposed upon him and required

Order to Show Cause and Appointing Receiver

by law and especially by an act entitled "An Act concerning corporations (Revision of 1896)," and the acts supplementary thereto and amendatory thereof; and it is further

10 Ordered that the said Receiver, before entering upon the discharge of his duties, shall take the oath of office *described* by law, and shall also enter into bond to the Chancellor of the State of New Jersey with a surety in the penal sum of \$5,000.00 conditioned for the faithful performance of his duties, which said bond shall be approved as to the form and security thereof by the court or any one of the Special Masters of this Court; and it is further

20 Ordered that the said Receiver shall take possession of all the property and assets of the said defendant corporation and account for the same as this Court shall hereafter direct, and that the said defendant corporation, its officers, directors and agents, shall forthwith assign, transfer, convey and deliver to the said Receiver all of the property of this corporation, both real and personal, wheresoever situated and of whatsoever *ind*; and it is further

30 Ordered that the said defendant corporation, its officers and agents, and all persons claiming under it, be and they hereby are restrained from interfering with the Receiver's possession of the said property and that all persons who-soever, and especially the creditors of the said defendant corporation, be and they hereby are restrained from bringing any action or proceeding at law or otherwise against the said
40 corporation and from taking any further pro-

Order to Show Cause and Appointing Receiver

ceeding in any action now pending; and it is further

Ordered that the defendant, Regna Construction Company, and all stockholders and creditors of said corporation, show cause before the Chancellor at the Chancery Chambers, in the City of Jersey City, on Thursday, the 28th day of June, 1928, at 10 o'clock in the forenoon, or as soon thereafter as the court can conveniently attend to the same, why the appointment of said Receiver should not be continued and made permanent and why the temporary restraint herein contained should not be continued until the final determination of this suit and until the further order of this Court in the premises; and it is further

Ordered that the complainant shall, within one day from the date hereof, serve upon the defendant corporation, a true copy of this Order To Show Cause and the Bill of Complaint and the affidavit upon which the same is founded; and it is further

Ordered that a notice of this Order, which need not be certified, be mailed by the Solicitor for the Complainant within three days from the date hereof to all of the creditors and stockholders of the defendant corporation at their last known post office address if such names and addresses can be ascertained.

Respectfully advised,
 JAMES F. FIELDER, E. R. WALKER,
 V. C. C.

**Order Appointing Receiver, Counsel and
Restraint, Filed June 29, 1928.**

10 This matter coming on to be heard on the
return day of the Order to Show Cause here-
tofore granted herein on June 22, 1928, and
the cause being opened to the Court by Samuel
Tartalsky, Solicitor for Complainant, in the
presence of G. Frank Shanley, Solicitor for
Consolidated Securities Corp., mortgagee, Otto
Cooper, Solicitor for Harry C. Leidinger and
James H. Friele, mortgagees; Isidor Haber, So-
litor for New Jersey Sash Door & Trim Co.,
Judgment Creditor; Otto Venino, Solicitor for
Anthony Marzullo and William Forsthall, Trus-
tees, and for New Jersey Securities Co. and
20 Fred Wehrhan, mortgagees; Rex Altschuler,
Solicitor for George M. Brewster & Son, Inc.,
Henry Epstein, Angelo Alessi, Anthony Val-
ente, Christino Menis, lien claimants; Charles
Runbenstein, Solicitor for Junction Milling Co.,
lien claimant, and Heyman & Heyman, Solici-
tors for Montgomery Plumbing Supply Co., and
Fred Dambrow, lien claimants, and due proof
being made of the service of the order to show
30 cause heretofore granted herein, and it appear-
ing to the Court that the said defendant is
insolvent; and no objection being made; and
it appearing also by proof duly filed that
solicitor for complainant has given notice of the
order to show cause heretofore granted herein
to all of the creditors whose names and post
office addresses were obtainable.

40 It is on this twenty-eighth day of June, 1928,
Ordered that the said order to show cause be

Order Appointing Receiver, Counsel and Restraint

made absolute, and that Warren Dixon, Jr., of Hackensack, be and he is hereby appointed and continued receiver with full power and authority to demand, sue for, collect and receive and take into his possession, all the goods and chattels, right and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills and notes, and property of every kind and description of the corporation and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his discretion to compound and settle with any debtor or creditor of the corporation or with persons having possession of property or in any way represented at law or in equity to the corporation at the time of its insolvency or afterwards, upon such terms and in such manner as he shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any persons to allow just set-offs in favor of such persons in all cases in which the same ought to be allowed according to law and equity and the said receiver shall have power to sell, convey and assign all the estate, rights and interest, and shall hold and dispose of the proceeds thereof, under the directions of the Court of Chancery, and to do and perform all the duties imposed upon him required by law and especially by an act entitled "An Act concerning Corporations (Revision of 1896)" and the acts

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Order Appointing Receiver, Counsel and Restraint

supplemental thereto and amendatory thereof.

10 It Is Further Ordered that the said Receiver, before entering upon the discharge of his duties, shall take the oath of office prescribed by law, and shall enter into bond to the Chancellor of the State of New Jersey in the sum of Five thousand (\$5,000) Dollars, conditioned for the faithful performance of his duties, to be approved as to the form and security thereof by one of the Special Masters of this Court, which bond shall be in lieu of the bond heretofore given as custodial receiver by said Warren Dixon, Jr.

20 It is further Ordered that Samuel Tartalsky be and he is hereby appointed counsel of Warren Dixon, Jr., receiver herein, to counsel and advise said receiver in the administration of his duties, to help and assist him in the investigation of the defendant's affairs, to assist him in the recovery of any property illegally disposed of, and to bring and defend any actions for the interests of the creditors herein and stockholders of said corporation and to
30 conserve and protect any assets and rights thereof.

It Is Further Ordered that said defendant corporation, its officers, agents and servants, and all persons claiming under it be and they are hereby restrained from interfering with the Receiver's possession of the said property; and that Consolidated Securities Corporation, Harry C. Leidinger, New Jersey Sash Door
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Order Appointing Receiver, Counsel and Restraint

& Trim Co., Anthony Marzullo, William Forst-
 hall, New Jersey Securities Company, Fred-
 erick Wehrhan, George M. Brewster & Sons,
 Inc., Henry Epstein, Angelo Alessi, Anthony
 Valente, Cristino Menis, Junction Milling Co., 10
 Montgomery Plumbing and Supply Co., Fred
 Dambrow trading as Modern Tile Co., James
 H. Friele, Fidelity Union Title & Mortgage
 Guaranty Co., Bogota Sheet Metal Works, West
 New York Stone Works, Highwaad Coal Com-
 pany, Building Supply Co., James T. Hunter,
 Joseph Simon, Decker Brothers, Antonina Bag-
 noto, Joseph Coppalino, Dominick Giordano,
 James Natale, Fred Regna, John Saziano, Tide- 20
 water Coal & Supply Co., Bergen Building Block
 Co., Yalon & Tuman, O. Weisgerber & Sons,
 Chares Enders, Jr., Amelia F. Enders, Peter
 C. Nelson, Jr., American Radiator Co., New
 York Heater & Supply Co., Walworth Co., their
 officers, agents, servants, counsel, attorneys and
 solicitors, and each and every one of them, and
 each and every other creditor of said corpora-
 tion, in the meantime, and until the further order 30
 of this Court in the premises, desist and re-
 frain, and they *and* each of them are hereby
 restrained and enjoined from bringing any ac-
 tion or proceeding at law or otherwise against
 the said corporation, and from taking any fur-
 ther proceeding in any action or proceeding
 now pending;

And it is further Ordered that the tenants
 now occupying any of the lands and premises 40
 of said corporation be and they are hereby

Order Appointing Receiver, Counsel and Restraint

restrained from paying the rents for said premises to any person other than the said Receiver.

10 And it is further Ordered that true copies of this order, which may be certified by the Solicitors for the Complainant, be mailed within seven days from the date hereof to all creditors and stockholders of the defendant corporation at their last known address if such address can be ascertained, or served upon the solicitor for any creditor or stockholder, and upon the tenants in possession of said premises.

20 Respectfully advised.
JAMES F. FIELDER, E. R. WALKER,
Vice Chancellor. C.

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**Petition for Sale Free of Liens, Filed July 9,
1928.**

To the Honorable Edwin Robert Walker,
Chancellor of the State of New Jersey:

The petition of Warren Dixon, Jr., respectfully shows unto your Honor that he is the Receiver of the above named defendant, a corporation, having been appointed by order of this court and having duly qualified by taking the oath and filing his bond approved by this court. 10

Your petitioner further shows that the defendant corporation was the owner of certain lands and premises in Ridgefield Park, Bergen County, New Jersey, particularly described as follows:

“ALL that tract or parcel of land and premises, hereinafter particularly described situate, lying and being in the township of Overpeck, in the County of Bergen and State of New Jersey. BEGINNING on the southerly side of Mount Vernon Street at a point distant one hundred (100) feet westerly from the southwesterly corner of Mount Vernon Street and Euclid Avenue, running thence (1) southerly parallel with Euclid Avenue, one hundred and seventy-five hundredths of a foot (100.75) more or less, to the northerly line of lot number (3) in block twenty-two (22) on a map hereinafter mentioned; thence (2) westerly along the northerly line of said lot number three (3), seventy-eight feet and three-tenths of a foot (78.3) more or less, to the northwesterly corner of said lot number (3); thence (3) northerly along the rear lines of lots numbers one (1) and two (2) in block twenty-two (22) as shown on said map, 20
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Petition for Sale Free of Liens

10 one hundred and one (101) feet to the southerly line of Mount Vernon Street; and thence (4) easterly along the southerly line of said Mount Vernon Street eighty feet and two tenths of a foot (80.2) more or less to the place of beginning. Being all that part of lots numbers one (1) and two (2) in block twenty-two (22) on a map filed in Bergen County Clerk's Office, September 18th, 1867, entitled "Map of Building Lots in Ridgefield Park belonging to the Ridgefield Land and Building Company" which lies westerly of a line drawn parallel with Central Avenue at a distance of one hundred (100) feet westerly therefrom."

20 That on said premises there is erected a thirty family brick apartment house which is now occupied by 11 tenants.

Your petitioner further shows that the said premises are subject to the following encumbrances:

(a) A mortgage held by Charles Enders, Jr., and Amelia F. Enders, his wife, for \$8,000.00.

30 (b) A mortgage in the nominal sum of \$9,500 upon which your petitioner is informed there is due \$7,500, which mortgage is made to Harry C. Leidinger and assigned by him to James H. Friele. This mortgage was subordinated to the lien of the mortgage to Consolidated Mortgage Loan Company for \$30,000.00.

(c) A mortgage in the nominal sum of \$30,000.00 held by Consolidated Mortgage Loan
40 Company.

Petition for Sale Free of Liens

(d) Another mortgage in the nominal sum of \$20,000.00 held by Consolidated Mortgage Loan Company.

(e) A mortgage in the nominal sum of \$85,000.00 held by Fidelity Union Title and Mortgage Guaranty Company. 10

(f) An assignment of rents for \$500.00 to Joseph Simon.

Your petitioner further avers that the said sum of \$85,000.00 intended to be secured by the mortgage executed by the corporation to the Fidelity Union Title and Mortgage Guaranty Company was not advanced and your petitioner believes that there is nothing due on said mortgage. 20

Your petitioner further shows that the said assignment of rents to Joseph Simon was made on June 9, 1928 and was to take effect on July 1, 1928, but said assignment of rents is invalid having been made within four months prior to the filing of the petition herein.

That in addition to the foregoing mortgages and assignment of rents a number of mechanics and material men have filed liens against the said lands and building for work, labor and services performed and materials furnished and some of the said mechanics and material men have entered judgment on said mechanics lien, some of which are as follows: 30

(1) A mechanics lien claim by George M. Brewster and Son, Inc., for \$9903.99. 40

Petition for Sale Free of Liens

(2) A mechanics lien claim by George M. Brewster and Son, Inc., for \$3077.62.

(3) A mechanics lien claim by Decker Bros. for concrete products for \$2716.40.

10 (4) Decker Bros. entered a judgment on June 13, 1928, for \$2856.88.

(5) A mechanics lien claim by Joseph Laurenze, trading as Bogota Sheet Metal Works for \$516.00.

(6) A mechanics lien claim by Peter C. Nelson, Jr., for \$546.00.

20 (7) A mechanics lien claim by West New York Stone Works for \$1832.00.

(8) On March 16, 1928, New Jersey Sash Door & Trim Company entered a judgment on mechanics lien for \$1742.03.

(9) On March 20, 1928, Bergen Building Block Co. entered a judgment on mechanics lien for \$2217.70.

30 (10) On April 8, 1928, Highwood Coal Co. entered a judgment on mechanics lien for \$1378.85.

(11) On March 12, 1928 said Highwood Coal Co. entered a judgment on mechanics lien for \$2629.45.

40 Your petitioner further shows that there are numerous claims by material men who furnished and performed work, labor and services and materials to said building who are or who may be entitled to mechanics' lien who have since

Petition for Sale Free of Liens

the appointment of your petitioner secured authority to file lien claims, and there are others who have not yet filed lien claims who have a right so to do.

Your petitioner further shows that said Consolidated Mortgage Loan Co. has changed its corporate title to Consolidated Securities Co. The mortgages held by said mortgagee are construction mortgages and it threatens to institute foreclosure proceedings, so that any interest which your petitioner as receiver has in said premises, as well as any interest of the creditors of said defendant corporation are likely to be foreclosed and wiped out. 10

Your petitioner further shows that he contests the legality and validity of the mortgage for \$85,000 held by Fidelity Union Title Mortgage Co., and your petitioner further shows that Montgomery Plumbing Supply Co. has a claim on mechanics lien for upwards of \$8,000 which it asserts is prior in lien and operation to said Consolidated Securities Co. mortgages by reason of the fact that said Montgomery Supply Co. has not executed nor delivered to said mortgage a *reliese* or subordination of *mecahnics* lien claim, and that it is likewise prior in lien to the mortgage to said Fidelity Union Title Mortgage Co. Petitioner further shows that other mortgagees have threatened foreclosure of their mortgages, and by reason of the consequent protracted litigation between said mortgagees and lien claimants, the rights of the creditors and receiver *were* be seriously prejudiced and impaired. 20 30 40

Annexed hereto and made part hereof are

Petition for Sale Free of Liens

10 affidavits of appraisers from which it appears that the value of the lands and premises is about \$150,000, and your petitioner believes that it would be for the best interests of the estate and creditors to sell the property as soon as possible.

20 Your petitioner further shows though the building contains thirty-two apartments, only eleven are rented. The taxes against the premises are accruing as well as the interest on the mortgages. Insurance premiums against the property are to be paid, and the present income of the property is insufficient to meet the carrying charges of the property. Mechanics lien suits are pending and by reason of the circumstances and the protracted litigation likely to ensue between mortgagees and lien claimants, the value of the premises will materially depreciate and deteriorate.

30 Your petitioner therefore prays for an order that all mortgagees, creditors and all other persons interested in the cause show cause before this Court why the Receiver should not be ordered and directed to sell the lands and premises of the defendant corporation herein particularly described either or public or private sale and why said lands and premises should not be sold free, clear and discharged of all mortgages and liens which mortgages and liens, shall however, attach to the proceeds of the sale, their equities being reserved, and why your petitioner should not have such other and further relief as shall be just.

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WARREX DIXON, JR.,
Petitioner.

Petition for Sale Free of Liens

State of New Jersey,
County of Hudson,

Warren Dixon, Jr., being duly sworn according to law on his oath deposes and says that he is the petitioner named in the foregoing petition that he has read the contents thereof and that the same is true to the best of his knowledge and belief. 10

WARREN DIXON, JR.

Sworn and subscribed before me this
9th day of July, 1928.

Jno. G. Flannigan,

Master in Chancery of New Jersey.

State of New Jersey,
County of Bergen, ss:

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Herant J. Hammalian, being duly sworn on his oath according to law, deposes and says:

I have been engaged in the real estate business for the last four years and I am familiar with real estate values in Bergen County.

On July 6th, at the request of Warren Dixon, Jr., I visited premises located at 101 Mount Vernon Street, Ridgefield Park, Bergen County, New Jersey, and found the same to consist of a 32 family four-story brick apartment house, erected on a plot of land approximately 80 x 105 feet, I examined the material of the building and ascertained the approximate rental value, and after giving due consideration to same, and taking into consideration the location of said property, I believe the following to be the true valuation thereof: 30 40

Petition for Sale Free of Liens

On the Building	\$130,000.00
On the Land	20,000.00
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Total Value	\$150,000.00

10 At the request of Warren Dixon, Jr., I also
 examined premises known as No. 240 to 252
 Porest Avenue, Teaneck, Bergen County, New
 Jersey, and found the same to consist of a
 block of seven stores with seven apartments, one
 above each store and fourteen garages in the
 rear; all seven are erected on a plot of land
 approximately 150 x 100 feet. The said prop-
 erty is located on the south side of Forest
 20 Avenue, approximately 75 feet west of Webster
 Avenue, Teaneck. After examining the said
 buildings and taking into consideration approxi-
 mate rental value and location thereof, I be-
 lieve the following to be the true valuation for
 the said lands and buildings:

On the seven stores and apartments	\$49,000.00
On the land	12,000.00
30 On the fourteen garages	4,000.00
	<hr/>
Total value	\$65,000.00

The above inspection and appraisals were
 made in concurrence with Archibald F. Graham,
 who visited and appraised the said premises
 with me.

HERANT J. HAMMALIAN.

Sworn and subscribed before me this

40 7th day of July, 1928.
 Warren C. Banta,
 Notary Public of N. J.

Petition for Sale Free of Liens

State of New Jersey,
County of Bergen, ss:

Archibald F. Graham, being duly sworn on his oath according to law, deposes and says:

I have been engaged in the Real Estate business for the last four years and I am familiar with real estate values in Bergen County. 10

On July 6th, at the request of Warren Dixon, Jr., I visited premises located at 101 Mount Vernon Street, Ridgefield Park Bergen County, New Jersey, and found the same to consist of a 32 family four story brick apartment house, erected on a plot of land approximately 80 x 105 feet. I examined the material of the building and ascertained the approximate rental value, and after giving due consideration to same, and taking into consideration the location of said property, I believe the following to be the true valuation thereof: 20

On the Building	\$130,000.00	
On the Land	20,000.00	
	<hr/>	
Total Value	\$150,000.00	30

At the request of Warren Dixon, Jr., I also examined premises known as No. 240 and 252 Forest Avenue, Teaneck, Bergen County, New Jersey, and found the same to consist of a block of seven stores with seven apartments, one above each store and fourteen garages in the rear: all seven erected on a plot of land approximately 150 x 100 feet. The said property is located on the south side of Forest 40

Petition for Sale Free of Liens

10 Avenue, approximately 75 feet west of Webster Avenue, Teaneck. After examining the said buildings and taking into consideration approximate rental value and location thereof, I believe the following to be the true valuation for the said lands and buildings:

On the seven stores and apartments	\$49,000.00
On the fourteen garages	4,000.00
On the land	12,000.00
	<hr/>
Total Value	\$65,000.00

20 The above inspection and appraisals were made in concurrence with Herant J. Hammalian who visited and appraised the said premises with me.

ARCHIBALD F. GRAHAM.

Sworn and subscribed before me this

7th day of July, 1928.

H. Mylis,

Notary Public, N. J.

30 State of New Jersey,
County of Hudson, ss:

40 Irving Solomon, being duly sworn, according to law on his oath deposes and says: On Friday, July 6th, 1928, I made an inspection of premises No. 101 Mt. Vernon Street, Ridgefield Park, New Jersey, and found that the land is approximately 80 feet in width by 105 feet in depth upon which is erected a 32 family four-story brick apartment house. The said building is now occupied by 11 tenants. There are

Petition for Sale Free of Liens

112 rooms in said building consisting of 26—
 3 room apartments; 8—4 room apartments and
 1—2 room apartment and I ascertained that
 the average rental per room is \$18.00 per month.
 In my opinion the approximate annual rental
 of said building is \$20,000 when fully rented. 10
 In my opinion the value of the land and build-
 ing is from \$140,000.00 to \$150,000.00.

In my opinion the present time would be
 the best time to sell the said building for the
 best price obtainable for the reason that the
 building is a new one and the location is good
 being very near to the Ridgefield Park rail- 20
 road station; from my experience the summer-
 time is the best time to sell real estate because
 there are more prospective purchasers at that
 time of the year than any other. Further-
 more, the apartments should begin to rent from
 the months of August, on.

IRVING SOLOMON.

Sworn and subscribed to before me at

Jersey City this

July 9th, 1928. 30

Joseph M. Milberg,

Atty at Law of N. J.

**Petition of Consolidated Securities Corp. for
Permission to Foreclose, Filed July 11,
1928.**

To: Warren Dixon, Jr., Receiver of Regna Construction Company, and O'Brien & Tartalsky,
10 solicitors for complainant.

Sirs:

Please Take Notice that on Thursday, the 28th day of June, Nineteen Hundred and Twenty-eight, I shall present the attached petition to the Chancellor at Chancery Chambers in Jersey City at ten o'clock in the forenoon (Daylight Saving Time), and I shall, at that
20 time, apply for an order in accordance with the prayer of the said petition.

G. FRANK SHANLEY,
Solicitor of Petitioner, Consolidated
Securities Corporation.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of Consolidated Securities Corporation, a corporation of New Jersey, having its principal office in the City of Union City, County of Hudson and State of New Jersey, respectfully shows:
30

1. That on or about June 22, 1928, an order was entered in the above entitled cause wherein and whereby it was ordered that the defendant in the above entitled cause be declared insolvent and that Warren Dixon, Jr., be appointed receiver for the creditors and stockholders of said
40 defendant. It was further ordered that the

*Petition of Consolidated Securities Corporation
to Foreclose*

creditors of said defendant show cause before the Chancellor on Thursday, June 28th, 1928, why said receiver should not be continued.

2. On or about September 30, 1927, the defendant, Regna Construction Company, made and executed its bond and mortgage to Consolidated Mortgage Loan Company, a corporation of New Jersey, to secure payment of the sum of Thirty Thousand (\$30,000.00) Dollars, which mortgage was on October 1, 1927, recorded in the Bergen County Clerk's Office in Book 989 of Mortgages, page 271. Said mortgage covers certain lands and premises in the Township of Overpeck, County of Bergen and State of New Jersey, situate on the southerly side of Mount Vernon Street one Hundred (100) feet West from the Southwesterly corner of Mount Vernon Street and Euclid Avenue.

3. On or about November 29, 1927, the said Regna Construction Company made and executed another bond and mortgage to the said Consolidated Mortgage Loan Company to secure the sum of Twenty Thousand (\$20,000.00) Dollars, which mortgage was recorded in the Bergen County Clerk's Office on November 30, 1927 in Book 1007 of Mortgages, page 260, and said mortgage covers the same premises as the mortgage referred to in the preceding paragraph.

4. The said Consolidated Mortgage Loan Company did, on April 25, 1928, amend its certificate of incorporation and did thereby change the

*Petition of Consolidated Securities Corporation
to Foreclose*

name of said corporation to Consolidated Securities Corporation, and the petitioner is now the owner and holder of the aforesaid mortgages.

10 5. The petitioner has advanced to the defendant corporation the full sum of Fifty Thousand (\$50,000.00) Dollars on said mortgages and there is now due on the first mentioned mortgage the sum of Thirty Thousand (\$30,000.00) Dollars with interest thereon from April 18, 1928, and on the second mentioned mortgage there is due the sum of Twenty Thousand (\$20,000.00) Dollars with interest thereon from
20 May 29, 1928.

6. The first of said mortgages became due and payable on March 30, 1928, and the second of said mortgages became due and payable on May 29, 1928, and although the petitioner has demanded payment of said mortgages, both of said mortgages remained unpaid.

30 Your petitioner therefore prays that it may be by order of this Court permitted to bring proceedings to foreclose its aforesaid mortgages and that it may be permitted to make Warren Dixon, Jr., or such other receiver as may be appointed in the above entitled cause, a party defendant to said suit.

And your petitioner will ever pray, &c.

40 G. FRANK SHANLEY,
Solicitor of Petitioner, Consolidated
Securities Corporation.

*Affidavit of Receiver on Motion to Sell Free of
Lien*

State of New Jersey,
County of Hudson, ss:

G. Frank Shanley, of full age, being duly
sworn according to law, upon his oath, deposes
and says: 10

I am the Solicitor of Consolidated Securities
Corporation, the petitioner named in the fore-
going petition, and the facts stated therein are
true.

G. FRANK SHANLEY.

Sworn and subscribed to before me, this
25th day of June, 1928.

Edgar Ross,

Notary Public of New Jersey. 20

**Affidavit of Receiver on Motion to Sell Free
of Lien, Filed July 16, 1928.**

State of New Jersey,
County of Hudson, ss:

30

Warren Dixon, Jr., of full age, being duly
sworn according to law, on his oath deposes
and says:

I am the receiver of the defendant corpora-
tion and have taken the oath prescribed by
the rules and filed the bond required by the
order of my appointment. 40

The defendant was seized of the title to prem-
ises known as #101 Mount Vernon Avenue,
Ridgefield Park, Bergen County, New Jersey.

*Affidavit of Receiver on Motion to Sell Free of
Lien*

10 At the time defendant acquired the title, there was of record against said premises a mortgage for \$8,000 held by Charles Enders, Jr., and Amelia, his wife, the legality or validity of which mortgage, I do not bring into dispute.

20 Said Regna Construction Company purchased the land from Harry C. Leidinger by deed dated August 31st, 1927, and recorded on the same date. A purchase money mortgage was executed by said corporation to said Harry C. Leidinger for \$9,500 and recorded on the same day. The principal sum of said mortgage is now reduced to \$7,500, as receiver and on behalf of the creditors of the corporation, I dispute the priority of this mortgage to certain of the lien claim creditors, by reason of the fact that said mortgagee postponed the lien and operation of his mortgage to the mortgages made and executed by the corporation to Consolidated Mortgage Loan Company (now known as Consolidated Securities Corporation), which will hereinafter be described and referred to. By 30 postponement of mortgage dated September 30th, 1927, and recorded in the Bergen County Clerk's Office in Book 78, page 384, he postponed his mortgage to a mortgage for \$30,000 to said Consolidated Mortgage Loan Company, and by postponement dated November 29th, 1927, and recorded in Book 81, page 169, he 40 subrogated the lien of his mortgage to another mortgage to Consolidated Mortgage Loan Company for \$20,000.

*Affidavit of Receiver on Motion to Sell Free of
Lien*

By assignment of mortgage dated December 16th, 1927, and recorded in the Bergen County Clerk's Office in Book 169, page 624, said Harry C. Leidinger assigned his said mortgage to James H. Freile, and in said assignment he covenanted that there was due on said mortgage the sum of \$7,500. 10

On or about September 6th, 1927, said Regna Construction Company commenced the erection of the building now on said premises. In an examination held before me on July 2nd, 1928, Domenico Giordano, president of defendant corporation, testified under oath, as follows: 20

“Q. When did you start to build the building in Ridgefield Park? A. In September 6 or 7, some day like that.

“Q. September 6th or 7th, 1927? A. Yes.”

On September 30th, 1927, said corporation made and executed a mortgage for \$30,000 to Consolidated Mortgage Loan Company. Said mortgage is a construction or advance money mortgage, but said mortgage was not executed, delivered or recorded until after the building on said premises was in the course of construction. Fred Regna, treasurer of defendant corporation, testified under oath before me on July 2nd, 1928, as follows: 30

“Q. How soon after you bought that plot did you start to do work on it? A. Some time around September; it was around the beginning of September. 40

*Affidavit of Receiver on Motion to Sell Free of
Lien*

“Q. In the beginning of September? A. Yes, the 10th or 11th.

10 “Q. Then you secured a mortgage from the Consolidated Mortgage Company? A. Right.

“Q. When you got the money for the mortgage from the Consolidated Mortgage Company, how far had your work progressed on the building? A. To the first tier of beams.”

20 Said mortgage for \$30,000 was not recorded until October 1st, 1927, in Book 989 of Mortgages, page 271. I have no knowledge as to the amount of money intended to be secured by said mortgage which was used for the erection of said building. I dispute and contest the legality and validity of said mortgage and that the sum of \$30,000 was used in the erection and construction of said building, for these reasons among others. The sum of \$1,000 was paid to Harry C. Leidinger, mortgagee hereinbefore referred to, in reduction of the principal sum of his mortgage. The sum of \$1,500 was
30 paid or retained to or by the mortgagee, its agents or servants, for fees. The said Fred Regna, testified under oath as follows:

“Q. You got a mortgage for how much? A. \$30,000.

“Q. How much did you pay for that mortgage? A. Five per cent.

40 “Q. Whom did you pay the \$1,500 to? A. No; there was no broker in that transaction.

“Q. You paid that direct to the company? A. Yes, sir.”

*Affidavit of Receiver on Motion to Sell Free of
Lien*

I dispute and contest the priority of said mortgage in its principal sum, for the further reason, that certain of the mechanic lien claimants who furnished and supplied labor and materials in the erection and construction of said building did not release or postpone their liens to the said mortgagee and these mechanic lien claimants now assert and insist that their respective liens are entitled to priority over said mortgagee by reason of the foregoing facts. Some of these claimants are:

(a) Montgomery Plumbing Supply Co. has filed a lien claim for \$8,337.36;

(b) New York Heater Supply Company has filed a lien claim for \$1,032.

(c) American Radiator Company has filed a lien claim for \$1,964.26. Annexed hereto and made part hereof is the affidavit of Abraham Lieberman, attorney for said American Radiator Company, to the effect that said lien claimant did not release or postpone its lien claim to said mortgage of said Consolidated Mortgage Loan Company and claiming that it disputes the priority of said mortgage, among others.

(d) Elbert M. Crown, who furnished and installed window shades in said building whose affidavit is hereto annexed and made part hereof.

I am informed and verily believe that George M. Brewster & Son, Inc., a corporation which has filed two lien claims, one for \$9,903.99, and the other for \$3,077.62, has not released or post-

Affidavit of Receiver on Motion to Sell Free of Lien

poned its lien to the lien of Consolidated Mortgage Loan Co., or the other mortgages hereinafter mentioned and which asserts priority thereto.

10

Other lien claims have been filed wherein said mortgagee, Consolidated Mortgage Loan Company, is made a defendant, and I believe that there are creditors who are entitled to liens whose time for the filing of the same has not yet expired and who may be entitled to priority over the full principal sum mentioned in said Consolidated Mortgage.

20

On November 29th, 1927, and while the building now on the lands and premises was in the course of construction, said defendant executed a mortgage for \$20,000 to said Consolidated Mortgage Loan Company. I have no knowledge as to the amount of money intended to be secured by said mortgage which was used for the erection and construction of said mortgage. I dispute and contest the legality and validity of said mortgage and that the sum of \$20,000 was used in the erection and construction of said building, for these reasons among others. The sum of One thousand dollars was paid to Harry C. Leidinger by said mortgagee in reduction of the principal sum of his mortgage. The sum of \$1,000 was paid or retained by said mortgagee, its agents or servants, for fees. Furthermore, mechanic lien claimants did not release or postpone their liens to this mortgage, by reason whereof, I, and said mechanic lien claimants, dispute and contest the priority of

30

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*Affidavit of Receiver on Motion to Sell Free of
Lien*

said mortgage in its principal sum, and some of the parties asserting and contesting such priority are mentioned hereinbefore, said lien claimants not having subordinated to either mortgage held by Consolidated Mortgage Loan Company. 10

On December 29th, 1927, and while the said building was in the course of construction, said defendant made and executed a mortgage for \$85,000 to Fidelity Union Title and Mortgage Guaranty Co., which mortgage is recorded in Book 1018, page 268 for Bergen County. I dispute and contest the legality, validity and priority of this mortgage to lien claims asserted for the reason that no moneys were paid or advanced by said mortgagee. The lien claimants hereinbefore *mentioned* did not release or postpone their respective liens to the operation of this mortgage and they now assert priority over this mortgage. 20

On June 9th, 1928, said corporation made and executed an assignment of rents for \$500 to Joseph Simon. Said assignment of rents is recorded in Book 1575, page 490. I dispute and contest the priority of this assignment of rents on the ground that it is void, having been executed within four months prior to the filing of the petition for insolvency herein, and furthermore, the lien claimants did not release or postpone their rights. 30

Pending the litigation between the lien claimants and the receiver against the mortgages hereinbefore set forth which are brought into 40

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question as to legality, priority or amounts advanced for the erection and construction of the building, the property and assets of the corporation are of a character materially to deteriorate in value pending the litigation, for these reasons. The building is adopted for use by thirty-two families but only eleven apartments are occupied. I have endeavored to secure tenants for the 21 vacant *partments*, but thus far, I have heard from only two prospective tenants. Since coming into possession of the property in Ridgefield Park, I have received complaints from the tenants concerning the condition of the premises. The roof leaks and water has entered some of the apartments. In the apartment on the top floor front the water coming from the leaky roof has damaged the plaster on the wall. This requires repair. In another apartment, the water coming from the roof has damaged the apartment to the extent that it requires painting. The plaster in the apartment occupied by tenant named Hirsch is in need of repair and said tenants threatens to move unless the repair is made. Because of a defect existing either in the sewer pipes or in the cellar, the cellar is frequently filled with water. This requires attention. All of the tenants have complained that the enamel on the Frigidaire ice boxes has cracked and needs repair. The electric bells were in poor condition and needed repair. This is not an opportune time to rent apartments, but if possession of the building is retained pending the litigation

*Affidavit of Receiver on Motion to Sell Free of
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which will follow between the lien claimants and mortgagees, unless restrained or avoided, the character of the building will further deteriorate in value because the unoccupied apartments will require cleaning, painting and decorating before rentable. 10

Moreover, the only apparent asset of the defendant is the said Ridgfield Park building. The continued possession of the same pending any litigation referred to will cause a material depreciation and deterioration of the asset, for these reasons. The aggregate monthly rental of the eleven occupied apartments is Four hundred and eighty (\$480) Dollars. This sum is wholly inadequate to pay for the carrying charges of the property, the taxes, water rents, insurance premiums, electric light bills, coal for hot water or heat, and interest on mortgages. The mortgages of record against said premises aggregate the sum of \$150,500. I dispute the legality, validity or amount due on all mortgages except the first mortgage for \$8,000, on the grounds before enumerated. The assignment of rents is for \$500. I dispute this. The lien claims of record aggregate the sum of \$41,203.09. In addition, there are many creditors who are entitled but have not yet filed lien claims and there exist creditors whose claims are as general creditors. The aggregate amount of the encumbrances and liens against the property claiming to be entitled to interest at six per cent is \$192,203.09. Janitor wage is \$50 per month. The taxes on the property are now 20
30
40

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Lien*

10 \$482.88, but the building has not yet been assessed for its full value because only recently completed but will be assessed in full after October. The annual insurance premium on the \$100,000 fire insurance policy is \$278. There are other charges for water, coal, electric light and repairs to be considered. The present gross rental of \$480 per month is obviously inadequate to pay for the interest and carrying charges. A continuance of the possession of the building under the circumstances will cause a material dissipation and deterioration of the
20 property and assets of defendant.

WARREN DIXON, JR.

Sworn and subscribed to before me this
16th day of July, 1928.

Irving Lipman,

Attorney at Law of New Jersey.

State of New Jersey,
County of Hudson, ss:

30 Abraham Lieberman, of full age, being duly sworn according to law, on his oath deposes and says:

I am the attorney for American Radiator Company, Inc., which furnished and supplied heating material and equipment which were used and installed in building on premises known as #101 Mount Vernon Avenue, Ridgefield Park,
40 New Jersey, erected and constructed by Regna Construction Company. There is due and owing said American Radiator Company, Inc., the

*Affidavit of Receiver on Motion to Sell Free of
Lien*

sum of \$1,964.26, and on behalf of my said client, I have filed in the Bergen County Clerk's Office a lien claim against the said lands and premises. The said American Radiator Company did not release or postpone its lien to any mortgage on said premises and it disputes the priority of the mortgage held by Harry C. Leidinger or James H. Friele, his assignee; or the priority of the mortgages held by Consolidated Mortgage Loan Company for \$30,000 and \$20,000 respectively; or the priority of the mortgage for \$85,000 held by Fidelity Union Title and Mortgage Company. The American Radiator Company, Inc., asserts and insists that it is entitled to priority over said mentioned mortgages.

ABRAHAM LIEBERMAN.

Sworn and subscribed to before me this

14th day of July, 1928.

Henry Moos,

Notary Public of New Jersey.

State of New Jersey,
County of Hudson, ss:

Elbert M. Crown, being duly sworn according to law, on his oath deposes and says:

That he is a creditor of Regna Construction Company; that on and before February 18th, 1928, said corporation was erecting and constructing a building on a lot of land situate in Ridgefield Park, Bergen County, New Jersey, commonly known as #101 Mount Vernon Ave-

Affidavit of Receiver on Motion to Sell Free of Lien

nue. That on said date, the defendant ordered of deponent 224 window shades to be furnished and installed in said building at the agreed price of \$8.50 per dozen. That between March 10 7th, 1928, and March 28th, 1928, he furnished and installed in said building the said 224 window shades and that said defendant is indebted to deponent in the sum of \$158.66, and no part of the same *as* been paid. Deponent further says that he is entitled to a lien claim against the said lands and premises by reason of having furnished and installed the said materials and labor. Deponent further says that 20 he did not execute nor deliver to any of the mortgagees on said premises any release or subordination of lien claim. Deponent further says that he contests the legality and validity of the mortgage of Fidelity Union Title and Mortgage Guaranty Co. for \$85,000, and contests the priority of the mortgages of the Consolidated Mortgage Loan Company now known 30 as Consolidated Securities Company, which aggregate the nominal amount of \$50,000. Deponent claims and insists that his claim is entitled to priority over any moneys that may be due said Consolidated Securities Company on its mortgages.

Deponent further says that he has no knowledge of the advancement of any moneys by said Consolidated Securities Company or Fidelity 40 Union Title and Mortgage Guarantee Company which were or may have been used in the construction of said lands and premises, and

Order Directing Receiver to Sell Real Property

claims to be prior in lien and priority to the distribution of any moneys that said mortgagees may have advanced by reason of the fact that said mortgages were not recorded until after the work on said lands and premises had been commenced and performed. 10

ELBERT M. CROWN.

Sworn and subscribed to before me this

13th day of July, 1928.

Samuel Milberg,

Master in Chancery of N. J.

Order Directing Receiver to Sell Real Property, Filed July 24, 1928. 20

It appearing to the Court that on the Ninth day of July, 1928, Warren Dixon, Jr., the Receiver duly appointed herein filed a petition praying for leave to sell the lands and premises particularly described herein, which premises are hereafter particularly described, free, clear and discharged of all mortgages and mechanic lien claims, and that on said Ninth day of July, 1928, an order was made in the above entitled cause requiring said mortgagees and lien claimants to show cause before this court on the Sixteenth day of July, 1928, at the Chancery Chambers, 1 Exchange Pl., Jersey City, at ten o'clock in the forenoon, why an order should not be made directing the Receiver herein to sell the lands and premises hereinafter described, free, clear and discharged of all mort- 30 40

Order Directing Receiver to Sell Real Property

gages and mechanic lien claims, and why also, whether the said lands and building should be sold either at public or private sale and why the said encumbrances, liens and equities should not attach to the proceeds of the sale and due proof having been made to the court of the service of the Order to Show Cause heretofore granted herein to each of the creditors and stockholders of the above named defendant at their several and respective post office addresses, with the postage prepaid thereon, as well as by acknowledgement of service upon the solicitors of record for such creditors as appeared by solicitor;

And this matter having come on to be heard on said Sixteenth day of July, 1928, in the presence of Samuel Tartalsky, of Counsel for Warren Dixon Jr. Receiver, aforesaid, and G. Frank Shanley, Solicitor for Consolidated Mortgage Loan Company, now know as Consolidated Securities Company, mortgagee, Morrison, Lloyd & Morrison, Solicitors for Charles Enders Jr. and Amelia Enders, mortgagees, Otto Cooper, Solicitor for Harry C. Leidinger and James H. Friele, mortgagee, Martin J. Cummings, Esq., of the firm of Hart & Vanderbilt, Solicitors for Tidewater Coal and Supply Co., and Highwood Coal Company, judgment creditors; John H. Sheridan, representing William F. Burke, Solicitor for Antomio Sellito, *et al.*, trading as West New York Stone Works, mechanic lien claimants; Mervin Herzfold, Solicitor for Decker Bros. Concrete Products, Inc., mechanic lien claimants; Joseph Rolonick, So-

Order Directing Receiver to Sell Real Property

licitor for Morris Jaffee and New Jersey Wall Paper Co., mechanic lien claimants, and said G. Frank Shanley, Solicitor for Consolidated Securities Company, having applied in open court for a continuance of the argument on said Order to Show Cause to July 23, 1928, which application was granted by this Court. 10

And this matter now coming on to be heard on said July 23, 1928, in the presence of Samuel Tartalsky, of Counsel with Warren Dixon, Jr., Receiver, and in the presence of John H. Sheridan, Esq., of the firm of William F. Burke, and Joseph Rolonick, Solicitors, as aforesaid, and Louis R. Kagan, Solicitor for P. Goranson Dumb Waiter Co., mechanic lien claimants. 20

And it appearing from the petition and proofs heretofore filed herein and from the argument of counsel and the Court being of the opinion that the property of said Regna Construction Company, an insolvent corporation, was at the time of the appointment of said Receiver, and is at this time encumbered with mortgages or other liens, the legality of which have been brought into question and that the property is of a character materially to deteriorate in value pending the litigation concerning the extent and priority of said liens and that it would be to the best interests of the various creditors to sell the lands and premises and building thereon, together with the appurtenances in and about the same belonging to the above-named defendant company and more particularly described in said petition, free and 30 40

Order Directing Receiver to Sell Real Property

10 clear of liens and encumbrances, except a mortgage for \$8,000 held by Charles Enders, Jr., and Amelia Enders, his wife, and that the liens and equities of the respective parties shall attach to the proceeds of the said sale; and no cause being shown to the contrary, it is on this Twenty-third day of July, 1928, on motion of Samuel Tartalsky of Counsel with said Warren Dixon, Jr., Receiver.

20 Ordered, Adjudged and Decreed that the said Warren Dixon, Jr., Receiver, be and he is hereby authorized, empowered and directed to sell free and clear of all liens and encumbrances except a first mortgage held by Charles Enders, Jr., and Amelia Enders, said lands mentioned in said petition and therein described as follows, to wit:

30 All that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Overpeck, in the County of Bergen and State of New Jersey, Beginning on the southerly side of Mount Vernon Street at a point distant one hundred feet westerly from the southwesterly corner of Mount Vernon Street and Euclid Avenue, running thence (1) southerly, parallel with Euclid Avenue, one hundred and seventy-five hundredths of a foot (100.75) more or less, to the northerly line of lot number three (3) in block twenty-two (22) on a map hereinafter mentioned; thence (2) westerly along the north-
40 erly line of said lot number three (3) seventy-eight feet and three-tenths of a foot (78.3) more

Order Directing Receiver to Sell Real Property

or less, to the northwesterly corner of said lot number (3); thence (3) northerly along the rear lines of lots numbers one (1) and two (2) in block twenty-two (22) as shown on said map, one hundred and one feet (101) to the southerly line of Mount Vernon Street and thence (4) easterly along the southerly line of said Mount Vernon Street eighty feet and two-tenths of a foot (80.2) more or less to the place of beginning. Being all that part of lots numbers one (1) and two (2) in block twenty-two (22) on a map filed in the Bergen County Clerk's Office, September 18, 1867, entitled "Map of building lots in Ridgefield Park, belonging to the Ridgefield Land and Building Company," which lies westerly of a line drawn parallel with Central Avenue at a distance of one hundred (100) feet westerly *thereform*.

Together with the appurtenances thereto belonging, free and clear of all liens and encumbrances except the aforesaid mortgage for \$8,000.00 with interest thereon, held by Charles Enders, Jr., and Amelia Enders, his wife, and Municipal liens, at public or private sale for the highest and best price that the same will bring in cash, at such time and at such place and under such conditions as to the said Receiver shall seem best, subject, however, to confirmation of such sale by this court, as is by the statute in such case made and provided.

And it is further Ordered and Adjudged that the purchase price of the property so sold shall be held by the said Receiver subject to

*Petition of Consolidated Securities Corporation
to Apply Debt to Purchase Price*

10 the same liens and equities of all parties interested in the said properties sold as was the said property before sale, to be disposed of as this court shall hereafter direct.

And it is further Ordered and Adjudged by the said Court that all further equities of all persons whatsoever in and to the said premises are reserved.

Respectfully advised.

JAMES F. FIELDER, E. R. WALKER,
V. C. C.

20

**Petition of Consolidated Securities Corp. to
Apply Debt to Purchase Price, Filed Sep-
tember 10, 1928.**

To: Warren Dixon, Jr., Receiver of Regna
Construction Company, 210 Main Street, Hacken-
sack, N. J.

30

Sir:

40 Take Notice that on Monday, September 10th, 1928, at ten o'clock in the forenoon (daylight saving time), I shall present the attached petition to the Chancellor at Chancery Chambers, I Exchange Place, Jersey City, and shall, at that time, ask for an order in accordance with the prayer of the attached petition.

RINALDI & SHANLEY,
Solicitors of Petitioner.

*Petition of Consolidated Securities Corporation
to Apply Debt to Purchase Price*

The petition of Consolidated Securities Corporation, a corporation of New Jersey, respectfully shows:

1. The petitioner is the owner and holder of a mortgage made by Regna Construction Company dated September 30, 1927, to secure the sum of Thirty-thousand (\$30,000.00), Dollars, which mortgage was recorded in the Bergen County Clerk's Office on October 1, 1927 in Liber 989 of Mortgages, page 271. 10

2. Petitioner is also the owner and holder of another mortgage made by the said defendant corporation bearing date November 29, 1927, to secure the sum of Twenty Thousand (\$20,000.00) Dollars, which mortgage was on November 30, 1927, recorded in the Bergen County Clerk's Office in Book 1007 of Mortgages, page 260. 20

3. The first of said mortgages was due and payable on March 30, 1928, and bears interest at the rate of six per cent per annum from its date. The second of said mortgages was due on May 29, 1928, and bears interest at the rate of six per cent per annum from its date. 30

4. Both of said mortgages were given to secure payment of said sums mentioned, the said sums to be advanced in payment of materials and labor used in the erection and construction of the building upon the lands owned by the defendant in the above entitled cause situate on Mt. Vernön Street, Ridgefield Park, New Jersey. 40

5. That of the moneys secured by the mort-

*Petition of Consolidated Securities Corporation
to Apply Debt to Purchase Price*

10 gage first above mentioned, the sum of Eight
Thousand Seven Hundred Twenty-three Dollars
and Forty Cents (\$8,723.40) was actually ad-
vanced and paid to material men and laborers
for labor and materials furnished in the erection
of said building, and such payment has been
duly proved before the Receiver appointed in
this cause; that of the moneys advanced on the
mortgage secondly above mentioned, the sum
of Sixteen Thousand Seven Hundred Twenty-
five (\$16,725.00) Dollars has been actually ad-
vanced and paid for labor and materials used
20 in the erection of the said building, and such
payment has been duly proved before the Re-
ceiver appointed in this cause.

6. That attached hereto, marked Schedule
"A," is an itemized statement showing the pay-
ments on both of said mortgages as herein
alleged.

30 7. That by an order entered in the above
entitled cause, the Receiver appointed herein
has been directed to sell the mortgaged prem-
ises covered by the petitioner's two mortgages
and has duly advertised said sale to be held
September 15th, 1928, at two o'clock P. M. on
the premises. The said sale is, by order of this
court, directed to be free and clear of all liens
and encumbrances, excepting a first mortgage
40 in the sum of Eight Thousand (\$8,000.00) Dol-
lars and taxes and interest thereon, and said
sale to be free and clear of the lien of the
two mortgages owned and held by this petitioner.

*Petition of Consolidated Securities Corporation
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8. That the petitioner will be entitled to priority of payment of the amount due on its two mortgages out of the proceeds of said sale for the moneys actually advanced on its said mortgages and paid into the building for materials and labor used in the erection thereof. 10

9. The petitioner is informed and believes that the sum of Twenty-five Thousand Four Hundred Forty-eight Dollars and Forty Cents (\$25,448.40) as alleged by it to be paid into the building, is not in dispute and that upon a sale of said premises the petitioner will be entitled to be firstly paid the aforesaid sum out of the proceeds of said sale. 20

Petitioner therefore prays: that it may be by order of this court permitted to use the sum of Twenty-five Thousand Four Hundred Forty-eight Dollars and Forty Cents (\$25,448.40) now due on its mortgages as part payment of the purchase price for the premises to be sold by the Receiver in the event that it shall become the purchaser of said premises at the said sale, the balance of said moneys due on its said mortgages to be paid out of the balance of the proceeds of said sale, according to its right and priority over other claimants. 30

And Your Petitioner Will Ever Pray, &C.

RINALDI & SHANLEY,
Solicitors of Petitioner.

*Petition of Consolidated Securities Corporation
to Apply Debt to Purchase Price*

State of New Jersey,
County of Hudson, ss.:

10 Frank J. Rinaldi, of full age, being duly sworn according to law, upon his oath, deposes and says:

I am Secretary of the Consolidated Securities Corporation, a corporation of New Jersey. I am thoroughly familiar with the mortgages held by the said corporation upon the property belonging to the defendant in the above entitled cause and am authorized to make this affidavit on behalf of said corporation. I have read the foregoing petition and the facts therein stated are true. The statement attached to said petition, marked Schedule "A," of a part of the moneys advanced and paid on said mortgage loans to the defendant herein for materials and labor actually used in the erection and construction of the building erected on the lands of said defendant, is correct. That all of said payments were made by checks of the Consolidated Securities Corporation and I have in my possession cancelled checks endorsed by the various persons mentioned on said statement as having received said payments. All of said money claimed by the Consolidated Securities Corporation to be due in accordance with the petition attached hereto, is actually due and payable and the said corporation is entitled to priority of payment over all other claimants and will be entitled to be firstly paid out of the proceeds of a sale of the premises owned by the defendant herein.

FRANK J. RINALDI.

Sworn and subscribed to,
before me, this 29

day of August, 1928,

Humbert M. Felitti,

Notary Public of New Jersey.

*Petition of Consolidated Securities Corporation
to Apply Debt to Purchase Price*

SCHEDULE "A"

PAYMENTS ON ACCOUNT OF MORTGAGE LOAN TO
REGNA CONSTRUCTION COMPANY, dated September 30, 1927, to secure \$30,000. 10

Date	Name	Amount	
10/ 7/27	Chrishotin-Weisgenber	\$ 723.40	
10/14/27	Decker Bros.	500.00	
	West New York Stone Works	500.00	
	Gardner & Meeks Co.	500.00	
10/24/27	George M. Brewster	1,000.00	20
10/24/27	Junction Milling Co.	500.00	
	Henry Epstein	500.00	
10/31/27	Harry C. Leidinger	1,000.00	
	West New York Stone Works	600.00	
	Decker Bros.	500.00	
	Alfred Filippini	400.00	
11/18/27	West New York Stone Works	500.00	30
	Junction Milling Co.	500.00	
	Harry C. Leidinger	1,000.00	
	Total Advanced	<u>\$8,723.40</u>	

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*Petition of Consolidated Securities Corporation
to Apply Debt to Purchase Price*

PAYMENTS ON ACCOUNT OF MORTGAGE LOAN TO
REGNA CONSTRUCTION COMPANY, dated November
29, 1927, to secure \$20,000.

10	Date	Name	Amount
	12/ 2/27	Gardner & Meeks Co.	\$ 500.00
		Alfred Filippini	500.00
		Bogota Sheet Metal Works	400.00
		D. A. Verrastro	91.50
		Angelo Alessi	1,079.00
		Angelo Alessi	821.00
20		James T. Hunter	1,000.00
		Angelo Alessi	1,000.00
		Junction Milling Co.	500.00
		Alfred Filippini	250.00
		Angelo Alessi	1,000.00
		Hudson Co. Marble Co.	500.00
		Lipschitz Parquet Floor Co.	400.00
		James T. Hunter	500.00
30		Christiano Menis	500.00
		Hudson Co. Marble Co.	500.00
		James T. Hunter	500.00
		Christiano Menis	500.00
		Fred Dandrow	500.00
		D. A. Verrastro	91.50
		Henry Epstein	1,000.00
		Interest on Mortgage Loans	1,592.00
40		Henry Epstein	3,000.00
		Total advanced	<hr/> 16,725.00

Order Permitting Consolidated Securities Corp., to Apply Part of Debt to Purchase Price, Filed September 10, 1928.

Upon reading and filing the duly verified petition of Consolidated Securities Corporation in the above entitled cause, it appearing that due notice has been given to Warren Dixon, Jr., Receiver appointed in the above entitled cause; and arguments of counsel having been heard in the presence of G. Frank Shanley, representing Solicitors of said petitioner, and Samuel Tartalsky, representing Solicitors of said Receiver; and it appearing that the petitioner is entitled to the relief prayed for in its petition and the aforesaid receiver, by his solicitor consenting hereto as appears by consent hereto attached. 10 20

It is, on this 10th day of September, 1928, Ordered, that the petitioner, Consolidated Securities Corporation, be permitted to use the sum of Twenty-one Thousand Six Hundred Seventy-three and Forty One-hundredths (\$21,673.40) Dollars, part of the moneys due on its mortgages made by the defendant in the above entitled cause, as part of the purchase money or consideration for the premises formerly belonging to the defendant corporation, to be sold by the Receiver herein, in the event that it shall become the purchaser of said premises at said Receiver's sale; its lien of the balance of said moneys due on its mortgages to attach to the balance of the proceeds of said sale according to its right and priority over other claimants. 30 40

It is further Ordered, that in the event of said petitioner becoming the purchaser at said

Order Permitting Consolidated Securities Corporation to Apply Part of Debt to Purchase Price

10 sale, the aforesaid sum shall be considered as a deposit on the purchase price, and in such event the claim of the said petitioner filed with the receiver herein be reduced by the sum aforesaid. This order is advised by the undersigned because of the absence without the State of Vice-Chancellor James F. Fielder, who made all previous orders in the above entitled cause.

E. R. WALKER,
C.

20 Respectfully advised,
JOHN J. FALLON,
V. C.

I hereby approve of the foregoing Order as to form.

SAMUEL TARTALSKY,
Solicitor of Receiver.
WARREN DIXON, JR.

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**Receiver's Report of Sale, Filed September 21,
1928.**

In pursuance of an order made by the Chancellor in the above stated cause and dated July 23, 1928, by which it was, among other things, Ordered, Adjudged and Decreed, that the undersigned, the receiver of the above named defendant company should proceed to make sale of all and singular the lands and premises in the said order for sale particularly mentioned and described together with the appurtenances thereto belonging, free and clear of all liens and encumbrances except a certain mortgage for \$8000, with interest thereon held by Charles Enders Jr. and Amelia Enders, his wife, and municipal liens, in the said order particularly mentioned and set forth, at public or private sale, as, in the discretion of the undersigned receiver might seem best and most for the benefit and advantage of all the parties interested therein, for the highest and best price obtainable that could be obtained therefor:

I, Warren Dixon Jr., Receiver as aforesaid, do hereby report to his Honor, the Chancellor, that I did, by public advertisements, signed by myself, cause the same to be published in the Bergen Evening Record and Ridgefield Park Bulletin, two of the newspapers printed and published in the County of Bergen in which said real estate is situate. The said Bergen Evening Record being a newspaper printed and published at Hackensack, the County seat of said Bergen County, and the said Ridgefield Park Bulletin being a newspaper printed and published in Ridgefield Park the municipality

Receivers' Report of Sale

in which the said real estate is situate and also caused the same to be published in the Jersey Observer, a newspaper printed and published in the County of Hudson. Said publications being
10 made at least five weeks successively, once a week next preceding the time appointed for said sale, gave public notice that the aforesaid lands and real estate of the said defendant company, together with the appurtenances would be exposed for sale at public vendue on September 15, 1928, at two o'clock in the afternoon (Daylight Saving Time), on the premises in said
20 notice described, a copy of which notice is hereto annexed and made part hereof, together with the affidavits of publication thereof.

That on said September 15, 1928, at two o'clock in the afternoon on the premises at the time and place fixed for such sale in said notice I did publicly adjourn the sale of the said premises to September 19, 1928, at the hour of two o'clock in the afternoon (Daylight Saving Time) on the premises. The reason for said
30 adjournment being that said September 15, 1928, was a holiday observed by persons of the Jewish Faith, many of whom were interested in the said premises by reason of being creditors of the defendant corporation.

I further report that on September 19, 1928, at about two o'clock in the afternoon (Daylight Saving Time) on the premises, at the time and place appointed for the said sale, in my discretion deeming a public sale of said lands
40 and other premises most for the benefit and

Receivers' Report of Sale

advantage of all parties interested therein, I
 did expose the said lands and premises to sale
 at public vendue to the highest bidder in the
 manner advertised, after having read the order
 for sale and the terms thereof, and John H. 10
 Sheridan and Mervin Herzfeld, both of Union
 City, Hudson County, New Jersey, then and
 there bid therefor the sum of \$96,500.00, sub-
 ject and assuming the payment of the aforesaid
 mortgage held by Charles Enders and Amelia
 Enders, his wife, for \$8,000.00 with interest
 thereon from December 26, 1926, subject also
 to municipal taxes against the said premises 20
 for the years 1927 and 1928, amounting ap-
 proximately to the sum of \$594.72, water taxes
 amounting approximately to \$20.00, assessment
 amounting to \$166.80 with interest of approxi-
 mately \$10.00 thereon and subject also to a
 snow and ice assessment for \$1.25 and which
 were announced at said sale and no one bidding
 so much or more the said lands and premises
 were struck off and sold to the said John H.
 Sheridan and Mervin Herzfeld for the price 30
 aforesaid, subject to confirmation of such sale by
 this court on October 1, 1928, a copy of the
 said terms of sale and the acceptance thereof
 by the said vendees being hereto annexed and
 made part hereof.

Dated, September 21, 1928.

WARREN DIXON, JR.,
 Receiver.

Receivers' Report of Sale

State of New Jersey,
County of Hudson, ss.

10 Warren Dixon, Jr., being duly sworn according to law on his oath deposes and says: I am the Receiver of the Regna Construction Company the defendant named in the foregoing action, having been duly appointed and qualified as such; that by order dated July 23, 1928, I was authorized and directed to sell the lands and premises described therein, free and clear of all liens and encumbrances except a mortgage for \$8000.00 held by Charles Enders and Amelia
20 Enders, his wife, and municipal liens and in accordance with the terms of said order I caused public advertisements to be made of said sale as is set forth in my report hereto annexed; said sale was originally set for September 15, 1928, at two o'clock in the afternoon (Daylight Saving Time) on the premises but at said time and place I adjourned the said sale to September 19, 1928, at two o'clock in the
30 afternoon (Daylight Saving Time) I deeming the adjournment for the best of all parties interested in said corporation because said date was a Jewish Holiday and by reason thereof many creditors of the defendant corporation who are of the Jewish Faith would have been unable to attend. On September 19, 1928, at about two o'clock in the afternoon on the
40 premises I made public sale of the lands and premises and appurtenances thereunto belonging, to John H. Sheridan and Mervin Herzfeld for the sum of \$96,500.00 they taking the said

Receivers' Report of Sale

premises subject to and assuming the payment of the mortgage held by Charles Enders and Amelia Enders, his wife, for \$8000.00 with interest thereon from December 26, 1926, subject also to municipal taxes against the said premises for the years 1927 and 1928, amounting approximately to the sum of \$594.72, water taxes amounting approximately to \$20.00 assessment amounting to \$166.90 with interest of approximately \$10.00 thereon and subject also to a snow and ice assessment for \$1.25; in accordance with the order and terms of sale which I read to the persons present prior to such sale. 10

The said sum of \$96,500.00 subject to the mortgage and municipal liens, hereinbefore set forth, was the highest and best price obtainable and no other person bid as much or more for the said premises. The first bid made was \$50,000.00 and successive bids were made by various parties until the said bid of \$96,500.00 was made by the said John H. Sheridan and Mervin Herzfeld; said sum being the highest investment price; I struck the said premises off to them, subject, however, to confirmation of such sale by this Court. At the time of said sale the said John H. Sheridan and Mervin Herzfeld paid the sum of \$4825.00 to me as Receiver, said sum being 5% of the purchase price and being also in accordance with the terms of sale and advertisement thereof. Annexed hereto and made part hereof is a true copy of the terms of sale which were read at the time of sale together with memorandum of purchase by the vendees; 20 30 40

Receivers' Report of Sale

10 In my opinion the said bid of the said John H. Sheridan and Mervin Herzfeld should be accepted and approved by the court and said sale confirmed, said sum being the highest and best price obtainable and being for the best interest of all parties interested in this cause. Prior to the sale I received but one written offer of purchase and that was for \$90,000 and was made by Consolidated Securities Company. I received no other offers of purchase other than those made at the time of the sale.

WARREN DIXON, JR.

20 Sworn and subscribed to
before me at Jersey City,
this September 21, 1928,
Joseph M. Milberg,
Atty. at Law,
of N. J.

30 TERMS OF SALE OF PROPERTY OF REGNA
CONSTRUCTION COMPANY

Time of Sale—September 19th, 1928 at about 2 P. M.

Place of Sale—On Premises—#101 Mt. Vernon Street, Ridgefield Park, N. J.

40 I, Warren Dixon, Jr., Receiver of Regna Construction Company, an insolvent New Jersey Corporation, having duly qualified as such Receiver after appointment by the Chancellor of the State of New Jersey, hereby offer for sale the

Receivers' Report of Sale

lands and premises hereinafter particularly described upon which is erected a thirty-two family brick apartment building, commonly known as No. 101 Mount Vernon Street, Ridgefield Park, New Jersey, particularly thus described:

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ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Overpeck (Village of Ridgefield Park) in the County of Bergen and State of New Jersey. BEGINNING on the southerly side of Mount Vernon Street at a point distant one hundred feet westerly from the southwesterly corner of Mount Vernon Street and Euclid Avenue, running thence (1) southerly parallel with Euclid Avenue, one hundred and seventy-five hundredths of a foot (100.75) more or less, to the northerly line of lot number three (3) in block twenty-two (22) on a map hereinafter mentioned; thence (2) westerly along the northerly line of said lot number (3) seventy-eight feet and three-tenths of a foot (78.3) more or less, to the northwesterly corner of said lot number three (3); thence (3) northerly along the rear lines of lots numbers one (1) and two (2) in block twenty-two (22) as shown on said map, one hundred and one foot (101) to the southerly line of Mount Vernon Street and thence (4) easterly along the southerly line of said Mount Vernon Street eighty feet and two-tenths of a foot (80.2) more or less to the place of beginning. Being all that part of lots numbers one (1) and two (2) in block twenty-two (22) on a map filed in the Bergen County Clerk's Office, September 18, 1867, en-

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Receivers' Report of Sale

titled "Map of building lots in Ridgefield Park, belonging to the Ridgefield Land and Building Company" which lies westerly of a line drawn parallel with Central Avenue at a distance of one hundred (100) feet westerly therefrom.

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Together with the appurtenances thereto belonging.

In accordance with the terms of an order of the Court of Chancery of New Jersey dated July 23rd, 1928, this sale is to be made free and clear of all liens and encumbrances except a mortgage for Eight thousand (\$8,000) Dollars with interest thereon from December 26, 1926, and municipal taxes for the years 1927 and 1928 amounting approximately to the sum of \$594.72 and water taxes amounting to approximately \$20 assessment \$166.80 interest approximatly \$10.00, snow and ice assessment about \$1.25.

20

Said mortgage for \$8,000 is held by Charles Enders and Amelia Enders and is recorded in the Bergen County Clerk's Office in Book 900 page 1 and premises are sold subject to this mortgage and the aforesaid taxes, water rents and assessments aforesaid which purchaser assumes.

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Sale is made subject to confirmation by the Court of Chancery application for which will be made before the Chancellor at the Chancery Chambers Jersey City, New Jersey, at ten o'clock in the forenoon on October 1st, 1928 receiver's deed to be delivered in accordance with aforesaid terms thirty (30) days thereafter.

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Receivers' Report of Sale

Five per cent of purchase price required to be paid by successful bidder when property struck off.

WARREN DIXON, JR.,
Receiver. 10

MEMORANDUM OF PURCHASE

This is to Certify that we have this day purchased at public sale the premises described herein for the sum of Ninety-six thousand five hundred dollars. We do promise and agree to comply with the above terms and conditions of sale upon confirmation of sale by the Court. 20

Dated September 19th, 1928.

JOHN H. SHERIDAN
MERVIN HERZFELD.

Note: Omitted from this copy, are the three (3) Newspaper affidavits of publication together with the printed notice attached thereto, which are attached to original copy filed in this cause. 30

**Order to Show Cause Why Sale Should Not
be Confirmed, Filed September 21, 1928.**

10 Upon reading and filing the report made in
the above stated cause by Warren Dixon, Jr.,
Receiver of Regan Construction Company, bear-
ing date the Twenty-first day of September, 1928,
by which it appears that in pursuance of an or-
der made by the Chancellor herein and dated
on the Twenty-third day of July, 1928, by which
it was, among other things, ordered, adjudged
and decreed that the said receiver make sale
of the real property, together with the appur-
tenances, in said order for sale mentioned and
described, at public sale as in the discretion of
20 the said receiver might seem best and most for
the benefit and advantage of all of the parties
interested therein, for the highest and best price
that could be obtained therefor, and the said
receiver having made report of such sale to this
court, from which said report it further appears
that the said receiver has given public notice of
the time and place when and where the said lands
together with the appurtenances would be ex-
posed to sale at public vendue, which was fixed
30 for September 15, 1928 at two o'clock in the
afternoon, at which time the said receiver in his
discretion did adjourn the said sale to Septem-
ber 19, 1928, at two o'clock in the afternoon at
the place so appointed and advertised, in his dis-
cretion, the said receiver deeming a public sale of
said lands and appurtenances most for the bene-
fit and advantage of all the parties interested
40 therein, did expose the said lands and premises
together with the appurtenances to sale at public
vendue to the highest bidder in the manner ad-
vertised, and said receiver having read to the

*Order to Show Cause Why Sale Should Not Be
Confirmed*

persons present the Order of Sale dated July 23, 1928, together with the terms of sale, and John H. Sheridan and Mervin Herzfeld, both of Union City, Hudson County, New Jersey, then and there bidding therefor the sum of \$96,500.00, subject and assuming the payment of the mortgage held by Charles Enders and Amelia Ender, his wife, for \$8,000.00 with interest thereon from December 26, 1926, subject also to municipal taxes against the said premises for the years 1927 and 1928 amounting approximately to the sum of \$594.72, water taxes amounting approximately to \$20.00, assessment amounting to \$166.80 with interest of approximately \$10.00 thereon and subject also to a snow and ice assessment for \$1.25, and no one bidding so much or more for the same, the said premises were struck off and sold to them, the said John H. Sheridan and Mervin Herzfeld for the price and upon the terms aforesaid.

And it appearing by affidavit that the property was sold at the highest and best price the same would then bring in cash;

It is, thereupon on this 21st day of September 1928, on motion of Samuel Tartalsky of Counsel with the said receiver, Ordered that all and any of the stockholders and creditors of the said defendant company, do show cause before the Chancellor at the Chancery Chambers, Jersey City, on the First Day of October, 1928, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the said receiver's report, and all the matters and things therein contained should not be ratified and confirmed and the said receiver directed to make, execute and deliver to said John H. Sheridan and Mervin

*Order to Show Cause Why Sale Should Not Be
Confirmed*

10 Herzfeld in compliance with the aforesaid order, a good and sufficient conveyance in the law for the said premises, and the appurtenances thereunto belonging, so purchased by them, free and clear of all liens and encumbrances except the aforesaid mortgage of \$8,000.00 held by Charles Enders and Amelia Enders, his wife, with interest thereon from December 26, 1926, subject also to municipal taxes against the said premises for the years 1927 and 1928 amounting approximately to the sum of \$594.72, water taxes amounting approximately to \$20.00, assessment amounting to \$166.80 with interest of approximately \$10.00, thereon and subject also to a snow and ice assessment for \$1.25, upon their compli-
20 ances with the conditions of said sale.

And it is further Ordered, Adjudged and Decreed that true copies of this Order, which may be certified by Counsel for the Receiver, be served upon each and every one of the stockholders and creditors of the said defendant company within four days from the date thereof, by service upon them personally, or upon their several and respective solicitors, or by mailing one of said copies to each of them, directed to it, him or her at its, his or her post office address, if the same can be ascertained, with the postage prepaid.

Respectfully advised

E. R. WALKER

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C.

JOHN J. FALLON
V. C.

**Notice of Petition of Domestic Electric Co.,
Inc., Claiming Chattels, Filed October 6,
1928.**

To Samuel Tartalsky, Esq.,
Counsel for Receiver.

Sir:

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Please Take Notice, that on Monday, October 1, 1928, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, we will apply to the Chancellor at the Chancery Chambers, Jersey City, New Jersey, for the relief prayed for in the petition annexed hereto and made a part hereof.

Dated, September 28, 1928.

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GREEN & GREEN,
Solicitors for Petitioner, Domestic
Electric Co., Inc.

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Petition of Domestic Electric Co., Inc., Claiming Chattels, Filed October 6, 1928.

To the Honorable Edwin Robert Walker,
Chancellor of the State of New Jersey:

10 The petition of Domestic Electric Co., Inc., a corporation of the State of New York, duly licensed to do business in the State of New Jersey, and having its principal office in New Jersey in the City of Newark, County of Essex and State of New Jersey, respectfully shows and alleges that:

1. It is engaged in the business of selling refrigerating equipment.
- 20 2. On or about May 25, 1928, it made a conditional sale contract with the defendant corporation for the furnishing and delivery of goods described in Schedule "A" annexed hereto and made a part hereof, in the apartment house building located at 93-95 Vernon Street, Ridgefield Park, Bergen County, New Jersey, for the sum of \$3,050.00. Defendant corporation paid nothing thereon.
- 30 3. Petitioner's equipment was and is personal property and are not so affixed to the realty as to become part thereof, and the same are easily removable from the building without doing any damage whatsoever to said building or to said equipment.
- 40 4. Petitioner furnished said goods pursuant to and in accordance with the terms and conditions of said contract, and became entitled to payment aforesaid, less \$360.00, or \$2,690.00. Said contract provided, *inter alia*, that petitioner does

*Petition of Domestic Electric Co., Inc., Claiming
Chattels*

not relinquish its title to equipment described herein and title shall not pass to defendant corporation until such purchase price is paid in full, and until such payment has been made said equipment shall be and remain the property of the petitioner. 10

5. Receiver has made application to this Court, returnable on Monday, October 1, 1928, for an order confirming sale of premises free and clear of petitioner's rights in and to said chattels.

Wherefore, your petitioner prays that the sale of the real estate, if confirmed, be confirmed expressly subject to the conditional sale contract between petitioner and defendant corporation and the amount due thereon of \$2,690.00, with interest, and that the purchaser of the realty must pay petitioner for said equipment if purchaser desires to retain the same, otherwise it is desirous of having and taking possession of said equipment, and your petitioner respectfully objects to the sale of the real estate inclusive of its chattels other than hereinabove stated. 20 30

And your petitioner will ever pray, etc.

Dated, September 28th, 1928.

DOMESTIC ELECTRIC CO., INC.,

By CONSTANT M. EAKIN

Asst. Treas.

Petitioner.

GREEN & GREEN,
Solicitors for Petitioner. 40

*Petition of Domestic Electric Co., Inc., Claiming
Chattels*

State of New York,
County of New York, ss:

10 Constant M. Eakin, of full age, being duly
sworn according to law on his oath deposes and
says that:

1. I am Asst. Treas. of petitioner named in the
foregoing petition. I am authorized to make this
affidavit on behalf of said petitioner and I am
personally familiar with the facts therein con-
tained.

20 2. I have read said petition and the same is
true to the best of my knowledge, information
and belief.

CONSTANT M. EAKIN.

Sworn and subscribed to before me,
a Notary Public of the State of New York,
at New York, N. Y., this 28th day of
September, 1928

Francis J. Lewis,
Notary Public,

30 Kings County.

Kings Co. Clk's No. 268, Reg. No. 410.
N. Y. Co. Clk's No. 674, Reg. No. 0-458.
Term expires March 30, 1930.
(L. S.)

Schedule "A"

40 30 Frigidaire cabinets
5 T F coils
2 "C" Compressors

**Report of Receiver on Claim of Domestic
Electric Co., Filed October 15, 1928.**

In pursuance of an order made by the Chancellor in the above entitled cause and dated June 28, 1928, by which I was appointed Receiver of Regna Construction Company, I qualified as such receiver, and in accordance with the statute in such case made and provided I received claims of creditors of said insolvent corporation. 10

Domestic Electric Co., Inc., made claim against the corporation to the title to Thirty (30) certain Frigidaire Cabinets; Thirty (30) Coils in said Cabinets and Two (2) Compressors. Annexed hereto and made part hereof is a stipulation of facts entered into between Green & Green, Solicitors for Domestic Electric Co., and Samuel Tartalsky of Counsel with Receiver. It is stipulated that the said goods were sold to the defendant on October 28, 1927, by conditional sales contract duly entered into. The said equipment was sold as personalty but the same was so affixed to the realty as to become part of it, but to be severable without material injury to the freehold. In the contract the title was reserved by the Domestic Electric Co., Inc., until the sum of \$2,690.00 was paid. No part of said sum was paid. 20 30

It also appears that it was not until September 28, 1928, that said conditional sales contract was filed in the Bergen County Clerk's Office. This contract was recorded after the said equipment was affixed in said building. Section 7 of the 40

Report of Receiver on Claim of Domestic Electric Co.

10 Uniform Conditional Sales Act, 2 Comp. State. 1911-1924, provided that the reservation of title shall be void as against the owner unless a contract or copy thereof be filed in the Office of the Clerk of the county where the realty is situate before the said goods are affixed. Such reservation of title if void as against the owner would likewise be void as against the receiver. I therefore reject the claim of the Domestic Electric Co., Inc., to the title as against the owner for the reasons stated and I respectfully report
20 that the said Domestic Electric Co., Inc., is only entitled to a claim against the said corporation for \$2,690.00 as a general creditor.

Respectfully submitted,

WARREN DIXON, JR.,

Receiver.

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Stipulation of Facts.

It is hereby stipulated by and between Green & Green, Solicitors for Domestic Electric Co., Inc., and Samuel Tartalsky, of Counsel with Warren Dixon, Jr., Receiver of Regna Construction Company, an insolvent corporation, as follows: 10

1. That Warren Dixon, Jr., was on June 22, 1928, appointed Custodial Receiver and on June 28, 1928, appointed Permanent Receiver of Regna Construction Company, an insolvent corporation, by the Chancellor of New Jersey. That said Receiver has duly qualified and is acting as such.

2. That the corporation was the owner of a certain 32-family brick apartment known as No. 101 Mount Vernon Street, Ridgefield Park, Bergen County, New Jersey, and that the construction of said building was commenced in the early part of September, 1927. 20

3. That Domestic Electric Co., Inc., hereinafter referred to as petitioner was engaged in the business of selling Frigidaire equipment. 30

4. That on or about October 28, 1927, it made a conditional sales contract with the defendant corporation for the furnishing and installation of 30 Frigidaire Cabinets, 30 Coils in said Cabinets and 2 Compressors. 40

5. Said Frigidaire Equipment when sold was personalty but the same was so affixed to the realty as to become part of it, but to be severable without material injury to the freehold. 40

6. Petitioner furnished said Frigidaire Equipment pursuant to and in accordance with the

Stipulation of Facts

10 terms and conditions of said contract and became entitled to payment in the sum of \$2,690.00. Said conditional sales contract provides that petitioner does not relinquish said title to equipment described therein and title shall not pass
 20 to defendant corporation until the purchase price is paid in full, and until such payment has been made, said equipment shall be and remain the property of the petitioner. Said contract or copy thereof was not filed in the County Clerk's Office of Bergen County, New Jersey, until September 28, 1928, which was after the date of the filing of the bill and appointment of the receiver, and which was after the said equipment was affixed in said building.

The following judgments were recovered against the corporation, some of which were general judgments and other for mechanic liens which will be set out hereinafter:

- 30 (a) January 28, 1928, Tidewater Coal & Supply Co., damages \$1,234.12, costs \$53.78, total \$1,287.90.
- (b) March 12, 1928, Highwood Coal Company, in the Bergen County Circuit Court, damages \$2,564.16, costs \$65.29, total \$2,629.45;
- (c) April 3, 1928, Highwood Coal Company Bergen County Circuit Court, damages \$1,311.17, costs \$67.68, total \$1,378.85;
- 40 (d) April 11, 1928, Building Supply Company of Englewood, New Jersey, Inc., in Bergen County Circuit Court, damages \$2,004.19, and costs.

The above judgments are general judgments.

Stipulation of Facts

(e) June 13, 1928, Decker Bros. Inc., damages \$2,787.50, costs \$69.38, total \$2,856.88. This is a special judgment against the lands and premises above referred to having been filed by a mechanic lien claimant.

10

(f) August 17, 1928, Junction Milling Co., damages \$5,133.00, costs \$65.53, total \$5,198.53. This also is a special judgment having been recovered by the plaintiff who furnished materials in the said building.

There are various lien claims which have been filed in the Bergen County Clerk's Office by persons who have furnished labor and materials in said premises which were not prosecuted further by reason of the restraining order made in this cause.

20

7. The said realty was sold pursuant to order of this court on September 19, 1928, and this matter comes on to be heard at the time application was made for confirmation of the sale, said Domestic Electric Co., Inc., claiming title to said Frigidaire Equipment and the right to the removal thereof unless the sum of \$2,690.00 is paid.

30

8. The Receiver contends that the reservation of title is void and that the said claimant is entitled only to a general claim for the sum mentioned in the petition.

Dated, October 1, 1928.

GREEN & GREEN,
Sol'rs, for Domestic Electric Co., Inc.,
Samuel Tartalsky,
Of Counsel with Receiver.

40

**Supplemental Stipulation of Facts *re* Claim
of Domestic Electric Co., Filed October
29, 1928.**

This stipulation supplements stipulation of facts entered into by and between Green & Green, solicitors for Domestic Electric Co., Inc., and Samuel Tartalsky, of counsel with Warren Dixon, Jr., Receiver of Regna Construction Company, the insolvent defendant corporation, so as to set forth the existence of the realty mortgages against said real estate described in paragraph two of the stipulation of facts, and also when the frigidaire equipment called for by the conditional sale contract between petitioner and defendant corporation were delivered to said premises.

It is further stipulated and agreed that the frigidaire equipment called for by the conditional sale contract between petitioner, Domestic Electric Co., Inc., and the defendant corporation, which contract was dated October 28, 1927, were delivered to the premises on March 30, 1928, and said equipment was completely installed by May 12, 1928.

It is further stipulated and agreed that the Consolidated Securities Corporation is the owner and holder of two mortgages affecting said premises. One of said mortgages is dated September 30, 1927, and was recorded in the Bergen County Clerk's Office on October 1, 1927, and was given to secure the sum of \$30,000.00; and the other mortgage is dated November 29, 1927, was recorded on November 30, 1927, in

*Supplemental Stipulation of Facts re Claim of
Domestic Electric Co.*

the same office and was given to secure the sum of \$20,000.00; and that said mortgages were given as security for moneys to be advanced by the mortgagee from time to time in the construction of said building, the first of said mortgage moneys having been advanced on September 30, 1927, and the last of said moneys advanced in February, 1928. 10

It is further stipulated and agreed that this supplemental stipulation shall be considered by the Court on the pending applications as if this supplemental petition was before the Receiver and the Court at the time of argument.

GREEN & GREEN, 20

Solicitors for Petitioner,
Domestic Electric Co., Inc.

SAMUEL TARTALSKY,
Counsel for Receiver,
Warren Dixon, Jr.

30

40

**Order Overruling Receiver's Report on
Claim of Domestic Electric Co., Filed July
5, 1929.**

10 It appearing to the court that by order dated
June 28, 1928, Warren Dixon, Jr., was appointed
Receiver of Regna Construction Company, an
insolvent corporation the defendant herein, and
that Domestic Electric Company made claim
against the defendant Regna Construction Com-
pany to the title to thirty certain Frigidaire
Cabinets, Coil and Compressors under a con-
ditional sales contract dated October 28, 1927,
which was not filed until after the appointment
of the Receiver herein on September 28, 1928,
20 in the Bergen County Clerk's Office and affixed
and installed in a certain building owned by the
defendant in the Town of Ridgefield Park, Ber-
gen County, New Jersey, May 12, 1928. And
the receiver having taken testimony and re-
ported that the consideration of \$2690.00 re-
mained unpaid to the Domestic Electric Com-
pany, but that said Domestic Electric Company
was entitled to payment as a general creditor
from the funds of the Regna Construction Com-
30 pany and the receiver reporting that the reserva-
tion of title was waived by reason of non-com-
pliance with the statute relating to conditional
sales; and

It further appearing that the said lands and
premises of the said Regna Construction Com-
pany are encumbered with two mortgages held
by the Consolidated Securities Company one in
the sum of \$30,000.00 dated September 30, 1927,
recorded October 1, 1927; another for \$20,000.00
40 dated November 29, 1927, recorded November
30, 1927, and encumbered with a further mort-

*Order Overruling Receiver's Report on Claim
of Domestic Electric Co.*

gage held by Harry C. Leidinger dated August 31, 1927, recorded on November 30, 1927, which mortgage was postponed to the lien of the afore-
said mortgage of the Consolidated Securities
Company; and it further appearing that there
are various judgments against the lands and
premises of the defendant corporation based
upon mechanic lien claims. 10

And the said Domestic Electric Company
having appealed to this court from the deter-
mination and decision of the said receiver and
the matter having been argued before this court
by Samuel Tartalsky of counsel with Receiver,
and Rinaldi & Shanley, solicitors for and of
counsel with Consolidated Securities Co. and
Green & Green, solicitors for and of counsel with
Domestic Electric Company and the court
having considered the matter and filed its opin-
ion, 20

It is, on this first day of July, 1929, ordered
that the determination of the said Receiver be
and the same is hereby set aside, reversed and
vacated; and 30

It is Ordered that the Receiver pay Domestic
Electric Company from the proceeds of sale of
said premises the sum of \$2690.00 together with
interest in the sum of \$53.80, in preference of
said Consolidated Securities Company and
Harry C. Leidinger, mortgagees and mechanic
lien claimants.

Respectfully advised

E. R. WALKER

JOHN J. FALLON
V. C.

40

We consent to entry of this order.

GREEN & GREEN,
Solrs. for Domestic Elec. Co., Inc.

**Petition of J. Rose & Co., Inc., Claiming
Chattels, Filed September 18, 1928.**

The petition of J. Rose & Co., Inc., a corporation, respectfully shows and alleges that:

10 1. On or about December 23rd, 1927, it sold conditionally to the Regna Construction Co., a corporation, 26—#822 Gas Ranges for an agreed price of \$936.00.

2. By the terms of said sale, title was expressly reserved in this petitioner until the full amount of \$936.00 had been paid.

20 3. The conditional sales contract was duly filed with the Register of Bergen County on or about March 22nd, 1928, and a copy of said contract is annexed hereto and made a part hereof and marked Schedule "A."

4. Said Regna Construction Co. was constructing a certain apartment house located at Mt. Vernon Street near Euclid Avenue, Ridgefield Park, New Jersey.

5. Payment of said \$936.00 was guaranteed by Domenico Giardano and Fred Regna.

30 6. The said gas ranges were delivered on April 4th, 1928.

7. Said gas ranges were duly installed in the aforementioned apartment house, which apartment house was owned by the Regna Construction Co.

40 8. Demand for payment of the sum of \$936.00 was made immediately after the last date upon

Petition of J. Rose & Co., Inc., Claiming Chattels

Domenico Giardano, Fred Regna and Regna Construction Co., but payment has been refused.

9. Warren Dixon, Jr., was subsequently appointed receiver of said Regna Construction Co. and took possession of the aforementioned apartment house and payment of the balance was thereupon demanded from him, which balance was refused although said gas ranges were duly installed in the aforementioned apartment house and are in the possession of the said receiver. 10

10. Your petitioner has elected to retain title to said gas ranges and had demanded possession of same from the aforementioned receiver, but said possession has been denied by said receiver. 20

11. Your petitioner was not informed until August 21st, 1928, that the said Warren Dixon, Jr., aforementioned had been appointed receiver of the defendant company, said petitioner having received no notices of any of the receivership proceedings. Your petitioner thereupon immediately engaged the firm of Meisterman & Katchen to take action to protect its interests, and your petitioner through the said attorneys, has ascertained that an order was made by this Honorable Court on July 23rd, 1928, under the terms of which order the receiver was authorized to sell the premises in his possession in the aforementioned, free and clear of all liens and encumbrances excepting a ground mortgage of Eight Thousand Dollars. 30

12. Your petitioner was not a party to said order and received no notice of the application. 40

Petition of J. Rose & Co., Inc., Claiming Chattels

Wherefore your petitioner respectfully prays:

10 That this Honorable Court make an order directing the receiver to show cause why the order for sale heretofore made by this Court dated July 23rd, 1928, should not be re-opened and amended so as to provide that the sale to be held shall not be free and clear of petitioner's lien, if any, but subject to such lien.

20 Your petitioner further prays that this Honorable Court make an order decreeing that the aforementioned receiver have no right to, interest in, or lien on the aforementioned gas ranges and that the said receiver be restrained from removing or attempting to sell the aforementioned gas ranges until the further order of this Court, and that the petitioner be authorized to enter said apartment house and re-take possession of said gas ranges.

And your petitioner will ever pray, &c.

J. ROSE & CO., Inc.,

Petitioner.

MEISTERMAN & KATCHEN,

30

Solicitors for Petitioner.

Petition of J. Rose & Co., Inc., Claiming Chattels

State of New York,
County of New York, ss:

Julius Rose of full age, being duly sworn according to law, on his oath, deposes and says: 10

1. I am the President of the aforementioned petitioner, J. Rose & Co., Inc., a corporation.

2. I have read the attached petition and I believe the facts therein set forth to be true.

3. On or about December 23, 1927, it sold conditionally to the Regna Construction Co., a corporation, 26—#822 Gas Ranges for an agreed price of \$936.00. 20

4. By the terms of said sale, title was expressly reserved in this petitioner until the full amount of \$936.00 had been paid.

5. The conditional sales contract was duly filed with the Register of Bergen County on or about March 22nd, 1928, and a copy of said contract is annexed hereto and made a part hereof and marked Schedule "A." 30

6. Payment of said \$936.00 was guaranteed by Domenico Giardino and Fred Regna.

7. The said gas ranges were delivered on April 4th, 1928.

8. Said gas ranges were duly installed in the aforementioned apartment house, which apartment house was owned by the Regna Construction Co. 40

9. A demand for payment of the sum of \$936

*Petition of J. Rose & Co., Inc., Claiming Chat-
tels*

was made immediately after the last date upon Domenico Giardino, Fred Regna and Regna Construction Co., but payment has been refused.

10 10. Warren Dixon, Jr., was subsequently appointed receiver of said Regna Construction Co. and took possession of the aforementioned apartment house and payment of the balance was thereupon demanded from him, which balance was refused although said gas ranges were duly installed in the aforementioned apartment house and are in the possession of the said receiver.

20 11. The said J. Rose & Co., Inc., has elected to retain title to said gas ranges and has demanded possession of same from the aforementioned receiver, but said possession has been denied by said receiver.

30 12. The said J. Rose & Co., Inc., was not informed until August 21st, 1928, that the said Warren Dixon, Jr., aforementioned had been appointed receiver of the defendant company, said J. Rose & Co., having received no notices of any of the receivership proceedings. The said J. Rose & Co., Inc., thereupon immediately engaged the firm of Meisterman & Katchen to take action to protect its interest, and J. Rose & Co., Inc., through the said attorneys has ascertained that an order was made by this Honorable Court on July 23rd, 1928, under the terms of which order the receiver was authorized to sell the premises in his possession in
40 the aforementioned, free and clear of all liens

Petition of J. Rose & Co., Inc., Claiming Chattels

and encumbrances excepting a ground mortgage of Eight Thousand Dollars.

13. The said J. Rose & Co., Inc., was not a party to said order and received no notice of the application. 10

JULIUS ROSE.

Sworn and subscribed to before me this

18th day of September, A. D. 1928.

Joseph N. Kessler,

Notary Public.

New York Co. Clk's No. 634.

Term expires March 30, 1920.

20

Schedule A

J. ROSE & COMPANY, INC.,

114 WEST 39TH STREET,

New York City.

30

Dec. 23, 1928.

Sold to Regna Const. Co., Inc. via Truck
Office Address 229 23 St., West New York
N. J.

When Feb 1st

Phone Palisade 2602

Salesman Kessler

Terms:—Each invoice due and payable when ranges are delivered, One-half thereof in cash, the balance in three notes of equal amounts with 40

Petition of J. Rose & Co., Inc., Claiming Chattels

interest, payable at the makers bank, respectively in 30, 60 and 90 days from date of delivery. Notes to be endorsed personally by the officers of the maker corporation.

- 10 J. Rose & Co., Inc., retains the ownership of and all title to the stoves and/or ranges and/or refrigerators described in this order until full payment of all sums due and to become due hereunder by the purchaser to the said J. Rose & Co., Inc., shall have been made in cash.

Quantity	Description	Price per	Amount
26	ranges as had #822	36.00	936.00

- 20 For job at 95 Vernon St. near Euclid St.,
Ridgefield Park, N. J.

Guarantee—In consideration of \$1.00 to us in hand paid by J. Rose & Co. Inc., receipt of which is hereby acknowledged, and in order to induce J. Rose & Co. Inc., to accept the above order and make delivery of the above merchandise, we hereby jointly and severally guarantee payment of the above amount in accordance with the terms of sale stated on this order.

30

Name Domenico Giardano L. S.
Address—1458 Liberty St., North Bergen

Name Fred Regna
Address—229—23rd St. W. N. Y., N. J.

Witnessed: J. N. Kessler
Address 114 W. 39th St., N. Y. C.

- 40 No change or alteration of the printed terms

Petition of J. Rose & Co., Inc., Claiming Chattels

of this order shall be valid unless signed by an officer of J. Rose & Company, Inc.

This order subject to acceptance by J. Rose & Company, Inc.

(Signed) REGNA CONST. CO., INC. 10
by Domenico Giordano

The foregoing stoves agreed to be conditionally sold by J. Rose & Company, Inc., to Regna Const. Co., Inc., are to be affixed to the realty at 95 Mt. Vernon St., nr. Euclid St. in the Town of Ridgefield Park, County of Bergen, State of New Jersey and which said premises are located on southerly side of Mt. Vernon St. approximately 100 feet westerly of Euclid ave. and are approximately 80 feet in width front and rear and 101 feet in depth on either side. 20

(Signed) J. ROSE & CO., INC.
By William Rose, Sec'y.

30

40

Report of Receiver on Claim of J. Rose & Co., Inc., Filed October 15, 1928.

10 In pursuance of an order made by the Chancellor in the above stated cause and dated June 28, 1928, wherein and whereby I, the undersigned, Warren Dixon, Jr., was appointed Receiver of the above named insolvent corporation and pursuant also to the direction of Vice Chancellor Lewis made in open court in the Chancery Chambers, Jersey City, on October 1, 1928, I do hereby report that J. Rose & Company, Inc., filed a petition and made claim against the corporation to the title to twenty-six (26) certain gas ranges installed in a certain apartment house in Ridgefield Park, Ber-
20 gan County, New Jersey claiming that said Regna Construction Company under conditional sales contract, claiming also that the sum of \$936.00 the contract price for said gas ranges had not been paid and in accordance with the direction I did on October 9, 1928 take testimony submitted by the said claimant which is hereby returned with this report and made part hereof.

30 I was attended by Samuel Tartalsky duly appointed Counsel with Receiver, Ira Katchen of the firm of Meisterman & Katchen, Solicitors for J. Rose & Company conditional sales claimant; J. Frank Shanley of the firm of Rinaldi and Shanley, Solicitors for Consolidated Securities Company, mortgagee on said lands and premises, and Otto Cooper of the firm of Katz

*Report of Receiver on Claim of J. Rose & Co.,
Inc.*

and Cooper, Solicitors for Estate of Harry C. Leidinger, mortgagee.

I further report that from the testimony it appears that on December 23, 1927, the defendant Regna Construction Company entered into a contract with J. Rose & Co., Inc. according to the terms of which said J. Rose & Co. Inc., conditionally sold twenty-six (26) gas ranges #822. An instrument which purported to be a copy of Said conditional sales contract was filed in the office of the County Clerk of Bergen County, March 22, 1928 and the said gas ranges were installed in said premises on April 4, 1928. The purchase price of said gas ranges was \$936.00 and no part thereof has been paid. Under the terms of the conditional sales contract the vendor reserved the title to the said gas ranges until full payment was made.

It also appears that the said gas ranges were affixed to the freehold as to become part thereof but are nevertheless severable without material damage to the freehold. The contract was filed in accordance with the provisions of Section 7 of the Uniform Conditional Sales Act, 2 Comp. Stat. 1911-1924, pages 3130-3131. The pertinent portion of said Section 7 provides that as against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof, but to be severable without material injury to the freehold, unless the conditional sales contract, or a copy thereof, to-

*Report of Receiver on Claim of J. Rose & Co.,
Inc.*

10 together with a statement signed by the seller
briefly describing the realty and stating that
the goods are to be affixed thereto, shall be
filed before they are affixed, in the office where
a deed would be recorded or registered to
affect such realty.

20 In the instant claim the conditional sales
contract itself was not filed, but an instrument
which purported to be a copy was filed. It
contained a statement signed by the seller
briefly describing the realty and stating the
goods to be affixed. The original contract de-
scribed the goods as "twenty-six (26) Ranges
as had #822." The instrument filed stated
"26 #822 A. B. Gas Ranges." Obviously in
this regard only the instrument filed is not
an exact or true copy of the conditional sales
contract, but the other particulars of the orig-
inal contract are identical. The property
actually installed in the building consisted of
twenty-six (26) gas ranges and all together
the "copy" filed was clearly—sufficient to ap-
30 prise any person that the gas ranges condi-
tionally sold and the terms under which they
were sold.

I, therefore, respectfully report that demand
having been made by the claimant J. Rose &
Company Inc., it is entitled to the return of
the goods or payment by the receiver.

Respectfully submitted,
WARREN DIXON, JR.

Transcript of Testimony.

Transcript of Shorthand Notes of Testimony taken in the above stated cause this ninth day of October, 1928, at ten o'clock in the forenoon, before Warren Dixon, Jr., Receiver of the above named defendant, pursuant to order made in open court on October 1, 1928, on the return of the order to show cause herein, in the presence of Samuel Tartalsky, Esq., solicitor of the receiver; Ira J. Katchen, Esq., of the firm of Meisterman and Katchen, solicitors for J. Rose & Co., conditional sales vendor, claimant; G. Frank Shanley, Esq., of Rinaldi and Shanley, solicitors for Consolidated Securities Company, mortgagee; Otto Cooper, Esq., of the firm of Katz and Cooper, solicitors for the Estate of Harry Leidinger, Mortgagee.

(Edward O'Byrne sworn as stenographer.)

Mr. Tartalsky: J. Rose and Company filed a petition on or about September 13, claiming that it had sold twenty-six certain gas ranges to the defendant, which were affixed to the property owned by the defendant in Ridgefield Park. On October 1, 1928, the return day of the order to show cause why the sale of the premises should not be confirmed, Vice-Chancellor Lewis directed the receiver to take testimony on the conditional sales claimants and to report thereon on October 15, 1928.

Transcript of Testimony

JOSEPH M. KESSLER, sworn as a witness in behalf of the claimant J. Rose & Company, testifies as follows:

Direct-examination by Mr. Katchen:

10 Q. Where do you live, Mr. Kessler? A. I live in the Bronx, New York City.

Q. What address? A. 1373 Franklin Avenue.

Q. Are you connected with J. Rose & Company, Inc., the petitioner in this case? A. I am; yes.

Q. In what capacity? A. As a salesman.

20 Q. Did you take the order from the Regna Construction Company, for gas ranges for the Mount Vernon Street, Ridgfield Park, property? A. Yes.

Q. (Showing witness.) Is this the order? A. Yes; that is my own handwriting.

Q. By whom was it signed for the defendant company? A. It was signed by two of the officers, Mr. Giordano and Mr. Regna.

Q. Was that order signed in your presence? A. Yes. I witnessed those signatures.

30 Mr. Katchen: I offer in evidence order bearing date December 23, 1927, for the sale of 26 gas ranges, No. 822.

Marked as Exhibit CS 1.

Q. Was that contract filed? A. That was filed in the Bergen County Clerk's Office.

40 Mr. Katchen: I offer in evidence certified copy of the conditional bill of sale, filed March 22, 1928, the same being

Transcript of Testimony

filed in the Bergen County Clerk's Office,
Registry Division.

Marked Exhibit CS 2.

Q. Mr. Kessler, were these gas ranges delivered? A. Yes; they were delivered on April 10
4, 1928.

Q. Have you a copy of the delivery slip? A. I have the original delivery receipt.

Q. Signed by whom? A. Signed by Mr. H. Epstein for the Regna Construction Company.

Q. Who was H. Epstein? A. Mr. Epstein was the plumber on that operation.

Q. You delivered these ranges to the plumber? A. We delivered them to the premises, and the plumber accepted them. 20

Mr. Katchen: I offer the delivery receipt in evidence.

Marked Exhibit CS 3.

Q. Do you know if these ranges are there? A. Yes, they are.

Q. How do you know? A. I was over to that operation several times after delivery to see Mr. Regna with reference to the bill, and in the course of our conversation we also went through the house discussing different repairs that were needed on the ranges, and in going through and inspecting I saw that our ranges were in each and every apartment. 30

Q. What was the contract price for those ranges? A. It was \$936.00.

Q. Has any money been paid on account of that? A. No, there has been nothing paid on account. There is still the full amount due. 40

Transcript of Testimony

Q. What is the amount still due and owing?
A. Well, the full amount of \$936 is still due. It is past due. It is still owing.

10 *CROSS-EXAMINATION by Mr. Shanley:*

Q. This agreement marked Exhibit CS 1 has a blue slip attached to it. Was that slip attached at the time that you took the order? A. At the time we took the contract?

Q. Yes. A. No.

Q. When was that put on there? A. That was put on subsequent to the taking of the contract. It was put on for the purpose of
20 filing.

Q. And were these gas ranges affixed to the realty in these premises in accordance with the provisions of this blue slip? A. Well, like all gas ranges they are affixed to the realty, but they are severable without material damage to the realty, because these ranges can be disconnected by simply turning a little valve on the pipe.

30 By Mr. Cooper:

Q. You said before that that contract was signed by two officers of the company on behalf of the company, didn't you? A. That is right.

Q. Will you please indicate on that contract where the two officers signed? A. Do you want me to show that to you?

Q. Yes, please. A. At the bottom here (indicating) Mr. Giordano signed as president
40 of this company, and up here (indicating) both

Transcript of Testimony

Mr. Regna and Mr. Giordano signed as personal guarantee.

Q. Mr. Regna only signed the personal guarantee contract. He did not execute the contract? A. Well, that is the execution. Mr. Regna was an officer of the company when he signed that contract. 10

Q. He did not execute the contract proper; he executed the personal guarantee contract?

A. It was not necessary for him to sign that. Mr. Giordano merely signed his name to that.

Q. Do you know what office Mr. Giordano held in that company? A I believe he was the president.

By Mr. Tartalsky: 20

Q. I call your attention to the contract, the original one marked Exhibit CS 1, which contains the description "Gas Ranges as had, No. 822," and I want to call your attention to the fact that the certified copy produced from the County Clerk's office has the description "No. 822 A. B. Gas Ranges"— A. Well, I will explain that to you. 30

Q. Was that change made on the original contract? A. No. There is the original contract in front of you.

Q. Then, the one that is on file is not a true copy of the one that was signed, is it?

Mr. Katchen: I object because it is impossible to answer yes or no to that question.

Mr. Tartalsky: I ask for yes or no. 40

Transcript of Testimony

10 Q. Is that an exact copy? Is the certified copy which is marked Exhibit CS 2 an exact or true copy of the contract which was signed, marked Exhibit CS 1, in so far as the description of the ranges is concerned? A. Well, I would have to go over to the clerk's office and pull out the contract and compare it with that before I would answer that yes or no.

Q. Look at these two papers and answer whether or not, in so far as the description of the chattels is concerned, whether the description of the chattels in the certified copy is the same as the description of the chattels in the contract that was signed by the defendant?

20 Mr. Katchen: I object to that because they speak for themselves.

The Receiver: Let him answer the question.

Mr. Katchen: I advise him not to answer because it speaks for itself.

30 Q. Will you answer, Mr. Kessler, that question, which I think is simple, whether or not as to the description of the chattels, the contract as certified by the clerk is the same as the contract signed by the defendant? A. Yes; they are the same.

Q. In other words, the words "Gas Ranges as had, No. 822" to your mind are the same as "No. 822 A. B. Gas Ranges"? A. They are.

Q. You say, then, that the copy which is on file is the same and a true copy of the one that was signed, do you? A. I do.

40 Q. Did you know, Mr. Kessler, that that build-

Transcript of Testimony

ing was in the course of construction at the time you took the contract? A. I did.

Q. You saw it in the course of construction, didn't you? A. I did.

Q. Did you talk with Mr. Giordano or Mr. Regna at the time you took the order? A. I did. I spoke to both of them. 10

Q. Did you know that they had a construction mortgage on the property? A. I did.

Q. You know what a construction mortgage is, don't you? A. I believe I do.

Q. You know that a construction is one under which the mortgagee advances money as the building progresses; is that right? A. That is right. 20

Q. Did you look at the plans of the building? A. No; I did not.

Q. You knew that gas ranges were to be installed and affixed to the property in order to make a complete building, didn't you? A. I don't understand your question.

Q. You knew that gas ranges would have to be installed in the building in order to make the apartment a complete one didn't you? A. Yes. 30

Q. You knew also, didn't you, that the mortgagee on the property would advance money on the strength of that property going into the building, didn't you?

Mr. Katchen: I object to that. He cannot be compelled to answer as to what the mortgagee knew. I advise the witness not to answer. 40

Transcript of Testimony

Q. Did you know or didn't you know it? A. Well, you heard what my counsel said.

Q. Do you refuse to answer? A. Yes.

Q. On the advice of your counsel? A. Yes.

10 Q. Did you know the amount of the construction mortgages? A. Yes; we knew that.

Q. What was the amount of the construction mortgages? A. Well, I don't remember them now. We had them as a matter of record.

Q. Have you that record with you? A. No. They are available to most anybody.

Q. You mean to say that you looked at the records in the court house? A. Sure we did.

20 Q. You made a search of the property, did you? A. The total mortgages. We always do.

It is stipulated between counsel for the respective parties that the following mortgages were recorded in the Bergen County Clerk's Office:

Mortgage for \$8,000 held by Charles Enders, Jr., and Amelia, his wife, dated December 6, 1926; recorded same day in Book 900 of Mortgages, page 1.

30 Mortgage for \$9,500 held by Harry C. Leidinger, dated August 31, 1927; recorded same day in Book 927 of Mortgages page 367.

Mortgage for \$30,000 held by the Consolidated Mortgage Loan Company, dated September 30, 1927; recorded October 1, 1927 in Book 989 of Mortgages, page 271.

40 Mortgage for \$20,000 held by same mortgagee; dated November 29, 1927; re-

Transcript of Testimony

corded November 30, 1927, in Book 1007, page 260.

Also the following judgments against the Regna Construction Company:

Judgment in favor of the Highwood Coal Company, entered March 12, 1928, in Book J, of Circuit Court judgments, page 366, for \$2,629.45. 10

Another judgment in favor of the same judgment creditor for \$1,378.85, entered April 3, 1928, in Book J of Circuit Court judgments, page 381.

Judgment in favor of Tidewater Coal and Supply Company; entered in the New Jersey Supreme Court in Volume 24 of Judgments, page 235, on January 28, 1928, for \$1,234.12 damages and \$53.78 costs. 20

Judgment entered in favor of Anthony Halpern and Abraham Stettner, partners trading as New Jersey Sash, Door and Trim Company, on February 21, 1928, for \$1,680.75 damages and \$61.28 costs, and under which, on March 28, 1928, levy was made on other property owned by the corporation in Teaneck, Bergen County, New Jersey, and advertised for sale. 30

It is also stipulated that mechanics lien claims against the property in Ridgefield Park were filed subsequent to the date of the recording of the conditional bill of sale by J. Rose & Company, the claimant herein, many of which were thereafter reduced to judgment. 40

Transcript of Testimony

Q. You know, Mr. Kessler, that the property is No. 101 Mount Vernon Street, don't you?

A. I believe that was the number. The number I had was 95.

10 By the Receiver:

Q. Mr. Kessler, Exhibit CS 1 is the original contract for sale, is it not? A. That is right.

Q. Who wrote in in pencil afterwards? A. I did. Let me explain—

Q. That is all I wanted to know. The description of the gas ranges by number was also written in? A. That is it. That is what you just referred to.

20 Q. Who wrote in the description of the property on the original bill of sale in ink? A. I wrote that in.

Q. When? A. At the time of the taking of the contract, and that description was given to me by both Mr. Regna and Mr. Giordano.

Q. Do you know whether the typewritten part was already in? A. What part is that? On the blue slip?

30 Q. Yes? A. That was put on immediately prior to the filing and after the taking of the contract. The blue slip is for a more accurate description of the premises.

Q. It was not written in after the contract was filed? A. Oh, no. I don't believe the county clerk would permit it, would he?

40 Q. The wording of the description on the original contract and the wording of the description on the certified copy of the contract are not identical, are they? A. Yes; they are.

Transcript of Testimony

Q. On the slip attached to the contract? A. This slip is not part of the original contract.

Q. Referring to the slip attached to Exhibit CS 1? A. Yes; but the slip is no part of the contract.

Q. Does that slip make up part of the contract which is on file? A. It makes up part of the contract on file. 10

Q. And the two slips are not identical? A. The slip on the original contract is not part of the original contract.

Q. You are not answering the question. The two slips are not identical in the description? A. If I look over these two, then I can tell you. (After looking at papers.) Yes; they are exactly alike. 20

Mr. Cooper: They speak for themselves.

30

40

Exhibit CS2, October 10, 1928.

J. ROSE & COMPANY, INC.

STOVES, RANGES, REFRIGERATORS, ETC.

114 West 39th Street

10

New York, N. Y., Dec. 23rd, 1927.

Sold to Regna Const. Co. Inc. Via Truck
Office Address 229 - 23 St. West New York, N. J.
When Feby 1st.

On Ten Days' Written Notice
Phone Palisade 2602 Salesman Kessler

20

TERMS:—Each invoice due and payable when
ranges are delivered, one-half thereof in cash,
the balance in three notes of equal amounts
with interest, payable at the makers bank,
respectively in 30, 60 and 90 days from date
of delivery. Notes to be endorsed person-
ally by the officers of the maker corporation.
J. Rose & Company, Inc., retains the owner-
ship of and all title to the stoves and/or
ranges and/or refrigerators described in this
order until full payment of all sums due and
to become due hereunder by the purchaser to
the said J. Rose & Company, Inc., shall have
been made in cash.

30

Quantity	Description	Price Per	Amount
26	#822 AB gas Ranges	36.00	936.00

40

For job at 95 Mount Vernon St. near Euclid St.
Ridgefield Pk., N. J.

Exhibit CS2

GUARANTEE

In consideration of \$1.00 to us in hand paid by J. Rose & Co., Inc., receipt of which is hereby acknowledged, and in order to induce J. Rose & Co., Inc., to accept the above order and make delivery of the above merchandise, we hereby jointly and severally guarantee payment of the above account in accordance with the terms of sale stated on this order. 10

Name Domenico Giardano L. S.
 Address 1458 Liberty Street, North Bergen
 Name Fred Regna L. S.
 Address 229-23rd St. W. N. J.
 Witnessed: J. N. Kessler 20
 Address 114 W. 39th St. City.

No change or alteration of the printed terms of this order shall be valid unless signed by an officer of J. Rose & Company, Inc.

This order subject to acceptance by J. Rose & Company, Inc.

Signed REGNA CONST. CO. INC. 30
 By DOMENICO GIORDANO

The foregoing stoves agreed to be conditionally sold by J. Rose & Company, Inc., to Regna Const. Co. Inc. are to be affixed to the realty at 95 Mt. Vernon St. nr. Euclid St. in the Town of Ridgefield Park County of Bergen State of New Jersey, and which said premises are located on southerly side of Mt. Vernon St. 100 feet westerly of Euclid Avenue, and are ap- 40

Exhibit CS2

proximately 80 feet in width front and rear and
101 feet in depth on either side.

Signed

J. ROSE & COMPANY, INC.

By WILLIAM ROSE

Secretary

10

(Seal.)

State of New Jersey,
County of Bergen, ss:

I, James W. Mercer, Clerk of the County of
Bergen, in the State of New Jersey, and also
20 Clerk of the Circuit and Common Pleas Courts,
in and for said County (Courts of Record), do
hereby certify that I have compared the copy
of the Conditional B/Sale hereto annexed, with
the original, &c., in my office at Hackensack in
said County, and that the same is a true copy
thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the seal of the said Courts
30 and County, at Hackensack, aforesaid, this 17th
day of September, A. D., one thousand nine
hundred and Twenty-eight.

JAMES W. MERCER,
Clerk.

(Seal.)

40

**Order Confirming Receiver's Report on Claim
of J. Rose & Co., Inc., Filed July 1, 1929.**

It appearing to the court that by Order dated June 28, 1928, Warren Dixon, Jr., was appointed Receiver of Regna Construction Company, an insolvent corporation the defendant herein, and that J. Rose & Co., Inc., made claim against the defendant Regna Construction Company to the title to 26 Gas Ranges under a conditional sales contract dated December 23, 1927, filed in the Bergen County Clerk's Office on or about March 22, 1928, and affixed and installed in a certain building owned by the defendant in the Town of Ridgefield Park, Bergen County, New Jersey, on or about October 4, 1928. The receiver having reported that the consideration of \$936.00 remained unpaid to the said J. Rose & Co., Inc. Said Receiver reporting that said J. Rose & Co., Inc., is entitled to the return of the goods or payment by the receiver of the sum of \$936.00;

It further appearing that the said lands and premises of the said Regna Construction Company are encumbered with two mortgages held by the Consolidated Securities Company one in the sum of \$30,000.00 dated September 30, 1927, recorded October 1, 1927; another for \$20,000.00 dated November 29, 1927, recorded November 30, 1927 and encumbered with a further mortgage held by Harry C. Leidinger dated August 31, 1927, recorded on November 30, 1927, which mortgage was postponed to the lien of the aforesaid mortgage of the Consolidated Securities Com-

*Order Confirming Receiver's Report on Claim
of J. Rose & Co., Inc.*

pany; and it further appearing that there are various judgments against the lands and premises of the defendant corporation based upon mechanic lien claims.

10 And the said Consolidated Securities Company having appealed to this court from the determination and decision of the said receiver and the matter having been argued before this court by Samuel Tartalsky of Counsel with Receiver and Rinaldi & Shanley, Solicitors for and of Counsel with Consolidated Securities Co., and Meisterman & Katchen Solicitors for and Of Counsel with J. Rose & Co., Inc., and the court having
20 considered the matter and filed its opinion;

It is, on this first day of July, 1929, Ordered that the determination of the said Receiver be and the same is hereby confirmed; and

It is Ordered that the said Receiver return the said twenty-six gas ranges or pay J. Rose & Co., Inc., from the proceeds of sale of said premises the sum of \$936.00 together with interest in the sum of \$24.00/100 in preference of
30 said Consolidated Securities Company and Harry C. Leidinger, mortgagees and mechanic lien claimants.

E. R. WALKER,
C.

Respectfully advised,

JOHN J. FALLON,
V. C.

40 We consent to entry of this order.
MEISTERMAN & KATCHEN,
Atty. for J. Rose & Co., Inc.

**Report of Receiver on Claim of Wasmuth-
Endicott Co., Filed October 15, 1928.**

In pursuance of an order made by the Chancellor dated June 28, 1928, wherein and whereby, I, the undersigned, Warren Dixon, Jr., was appointed Receiver of the above named insolvent corporation and pursuant also to the direction of Vice Chancellor Lewis made in open court in the Chancery Chambers, Jersey City, on October 1, 1928, I do hereby report that Wasmuth-Endicott Company filed a petition and made claim against the defendant corporation to the title to 6-68 Kitchenettes; 24-#4856 Compacts; 2-#740 Cabinets; Molding and 1/4 Round, installed in a certain apartment house in Ridgefield Park, Bergen County, New Jersey, claiming same under a conditional sales contract made between said claimant and said insolvent corporation, and also claiming that the sum of \$2,840 the contract price for said property remained unpaid. In accordance with the direction of Vice Chancellor Lewis, I did on October 9, 1928, take testimony submitted by said claimant which is hereby returned with this report and made part hereof.

I was attended by Samuel Tartalsky, duly appointed counsel of receiver; George Moser, of the firm of Carey & Lane, Solicitors for Wasmuth-Endicott Company, the claimant; J. Frank Shanley of the firm of Rinaldi & Shanley, Solicitors for Consolidated Securities Corp., mortgagee on the lands and premises; and Otto Cooper, Esq., of the firm of Katz & Cooper, Solicitors for Estate of Henry C. Leidinger, mortgagee on said lands and premises.

Report of Receiver on Claim of Wasmuth-Endicott Co.

10 It appears from the testimony that on November 9, 1927, a conditional sales contract was entered into between said Wasmuth-Endicott Company and Regna Construction Company, the insolvent corporation, whereby said claimant conditionally sold said property mentioned for the sum of \$2,840; that said sum is unpaid; that the insolvent corporation was the owner of a certain apartment house known as #101 Mt. Vernon Street, Ridgefield Park, Bergen County, New Jersey, and that the property conditionally sold was affixed in and to said premises in the early part of March, 1928. The conditional sales contract was filed in the Bergen County Clerk's Office on November 14, 1927. Under the terms of the contract, the vendor reserved the title to the property until the price was paid.

20 One kitchenette was installed in each of the kitchens in said apartment house together with a refrigerator, both consisting of one unit. The kitchenettes were nailed to the walls and the refrigerators are connected to pipes in the wall with a locknut. In each of the refrigerators there is installed frigidaire coils which were sold by another company but the refrigerators sold by claimant were intended to be adapted for the frigidaire coils purchased by defendant. The salesmen of claimant testified that the refrigerators installed in the premises are peculiarly fitted for the frigidaire coils and that the installation of any other refrigerators would necessitate considerable alteration in the construction of the frigidaire coils and pipes connecting therewith from the wall. The same salesman made the sale

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Report of Receiver on Claim of Wasmuth-Endicott Co.

while the building was in the course of construction and he saw the plans and that they made provision for kitchenette cabinets and refrigerators.

I report that the property sold by said Wasmuth-Endicott Company are affixed to the realty so as to become part thereof but are severable without material injury to the freehold. 10

The conditional sales contract as filed is, however, fatally defective, in that *in* contains no description of the realty, and hence the reservation of title is void as against the owner of the realty. The owner was the insolvent corporation and the receiver has succeeded to whatever rights the owner had. Section 7 of Uniform Conditional Sales Act, 2 Comp. Stat. 1911-1924 Supp. Sec. 182-93, pages 3130-3131; provides that as against the owner of realty, the reservation of title shall be void unless the contract or a copy thereof be filed before the goods are affixed. 20

Counsel for claimant urges that under the cases of *Depew v. C. W. Depew & Co.*, 98 Equity 461, *Koerner v. U. S. Waxed & Coated Paper Co.*, 94 Equity 655, the receiver cannot deny the reservation of title and could not do so even if the conditional sales contract were not filed. Neither of the cases mentioned concerned the sale of fixtures or goods affixed to realty. The former involved a coating machine and the latter Mack automobile trucks. Both cases came within the provisions of Section 5 of the Conditional Sales Act, which are radically different from the provisions of Section 7 with which we 30 40

Report of Receiver on Claim of Wasmuth-Endicott Co.

are here concerned. Under Section 5, provides that the reservation of title is void unless the contract is filed as against a creditor "who acquired by attachment or levy, a lien." The cited cases decide that in cases where there is no such creditor, the receiver cannot claim title. Under Section 7, it is expressly provided that "as against the owner of realty" the reservation shall be void unless the contract or a copy be filed in accordance with the terms and requirements of the statute. In the instant case, the insolvent corporation was the owner of the realty and as against it the reservation of title was void, therefore, the receiver may assert the same right.

The section of the statute relied upon is unambiguous. It expressly provides that the reservation of title shall be void *as against the owner of realty*. The words do not admit of any misinterpretation. The statute makes no provision for a situation such as this where the owner of realty is also the conditional vendee. If the legislature intended that the provisions should not apply to an owner of realty who happens to be the conditional vendee, it would or should have so stated. In the wording of the statute there is no limitation, qualification or restriction, as to the particular owner of realty or character of owner of realty against whom the reservation would be void. It obviously follows that *Any owner of realty* could resist the reservation of title against claimant if the goods are so affixed as to be severable where the contract is not filed. To hold as claimant urges would require

Report of Receiver on Claim of Wasmuth-Endicott Co.

the writing into the statute after the words owner of realty, "except when the owner of the realty is the conditional vendee" or words to that effect. In my opinion, the remedy lies with the Legislature. Neither the courts nor its receiver can construe the statute otherwise in view of the clear, unambiguous and definite phraseology of the act. 10

I respectfully report that the claim of title to the goods by Wasmuth-Endicott Company as against the owner of the realty or its Receiver, be rejected and said Wasmuth-Endicott Company is entitled to a claim against the corporation is the sum of \$2,840 as a general creditor. 20

WARREN DIXON JR.,
Receiver.

Transcript of Shorthand Notes of Testimony taken in the above stated cause this ninth day of October, 1928, at eleven o'clock in the forenoon before Warren Dixon, Jr., Receiver of the above named defendant, pursuant to order made in open court on October 1, 1928, on the return of the order to show cause herein, in the presence of Samuel Tartalsky, Esq., Solicitor of the receiver; George Moser, Esq., solicitor for Wasmuth-Endicott Company, conditionals sales vendor, claimant; G. Frank Shanley, Esq., of Rinaldi & Shanley, solicitors for Consolidated Securities Company, Mortgagees; and Otto Cooper, Esq., of the firm of Katz & Cooper, Solicitors for the Estate of Harry Leidinger, Mortgagee. 30 40

(Edward O'Byrne sworn as stenographer.)

Report of Receiver on Claim of Wasmuth-Endicott Co.

JULIUS STEIGLER, sworn as a witness on behalf of the claimant, Wasmuth-Endicott Company, testifies as follows:

10 *Direct-examination by Mr. Moser:*

Q. You are the salesman for the Wasmuth-Endicott Company? A. I am.

Q. Did you secure the account of the Regna Construction Company? A. I did.

Q. Where is that building? A. On Mount Vernon Street in Ridgefield Park.

Q. (Showing witness.) I show you this paper. Is that the contract that was entered into between your company and the Regna Construction Company? A. That is the original contract.

Q. Are any of these chattels mentioned therein so affixed to the building that they cannot be removed without damage? A. They can all be removed without damage to the building.

Q. They can? A. They can; yes.

Mr. Moser: I offer the contract in evidence.

30 Marked Exhibit CSWE-1.

Q. Has any of the money for this contract been paid? A. No; there has none been paid.

CROSS-EXAMINATION by Mr. Tartalsky:

Q. The price of these kitchenette cabinets and the matters set forth in the contract is \$2,840? A. That is on the contract, yes.

40 Q. And twenty-five per cent, was to be paid on delivery and the balance in sixty days? A. Yes.

Report of Receiver on Claim of Wasmuth-Endicott Co.

Q. May I ask why you did not insist upon the twenty-five per cent on delivery? A. Delivery was made because I had a verbal promise of a check two days after delivery, but it was not paid then, and that is the reason we stopped doing any more work on it, or installing or doing anything. 10

Q. And all of these kitchenettes, compacts and cabinets were installed in the building of the Regna Construction Company at 101 Mount Vernon Street, Ridgefield Park? A. Yes.

Q. When did you install them? A. The date I cannot fix unless I have some records to look up and see when they came in; but they were delivered one or two days after receipt at the railroad. 20

Q. How long, would you say, after the contract was dated, was it that the merchandise was affixed to the property? A. That was quite some time.

By Mr. Moser:

Q. (Showing witness.) Do you recognize this card? Is that one of your office cards? A. That is one of our shipping cards. 30

Q. Made in the regular course of business? A. Made in the regular course of business.

Q. In your establishment? A. Yes.

Q. By referring to that can you tell what date the articles were shipped on? A. It was shipped on the 25th of February, 1928, from the factory, according to that record; and according to that, it must have arrived between the first and fifth of March at the station, and it was delivered immediately after it arrived. 40

Report of Receiver on Claim of Wasmuth-Endicott Co.

By Mr. Tartalsky:

Q. So that it was in the early part of March, 1928, that they were installed? A. Yes.

10 Mr. Moser: I offer this shipping card in evidence.

Marked Exhibit CSWE-2.

Q. This contract was signed by Dominick Giordano, the president of the corporation? A. Yes.

Q. In your presence? A. In my presence.

Q. And then did you sign "Wasmuth-Endicott Company, Inc., Kitchenette Equipment Co., J. Steigler"? A. Yes.

20 Q. When was that signed—at the same time? A. At the same time when Mr. Giordano signed it.

Q. And where was it signed? A. On the job.

Q. In Ridgefield Park? A. In Ridgefield Park.

Q. So that the order was given and the contract accepted right in Ridgefield Park?

30 Mr. Moser: I object to that as a conclusion. The contract speaks for itself, and it says that it shall not be accepted until accepted by the home office.

Q. In other words, at the same time that the Regna Construction Company signed the contract you signed the contract as salesman on behalf of the company? A. I did.

Q. And then what did you do with the contract—send it on to Indiana? A. The contract was sent in to the home office; yes.

40 Q. Then what happened to it? A. All I know happened, nothing, except to take the usual

Report of Receiver on Claim of Wasmuth-Endicott Co.

course—investigation and filed, the regular procedure. I don't hear anything of the order until the delivery comes.

Q. Do you know when this contract was accepted or when this order was accepted? A. Yes; that was accepted, but the date I cannot fix from memory. 10

Q. Can you tell us where it was accepted? A. At the home office.

Q. As I understand it, these are cabinets which go into each apartment? A. Yes.

Q. Part of which are used for dishes and other materials and another part is a space where a refrigerator fits in? A. Correct; yes. 20

Q. One of these, of course, went into each apartment? A. Each kitchen.

Q. In each kitchen in each apartment of the building? A. Yes.

Q. Do I understand from you that these articles are affixed to the building but can be removed without— A. (Interrupting.) They can be removed without any damage to the building.

Q. Well, if they are affixed to the realty, there would be some damage in removing them? A. None that I can think of. 30

Q. Well, there are moldings and screws and nails. A. The moldings are always fastened to the cabinet itself. As a matter of fact, in this particular case no molding has been put on the cabinet by us. Whether they have put it on themselves afterwards, I do not know, but we have not put any molding on because I stopped the job when I didn't get paid. 40

Report of Receiver on Claim of Wasmuth-Endicott Co.

10 Q. In removing these screws or nails that you put in, would there not be holes left in the plaster and walls? A. There would be a nail hole in the plaster absolutely.

Q. And these holes, of course, would have to be refilled with plaster? A. They can be filled with plaster without any damage.

Q. Were you on the job when the work was being done? A. I was; yes.

Q. And you knew, of course, when this order was given and accepted, that these articles would be affixed to the building? A. They would be in the usual way; yes.

20 Q. You contend that although they are affixed to the realty, they can be removed without damage, the only damage being some holes in the plaster? A. A small nail hole in the wall. That is all.

Q. About how many nail holes in the wall in each kitchen would there be? A. As a rule, there are not more than four.

30 Q. How heavy is one equipment which goes into a kitchen? A. 150 pounds.

Q. Now, then, in the Frigidaire there is a motor and coils which go into the refrigerator?

Mr. Moser: I object to that. We have nothing to do with the Frigidaire.

40 A. There is no motor. The motor is down in the cellar. There is merely a pipe line running in the wall, which then goes through a hole into the refrigerator and into the refrigerating compartment. In that compartment is a coil which has been installed in there by the Frigidaire or Domestic Electric Company.

Report of Receiver on Claim of Wasmuth-Endicott Co.

Q. You did not install or furnish the coils which go into the cabinet? A. We did not.

Q. The conditional sales contract which you entered into with the Regna Construction Company was filed in the Bergen County Clerk's Office November 14, 1927; is that right? A. I did not personally attend to the filing. 10

By Mr. Moser:

Q. These nail holes in the wall would be just the same as if the nails were put in the wall to hang pictures? A. Exactly the same thing.

By Mr. Tartalsky:

Q. You knew that it was to be occupied as an apartment house and that this equipment was to be used by each tenant in the building? A. Yes. 20

Q. When you made the sale, the building was in course of construction, was it not? A. Yes.

Q. Did you know that there were mortgages on the property—two mortgages? A. There was no mortgage at that time, except a construction loan—what we call a construction loan.

Q. Did you see the plans of this building? A. I did. 30

Q. Did the plans call for the equipment which you sold? A. I cannot answer that question because I cannot remember. Sometimes they do; sometimes they do not. They certainly did call for some cabinets.

By the Receiver:

Q. Could the coils used in the refrigerator be used in another cabinet without considerable alteration? A. Without considerable alteration? 40

Report of Receiver on Claim of Wasmuth-Endicott Co.

10 Q. Yes. A. The lines would have to be changed, and you would have to find a refrigerator—which I believe is a hard job—that would exactly fit in the equipment. In other words, you would have to run pipe lines from each conduit outlet to the new refrigerator. You could not place the refrigerator where the cabinet is unless you removed the cabinet first and found another place for that or found a place for some cabinet. In other words, it would be quite a job.

By Mr. Moser:

20 Q. It could be done? A. It could be done.

Q. The coil system has nothing to do with the cabinet? A. It has nothing to do with the cabinet. It can be installed in any refrigerator.

By the Receiver:

Q. Are the cabinet and refrigerator separate units? A. No; they are one unit.

30 Mr. Moser: I now offer in evidence certified copy of the conditional bill of sale. Marked Exhibit CSWE-3.

By Mr. Tartalsky:

Q. It is the intention, of course, that the equipment that you sell should become part of the building, but you contend that it can be removed; is that it? A. I don't know anything about the intention.

40 Q. When you sell them, they can become part of the building, but you contend that they can be removed?

Report of Receiver on Claim of Wasmuth-Endicott Co.

Mr. Moser: I object.

Q. What was your intention?

Mr. Moser: I object. It does not make any difference what his intention was. 10

A. My intention in making a sale is to get my commission after it is supplied.

Q. The very fact that you see it so that it is used by each tenant and the fact that you do look at the plans sometimes and know that it is delivered to the building, from that you know it is intended to go into the building and become part of it, but your contention, as I gather it, is that it can be removed without damage to the building? 20

Mr. Moser: I object to that on the ground that it is incompetent, immaterial and irrelevant.

The Receiver: I think he ought to answer.

A. It certainly is intended for the building when it is sold for the building. There is no doubt about that. But it certainly can never become part of the building because it is a piece of furniture. At least that is what I consider it and look upon it. 30

Q. It is more than a piece of furniture, in that it is affixed to the building, but your contention being that it can be removed without damage?

A. Absolutely; and I only look at it as a piece of furniture. 40

Q. The pipes which are put into the building from the cellar leading so far as the refrigerat-

Report of Receiver on Claim of Wasmuth-Endicott Co.

ing system—their purpose is to connect with the refrigerator, is it not? A. Not with the refrigerator; only with their coils in the refrigerator, and the coil is attached to our refrigerator.

10 Q. How are the pipes in the wall connected with the coils which are placed in the refrigerator? A. With a lock nut.

Q. Through a connection with the pipe which is at the wall? A. Yes.

Q. To the ice box? A. Yes.

20 WILLIAM SLIKER, sworn as a witness on the part of Wasmuth-Endicott Company, claimant, testifies as follows:

Direct-examination by Mr. Moser:

Q. You are credit manager of the Wasmuth-Endicott Company in charge of New York? A. Yes.

30 Q. Do you know whether or not anything has been paid on account of this contract with the Regna Construction Company? A. There has not.

Q. Do you know when the contract was accepted by the home office? A. No; I cannot say that. I cannot tell you the exact date it was accepted because that contract was sent to them and they accepted it and I have no way of knowing. They don't always tell me when it has been accepted.

40 Q. The home office is in Indiana? A. Yes.

Q. Is it accepted there? A. Yes.

Report of Receiver on Claim of Wasmuth-Endicott Co.

Q. And it come back to you? A. No; it doesn't come back to me.

Q. It is recorded from there? A. We record a copy of it.

Q. That was recorded the 14th of November, 1927? A. I don't know.

10

CROSS-EXAMINATION by Mr. Tartalsky:

Q. A person under your supervision mailed this contract to the Bergen County Clerk's Office for filing? A. Yes.

It is stipulated that the following mortgages were recorded in the Bergen County Clerk's Office:

20

Mortgage for \$8,000 held by Charles Enders, Jr., and Amelia, his wife, dated December 6, 1926; recorded same day in Book 900 of Mortgages, page 1.

Mortgage for \$9,500, held by Harry C. Leidinger, dated August 31, 1927; recorded same day in Book 927 of Mortgages, page 367.

30

Mortgage for \$30,000 held by the Consolidated Mortgage Loan Company, dated September 30, 1927; recorded October 1, 1927, in Book 989 of Mortgages, page 271.

40

Report of Receiver on Claim of Wasmuth-Endicott Co.

JULIUS STEIGLER, heretofore sworn as a witness on behalf of the claimant, Wasmuth-Endicott Company, recalled:

10 *Further cross-examination by Mr. Tartalsky:*

Q. Do I understand that the contract made on October 1st with the Regna Construction Company, and filed October 26, 1927, in the Bergen County Clerk's Office, wherein the purchase price is \$2,055, was cancelled by mutual agreement?

A. It was cancelled by mutual agreement; yes.

Q. Your company makes absolutely no claim under that contract? A. We do not.

20 Q. The only claim that you make is under the contract that has been offered in evidence here?

A. Yes.

30

40

Exhibit CSWE3, Filed October 10, 1928.

"KITCHEN MAID" STANDARD UNIT
SYSTEM.

Andrews, Indiana, November 9, 1927.

Ship to Regna Construction : Invoice to same. 10
 Company Mt. Vernon St. :
 Ridgefield Park, N. J. :

F. O. B. Factory installed When ———

6 - 68 Kitchennets
 24 - #4856 Compacts
 2 - #740 Cabinets
 Moulding and 1/4 round. 20

In consideration whereof the undersigned agrees to pay the Wasmuth-Endicott Company, of Andrews, Ind., Two thousand Eight Hundred and Forty and no/100 Dollars (\$2,840.00) as follows: \$ ——— Cash payment with order 25% on delivery, balance in 60 days.

\$ ——— C. O. D. through ——— Bank

\$ ——— 75% Cash on delivery of Equipment. 30
 Balance cash when equipment is installed. (Not over 90 days.)

This order states the entire agreement for the purchase of said goods and is not modified by any verbal agreement. It is subject to the approval of the home office of Wasmuth-Endicott Company, and any communication indicating such approval stamped, and addressed to the undersigned at the address above given or enclosed in an envelope so stamped and ad- 40

Exhibit CSWE3

dressed shall be a duly made approval upon being deposited in any place officially designated as a place for receiving United States mail. This contract shall be construed in accordance with the laws of the State of Indiana.

- 10 The Wasmuth-Endicott Company is not responsible for any delay in the completion of this contract caused by war, strikes, fires, floods, or accidents beyond its control whether of the kind or class enumerated or not, and in such case the time for completion of this contract shall be proportionately extended. If goods are not shipped on or before the shipping date given above the company agrees in fulfillment of its
- 20 contract for delivery to extend the time of payment for a period equal to such delay. There shall be no alterations or additions to the work herein specified unless agreed upon in writing.

- It is agreed that title to said goods shall not pass with the delivery of the possession thereof as provided herein, but shall remain in Wasmuth-Endicott Company until the entire purchase price thereof is paid, and all partial
- 30 payments made hereunder shall be deemed consideration for the delivery and use of said goods, but if and whenever the payments shall have been promptly made as herein provided and the total thereof equals the entire purchase price, the full legal title to said goods shall pass to the purchaser without the further act on the part of the vendor. In case of default in the payments or in any stipulations and agreements as herein specified, or if at
- 40 any time the vendor deems itself insecure or that the purchaser's conduct impairs the title

Exhibit CSWE3

to said goods, then said vendor may declare the entire purchase price due, and unless said purchaser forthwith pays the unpaid balance, the vendor may refuse to go further with this contract, and as its remedy elect, either to re-
take said goods and retain the payments re- 10
ceived as compensation for the delivery and use thereof, or, treat the sale as complete and collect the balance of the unpaid purchase price. If notes are taken for any part of the purchase price, said notes are not to be considered as payment thereof until they have been fully paid, but if default is declared as herein provided the vendor may tender back any unpaid notes and retake the property as if said notes had not been given, or may treat the sale as complete and collect said purchase price in full. In case Wasmuth-Endicott Company elects to treat the sale as incomplete it may without legal process retake possession of and remove said goods, wherever they may be and for such purpose license is hereby given to go upon any premises where said goods are located or be- 20
lieved to be located without such act or acts being a trespass. 30

It is also agreed that the purchaser shall pay any and all taxes, levies or assessments, made or assessed by any legal authority against the goods covered by this contract so long as this contract shall be in existence. If the purchaser fails to make any such payment or maintain insurance as hereafter provided, the vendor may make such payments and maintain said insurance on behalf of the purchaser and any amount so expended shall be added to the bal- 40

Exhibit CSWE3

ance due by the undersigned and the undersigned agrees to repay such amounts with 8% interest on demand.

10 The property covered by this contract is sold on condition that it remain the personal property of the Wasmuth-Endicott Company, until fully paid for in cash, no matter by what manner or whatever degree it may be attached to the realty and said goods shall at no time be so attached or built into the real estate or property of anyone that the removal as authorized herein would injure the property to which said goods may be attached.

20 In case of any damage to said property by fire, water, theft, or any other cause whatsoever, whether similar in kind to those named or not said purchaser agrees to pay to said Wasmuth-Endicott Company, the amount of such damage and in case of destruction thereof from any cause to pay the above valuation less any portion of the purchase price which may have been paid and said purchaser agrees to have
30 same fully insured in standard insurance companies at his own expense with loss payable to said Wasmuth-Endicott Company, as its interest may appear.

The use of the property described herein, or any portion thereof, for a period of five days, constitutes an acceptance of same as complying with all the terms and specifications of
40 this contract and all claims for damages, errors, or shortage not filed within that time are thereby waived.

It is agreed that if for any reason at the

Exhibit CSWE3

request of the purchaser goods are held for more than thirty days after shipping date, that a date of thirty days following the original designated date of shipment shall be considered as the date of shipment and any payment or payments shall be figured from that date. 10

The responsibility of the Wasmuth-Endicott Company on this shipment shall cease upon the delivery of the goods in good condition to the railroad company.

Failure or delay on the part of the vendor to enforce any of the terms of this agreement shall not be deemed a waiver of such terms or conditions as to the past, existing or future breaches. 20

The rights and remedies herein given are cumulative and shall not be construed as in lieu of rights and remedies given by statute, decided laws of the courts, local customs or practices, and the vendor may exercise any or all rights and remedies to which he may be entitled at law or equity or otherwise.

The purchaser will pay all reasonable attorneys fees incurred by the vendor in enforcing this contract. 30

This order is duly authorized and not subject to cancellation.

REGNA CONSTRUCTION COMPANY

By DOMENICK GIORDANO

President.

Attest:

Kitchen Maid Equipment Co. Inc. 40

Witness J. Steigler

Exhibit CSWE3

State of New Jersey,
County of Bergen, ss:

10 I, James W. Mercer, Clerk of the County of Bergen, in the State of New Jersey, and also Clerk of the Circuit and Common Pleas Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the Conditional Bill of Sale hereto annexed, with the original thereof Filed November 14, 1927, in my office at Hackensack in said County, and that the same is a true copy thereof, and of the whole of such original.

20 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts and County, at Hackensack, aforesaid, this 9th day of October, A. D. one thousand nine hundred and Twenty-eight.

JAMES W. MERCER,
Clerk.

(Seal.)

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**Exceptions to Receiver's Report *re* Claim of
Wasmuth-Endicott Co., Filed April 15,
1929.**

Wasmuth-Endicott Company hereby files the following exceptions to the report of the receiver on claim of Wasmuth-Endicott Company conditional sales vendor. 10

1. It excepts to that part of the report which holds that:

"The conditional sales contract as filed is, however, fatally defective, in that it contains no description of the realty, and hence the reservation of title is void as against the owner of the realty. The owner was the insolvent corporation and the receiver has succeeded to whatever rights the owner had. Section 7 of Uniform Conditional Sales Act, 2 Comp. Stat. 1911-1924 Supp. Sec. 182-93, pages 3130-3131; provides that as against the owner of realty, the reservation of title shall be void unless the contract or a copy thereof be filed before the goods are affixed." 20

2. It excepts to that part of the report, which holds that: 30

"In the instant case, the insolvent corporation was the owner of the realty and as against it the reservation of title was void, therefore, the receiver may assert the same right."

3. It excepts to that part of the report which holds that: 40

*Exceptions to Receiver's Report re Claim of
Wasmuth-Endicott Co.*

10 "I respectfully report that the claim of title to the goods by Wasmuth-Endicott Company as against the owner of the realty or its receiver, be rejected, and said Wasmuth-Endicott Company is entitled to a claim against the corporation in the sum of \$2840 as a general creditors."

4. It excepts to the report as a whole and particularly to the conclusions of law set forth therein and the reasoning upon which the receiver's findings are based.

20 5. It prays that the report of the receiver rejecting the claim of title to the goods in question by Wasmuth-Endicott Company as against the receiver, and finding that the said Wasmuth-Endicott Company is only entitled to a claim against the corporation or the receiver, for the purchase price of the goods as a general creditor, be overruled and that it be determined that the title to the goods in question remain in the
30 Wasmuth-Endicott Company, and that the said Wasmuth-Endicott Company is entitled to either the goods or the full purchase price thereof.

CAREY & LANE,
Solicitors for Wasmuth-
Endicott Company,
claimant.

**Order Overruling Receiver's Report on Claims
of Wasmuth-Endicott Co., Filed July 5,
1929.**

It appearing to the court that by Order dated June 28, 1928, Warren Dixon, Jr., was appointed Receiver of Regna Construction Company, an insolvent corporation the defendant herein, and that Wasmuth-Endicott Company made claim against the defendant Regna Construction Company to the title to certain kitchenettes and cabinets under a conditional sales contract dated November 9, 1927, filed in the Bergen County Clerk's Office on November 14, 1927, and affixed and installed in a certain building owned by the defendant in the Town of Ridgefield Park, Bergen County, New Jersey in March, 1928. The receiver having reported that the consideration of \$2,440.00 remained unpaid to the Wasmuth-Endicott Company, but that said Wasmuth-Endicott Company was entitled to payment as a general creditor from the funds of the Regna Construction Company and the receiver reporting that the reservation of title was waived by reason of non-compliance with the statute relating to conditional sales; and

It further appearing that the said lands and premises of the said Regna Construction Company are encumbered with two mortgages held by the Consolidated Securities Company one in the sum of \$30,000.00 dated September 30, 1927, recorded October 1, 1927; another for \$20,000.00 dated November 29, 1927, recorded November 30, 1927, and encumbered with a further mortgage held by Harry C. Leidinger

*Order Overruling Receiver's Report on Claim of
Wasmuth-Endicott Co.*

dated August 31, 1927, recorded on November 30, 1927, which mortgage was postponed to the lien of the aforesaid mortgage of the Consolidated Securities Company; and it further
10 appearing that there are various judgments against the lands and premises of the defendant corporation based upon mechanic lien claims.

And the said Wasmuth-Endicott Company having appealed to this court from the determination and decision of the said receiver and the matter having been argued before this court by Samuel Tartalsky of Counsel with Receiver and Rinaldi
20 and Shanley, Solicitors for and of Counsel with Consolidated Securities Co., and Cary & Lane, Solicitors for and of Counsel with Wasmuth-Endicott Company and the court having considered the matter and filed its opinion;

It is, on this first day of July, 1929, Ordered that the determination of the said Receiver be and the same is hereby set aside, reversed and vacated; and

30 It is Ordered that the Receiver pay Wasmuth-Endicott Company from the proceeds of sale of said premises the sum of \$2,440.00 together with interest in the sum of \$61.00, in preference of said Consolidated Securities Company and Harry C. Leidinger, mortgagees and mechanic lien claimants.

E. R. WALKER,
C.

40 Respectfully advised.

JOHN J. FALLON,
V. C.

We consent to entry of this order.

CAREY & LANE,
Solrs. for Wasmuth-Endicott Co.

**Report of Receiver re Claim of Liberty
Lighting Fixture Co., Filed October 29,
1928.**

In pursuance of an order made by the Chancellor in the above entitled cause and dated June 28, 1928, by which I was appointed Receiver of Regna Construction Company, I qualified as such receiver, and in accordance with the statute in such case made and provided I received claims of creditors of said insolvent corporation. 10

Annexed hereto and made part hereof is a proof of claim by Liberty Lighting Fixture Co. The said Liberty Lighting Fixture Co., by contract dated March 6, 1928 and filed in the Bergen County Clerk's Office sold certain electrical fixtures to Regna Construction Company for the sum of \$1050.00; said contract was filed with the Clerk of Bergen County on March 30, 1928. Proof of claim also establishes that the said fixtures were installed on or about April 14, 1928. The conditional sales contract as recorded provided "that the same are to be installed and affixed to the realty so as to be severable without material injury to the freehold." It further provided "*the seller may at their election regard the property as sold unconditionally and file a mechanic's lien or pursue any other remedy for the collection of the within consideration.*" The consideration of \$1,050 not having been paid the Liberty Lighting Fixture Co. does not demand the return of the goods nor claim title thereto, but on the contrary, insists upon payment from the funds in the hands of the receiver as a preferred creditor. 20 30 40

Report of Receiver re Claim of Liberty Lighting Fixture Co.

Obviously, the claimant has elected to treat the sale as an unconditional sale in accordance with the terms of its agreement. I, therefore, respectfully report that the title to the goods passes to the corporation and to the receiver thereof, and said Liberty Lighting Fixture Company is entitled to the sum of \$1,050.00 together with \$24.50 interest, making a total of \$1,074.50, as against the corporation, as a general creditor.

Respectfully submitted,
WARREN DIXON, JR.,
Receiver.

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To Warren Dixon Jr., Receiver of the Regna Construction Company:

Please take notice that the Regna Construction Company of which you are the receiver is indebted to Joseph Neidorff and Samuel Milnis, trading as Liberty Lighting Fixture Company, in the sum of \$1,050.00 besides lawful interest thereon, as appears from the annexed schedules

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Please take further notice that the said Joseph Neidorff and Samuel Milnis, trading as Liberty Lighting Fixture Company, insist upon payment from the fund realized from the sale of the premises described in the Conditional Bill of Sale hereto annexed, or otherwise, in preference to all mortgages on the said premises, mechanics lien creditors, judgment creditors and all other liens on the said premises.

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Dated, September 20th, 1928.

Yours &c.

LIBERTY LIGHTING FIXTURE CO.,

By JOSEPH NEIDORFF,
Claimants.

*Report of Receiver re Claim of Liberty Light-
ing Fixture Co.*

Schedule 1

Know All Men by These Presents, that the Liberty Lighting Fixture Company, having its principal office at No. 760 Broadway, in the City of Bayonne, County of Hudson, and State of New Jersey, hereinafter called the Seller, doth covenant and agree with Regna Construction Company of No. 229-23rd Street in the City of West New York County of Hudson and State of New Jersey, hereinafter called the Purchaser, that the seller will, in consideration of the sum of \$1,050.00 to be paid as hereinafter stated, furnish and install the fixtures listed in the following schedule in the building known and designated as, being located in Ridgefield Park, Bergen Co., N. J., which property is on the Southerly side of Mount Vernon Street., 100 feet west from the southwesterly corner of said street with Euclid Avenue, being 80.2 feet in front and rear more or less by 101 feet in depth on each side more or less, in the City of Ridgefield Park, County of Bergen and State of New Jersey with the understanding that the same are to be installed and affixed to the realty so as to be severable without material injury to the freehold and not to be regarded as a permanent part thereof.

The consideration is to be paid as follows: \$525.00 on delivery of electrical fixtures to premises. \$525.00 60 days after completion of all work.

It is agreed that the said fixtures are to remain the property of the said Liberty Lighting

Report of Receiver re Claim of Liberty Lighting Fixture Co.

10 Fixture Company until the entire consideration as above set forth is paid, and if default be made in payment or the goods and chattels herein described are removed, sold or attempted to be removed the seller may take actual possession thereof and the purchaser authorizes and empowers the seller to enter and carry away the same wherever the same may be, hereby waiving any action or cause of action for such entrey, seizure or removal and disclaiming any interest or resistance thereto. The seller may at their election regard the property as sold
 20 unconditionally and file a mechanics lien or pursue any other remedy for the collection of the within consideration.

In Witness Whereof the seller and purchaser have hereunto set their respective signatures, this 26th day of March, 1928.

Seller: LIBERTY LIGHTING FIX-
 TURE COMPANY,

By JOSEPH NEIDORFF (L. S.)

30 Purchaser: REGNA CONSTRUCTION
 CO. a N. J. Corporation,

DOMINICO GIORDIANO (L. S.)

Pres.

FRED REGNA, Treas. (L. S.)

Witness:

N. Frankel.

*Report of Receiver re Claim of Liberty Light-
ing Fixture Co.*

Schedule

1 Dining Room	5 K	6105	Puritan
42 Bedroom	2 40K (2PS)	8000	Ivory Poly
32 Kitchen	1 K	4/8	Plain
32 Private Hall	1 31K (1Ps)	2000	U. M. Rosette
132 Brackets L. R.	2 K	1940	Gold Poly
32 Brackets Bath R.	1 P. S.	1/2 Round	Gem Box
4 Brackets M. H.	2 P. S.	9552	Midwest
2 Ceiling M. H.	3 K.	3303	Cap Bronze
2 Statutes	L P. S.		Marble
2 Brackets Vest	2 P. S.	9552	Midwest
10 Cellar	1 Key	Cord	Drop
2 Brackets Out	1 K.	Newell Posts.	

Schedule 2.

State of New Jersey,
Hudson County, ss:

Joseph Neidorff, of full age, being duly sworn according to law deposes and says:

1. I am one of the partners of Joseph Neidorff and Samuel Milnis, trading as Liberty Lighting Fixture Company.

2. I conducted the business dealings with Regna Construction Company for the Liberty Lighting Fixture Company; and I also supervised and managed the supplying of materials and the performance of the work mentioned in the Conditional Bill of Sale annexed hereto and designated as Schedule 1.

3. All of the materials mentioned in the Conditional Bill of Sale aforesaid were delivered to the premises described therein on or about April 14th, 1928. Under the terms of the Con-

*Report of Receiver re Claim of Liberty Light-
ing Fixture Co.*

ditional Bill of Sale, the sum of \$525.00 became
due and payable on the date of delivery. The
said sum of \$525.00 was not paid or any part
thereof.

10 4. All the work required to be performed
by the Liberty Lighting Fixture Company was
completed in accordance with the terms of the
Conditional Bill of Sale aforesaid on April 28th,
1928. Under the terms of the said agreement,
the sum of \$525.00 became due and payable 60
days after the date of completion. The said
sum of \$525.00 was not paid or any part there-
of.

5. The entire contract price; to wit, the sum
of \$1,050.00 is still due and unpaid, besides law-
ful interest thereon to the date hereof amounting
to the sum of \$24.50, making the total of
\$1,074.50, justly due and owing by the Regna
Construction Company to the Liberty Lighting
Fixture Company.

30 6. The Conditional Bill of Sale aforesaid was
signed by the Regna Construction Company
through its President and Treasurer in my
presence; that the copy annexed hereto as
Schedule 1 is a true copy; and that the original
Conditional Bill of Sale was filed in the Clerks
Office of the County of Bergen on March 30th,
1928.

JOSEPH NEIDORFF

40 Sworn and subscribed to before me
this 20th day of September, 1928,
Anna Rubenstein,
A Notary Public
of New Jersey.

**Petition of Liberty Lighting Fixture Co.,
Claiming Chattel, Filed October 29,
1928.**

To The Honorable Edwin Robert Walker,
Chancellor of the State of New Jersey.

The petition of Joseph Neidorff and Samuel
Milnis, partners, trading as Liberty Lighting
Fixture Company, of the City of Bayonne,
County of Hudson and State of New Jersey,
respectfully show, that your petitioners, being
a creditor of the said Regna Construction Co.,
a corporation of New Jersey, in the amount of
\$1,050.00 besides lawful interest thereon, did
heretofore and within due time presented their
claim to Warren Dixon, Jr., the receiver ap-
pointed in this cause, for allowance as a pre-
ferred claim as therein stated, a copy of which
claim is hereto annexed as Schedule "A" and
made part hereof; that the same was presented
in due form, properly proved and substantiated
by legal evidence, and submitted to said re-
ceiver, and that said receiver disallowed this
claim as a preferred claim as requested by
your petitioner's by his report and letter dated
October 12th, 1928, addressed to Louis Ruben-
stein, Solicitor for petitioners, a copy of which
report and letter is hereto annexed as Schedule
"B" and "C" respectively and made part here-
of. And your petitioners conceive that they are
aggrieved by said refusal of said receiver, and
insist that &c. And your petitioners respectfully

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Petition of Liberty Lighting Fixture Co. Claiming Chattel, Filed October 29, 1928

10 appeal from said determination of said receiver disallowing as aforesaid, to this Honorable Court, and pray that the same may be reversed, and such order made in the premises as shall be agreeable to equity and good conscience. And your petitioners will ever pray &c.

LOUIS RUBENSTEIN,
Solicitor for Petitioners, Joseph Neidorff and Samuel Milnis, trading as Liberty Lighting Fixture Co.

20 County of Hudson,
State of New Jersey, ss:

Louis Rubenstein, being duly sworn according to law, on his oath says, that he is the Solicitor for the petitioners herein; that he has read the petition and knows the contents thereof, and that the same is true, to the best of his knowledge, information and belief.

30 LOUIS RUBENSTEIN.
Sworn and subscribed to before
me this 22nd day of October, 1928,
Anna Rubenstein,
A Notary Public
of N. J.

**Order Overruling Receiver's Report on Claim
of Liberty Fixture Co., Filed July 1, 1929.**

It appearing to the Court that by order dated June 28, 1928, Warren Dixon, Jr., was appointed Receiver of Regna Construction Company, an insolvent corporation, the defendant herein, and that Joseph Neidorff and Samuel Milns, partners trading as Liberty Lighting Fixture Co., filed a proof of claim with receiver claiming payment from the funds in the hands of receiver as a preferred creditor by reason of a conditional sales contract, according to the terms of which the said Liberty Lighting Fixture Co. sold certain electrical fixtures to Regna Construction Company, the defendant herein, for the sum of \$1,050.00, which electrical fixtures were installed in a certain building owned by the defendant in the Town of Ridgefield Park, Bergen County, New Jersey. The said receiver having reported that the claimant had elected to treat the sale as an unconditional sale, and reported that the said Liberty Lighting Fixture Co. was entitled to the balance of the sum of \$1,050.00 together with interest as a general creditor; and

It further appearing that the said lands and premises of the said Regna Construction Company are encumbered with two mortgages held by the Consolidated Securities Company, one in the sum of \$30,000.00 dated September 30, 1927, recorded October 1, 1927; another for \$20,000.00, dated November 29, 1927, recorded November 30, 1927, and encumbered with a further mortgage held by Harry C. Leidinger, dated August 31, 1927, recorded on November 30, 1927, which mortgage was postponed to the lien of the aforesaid mortgage of the Consolidated Securities Company; and it further

*Order Overruling Receiver's Report on Claim
of Liberty Fixture Co., Filed July 1, 1929*

10 appearing that there are various judgments
against the lands and premises of the defend-
ant corporation based upon mechanic lien
claims.

20 And the said Liberty Lighting Fixture Co.
having appealed to this court from the deter-
mination and decision of the said receiver and
the matter having been argued before this
court by Samuel Tartalsky of counsel with
receiver and Rinaldi & Shanley, solicitors for
and of counsel with Consolidated Securities Co.,
and Louis Rubenstein, solicitor for and of coun-
sel with Liberty Lighting Fixture Company and
the Court having considered the matter and
filed its opinion;

It is, on this first day of July, 1929, Ordered
that the determination of the said Receiver be
and the same is hereby set aside, reversed and
vacated; and

30 It is Ordered that the receiver pay Liberty
Lighting Fixture Co. from the proceeds of sale
of said premises the sum of \$1,050.00 together
with interest in the sum of \$24.50, in preference
of said Consolidated Securities Company and
Harry C. Leidingger, mortgagees and mechanic
lien claimants.

40 Respectfully advised.
JOHN J. FALLON, E. R. WALKER
V. C. C.

Consent is hereby given to the entry of above
order.

LOUIS RUBENSTEIN
Sol. of Liberty Lighting Fixture Co.

**Conclusions of Fallon, V. C. *re* Sale, Filed
May 20, 1929.**

1. The Receiver of an insolvent corporation sold a 32 family brick apartment house free and clear of all liens and encumbrances except a mortgage of \$8,000, and municipal liens. The property was subject to various other liens and encumbrances. The order for sale provides that the moneys realized be subject to the same liens and equities of all parties in interest as was the property before the sale. Objection to confirmation of the sale was made by counsel representing parties who sold to the corporation refrigerators, kitchenettes, gas ranges, and lighting fixtures, under contracts reserving the seller's title to the goods until purchase price paid, the gist of the objection being that vendors cannot be divested of their reserved title to the goods, and title thereto be vested in the purchaser from the receiver. Counsel conceded that the goods were severable from the realty without material injury to the freehold, and that vendors' claims are based upon Section 7 of the Uniform Conditional Sales Act P. L. 1919, p. 461. The Consolidated Securities Corporation, as mortgagee, claims to be a subsequent purchaser of the realty for value and without notice of the vendors reserved title to the goods conditionally sold, and that its mortgages are a lien upon the vendors' said goods, as part of the realty. Held, upon the facts disclosed, and the law applicable thereto, that said mortgagee is not a subsequent purchaser of the realty of the Regna Construction Company, as against the reserved title of the vendors to the goods which are the subject-

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Conclusions of Fallon, V. C. Re Sale.

10 matter of the conditional sale contracts affixed to the realty so as to become part thereof, but severable without material injury to the freehold. Held, also, that the receiver has no right to said goods in default of payment of purchase price therefor.

20 2. A filed conditional sale contract, referring to goods furnished thereunder, recites, "Shipped to Regna Construction Company, Mt. Vernon Street, Ridgefield Park, N. J." Such recital does not comply with the statutory requisite of "briefly describing the realty," but such non-compliance is inconsequential in the matter *sub judice*.

30 3. A conditional sale contract describes goods as "twenty-six (26) ranges as had #822." A filed instrument purporting to be a copy of such contract described the goods as "26 #822 A. B. gas ranges." The variance is unsubstantial. The Uniform Conditional Sales Act, *supra*, does not require or lay down any particular manner in which the chattel is to be described. *Huber v. Cloud*, 130 Atl. Rep. 562; 102 N. J. L. 181.

40 4. A filed contract reads in part, "The seller may at their election regard the property as sold unconditionally and file a mechanic's lien, or pursue any other remedy for the collection of the within consideration." Receiver's claim that the vendors should be regarded as having elected to treat the transaction as an unconditional sale, is not sustained by the proofs.

Conclusions of Fallon, V. C. Re Sale.

5. The Uniform Conditional Sales Act, *supra*, alters the fixture rule—established as a general rule of law prior to its enactment—wherein the intent of the parties to a conditional sale contract was regarded as the paramount test as to whether chattels affixed to realty so as to become part thereof should remain personalty or not. As stated in *General Motors Acceptance Corporation v. Smith*, 101 N. J. L. 154, “This act stands by itself.” 10

6. When the legislature frames a new and general rule covering an entire subject-matter, all earlier and different rules touching the same matter are to be discarded in favor of such latter rule. 20

7. The first part of Section 7 of the Uniform Conditional Sales Act, *supra*, is inapplicable to the matter *sub judice* because it applies to a case in which goods conditionally sold are not severable from the realty to which affixed without material injury to the freehold.

8. Under part two of Section 7 of the aforesaid act, if the goods are so affixed to the realty at the time of sale or subsequently as to become part thereof, but severable without material injury to the freehold, the reservation of title is void after the goods are so affixed only as against subsequent purchasers of the realty * * * unless the contract, or a copy thereof * * * shall be filed before such purchase * * *. A mortgagee is classified as a purchaser by Section 1 of said act. 30
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Conclusions of Fallon, V. C. Re Sale.

9. Under part three of Section 7 of the afore-
said act, the seller's reservation of title is void
as against the "owner" of the realty * * * un-
less the contract, or a copy thereof * * * shall
10 be filed before the goods are affixed * * * in
cases where the goods are sold to and affixed
by a contractor or some one other than the
owner himself.

10. The receiver herein is not vested with title
to the goods which are the subject-matter of
conditional sale contracts, as against the vend-
ors, even though in one or more instances the
20 vendors have not strictly complied with the re-
quirements of Section 7 of the Uniform Condi-
tional Sales Act, *supra*.

11. In the matter *sub judice* the receiver holds
the property which came to his possession by
the same right and title as the Regna Con-
struction Company. Said company not having
acquired title to the goods, it could not resist
the claims of the vendors, and consequently the
30 receiver cannot do so.

12. Receiver's claim that he should be re-
garded as the "owner" of the realty within the
purview of the third part of Section 7 of the
Uniform Conditional Sales Act, *supra*, is un-
tenable as against the vendors.

13. The third part of Section 7 of the Uni-
form Conditional Sales Act, *supra*, ostensibly
40 was intended to apply to the case of a sale of
goods to a contractor to be affixed to realty
owned by a person other than such contractor.

Conclusions of Fallon, V. C. Re Sale.

In the case *sub judice* the goods were sold directly to the Regna Construction Company—the “owner” of the realty.

Messrs. O'Brien & Tartalsky, Solicitors for Complainant. 10

Mr. Samuel Tartalsky, Counsel for Receiver.

Messrs. Carey & Lane, Solicitors for Washmuth-Endicott Company.

Mr. Louis Rubenstein, Solicitor for Joseph Neidorff and Samuel Milnis, partners trading as Liberty Lighting Fixture Company.

Messrs. Meisterman & Katchen, Solicitors for J. Rose & Company, Inc. 20

Messrs. Green & Green, Solicitors for Domestic Electric Co., Inc.

Messrs. Rinaldi & Shanley, Solicitors for Consolidated Securities Corporation.

FALLON, V. C.

This matter is before the Court on the petition of the receiver appointed herein for confirmation of the sale by him of a 32-family brick apartment house known as No. 101 Mt. Vernon Street, Ridgefield Park, N. J., for \$96,500, free and clear of all liens and encumbrances except a mortgage for \$8,000 held by Charles Enders, Jr., and Amelia Enders, his wife, and municipal liens. The order for sale provides that the moneys realized be subject to the same liens and equities of all parties in interest as was the property before the sale. Objection to confirmation was made by coun- 30 40

Conclusions of Fallon, V. C. Re Sale.

sel representing parties who sold to Regna Construction Company, the insolvent corporation for which the receiver was appointed refrigerators, kitchenettes, gas ranges, and lighting fixtures, under conditional sale contracts wherein the seller's reserved title to the goods until the purchase price was paid therefor. The gist of the objection is that such conditional sale vendors cannot be divested of their reserved title to the goods which they furnished to the Regna Construction Company, and title thereto be vested in the purchaser from the receiver. A contract of Domestic Electric Co., Inc., for refrigerators, bears date October 28, 1927, but was not filed until September 28, 1928. The goods were affixed to the realty May 12, 1928. A contract of Wasmuth-Endicott Company, for kitchenettes, bears date November 9, 1927, and was filed November 14, 1927. The goods were affixed to the realty in March, 1928. The filed contract, referring to the goods furnished thereunder, recites, "Shipped to Regna Construction Company, Mt. Vernon Street, Ridgefield Park, N. J." Though such recital does not, in my judgment, comply with the statutory requisite of "briefly describing the realty," the non-compliance is inconsequential in the matter *sub judice*. A contract of J. Rose & Company, for gas ranges, bears date December 23, 1927. The goods were delivered to the apartment house April 4, 1928, and while it does not appear when they were affixed to the realty, the fact is they are affixed thereto. An instrument purporting to be

Conclusions of Fallon, V. C. Re Sale.

a copy of such contract was filed March 22, 1928. The contract describes the goods as "Twenty-six (26) ranges as had #822." The instrument filed reads, "26 #822 A. B. Gas ranges." Although the instrument filed is not a true copy of the contract, I regard the variance as unsubstantial. The Uniform Conditional Sales Act (P. L. 1919, p. 461) does not require or lay down any particular manner in which the chattel is to be described. *Huber v. Clark*, 130 Alt. Rep. 562. A contract of Joseph Neidorff and Samuel Milnis, partners trading as Liberty Lighting Fixture Company, for lighting fixtures, bears date March 6, 1928, and was filed March 30, 1928. The goods were affixed to the realty in April, 1928. The filed contract reads in part, "The seller may at their election regard the property as sold unconditionally and file a mechanic's lien, or pursue any other remedy for the collection of the within consideration." The receiver claims said vendors should be regarded as having elected to treat the transaction as an unconditional sale. I do not find anything in the proofs to warrant such claim. Screens were furnished to the Regna Construction Company, and affixed to the realty so as to become part thereof, but severable without material injury to the freehold, under a conditional sale contract reserving to the vendor title thereto until the purchase price was paid therefor. While said vendor has not made objection to the confirmation of the sale of the realty to which, as aforesaid, his goods are affixed, his rights must never-

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Conclusions of Fallon, V. C. Re Sale.

10 theless be observed. It was conceded by counsel for the vendors and for the receiver, and I find the fact to be, that the goods which were the subject-matter of the conditional sale contracts were affixed to the realty so as to become part thereof, but severable without material injury to the freehold. Counsel conceded also that the claims of the vendors are based upon Section 7 of the Uniform Conditional Sales Act, *supra*, which for the purpose of clarity and convenience, is hereinafter set forth in three parts:

20 If the goods are so affixed to realty, at the time of a conditional sale or subsequently as to become a part thereof and not to be severable wholly or in any portion without material injury to the freehold, the reservation of property as to any portion not so severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation.

30 If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof, but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with
40 a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before

Conclusions of Fallon, V. C. Re Sale.

such purchase in the office where a deed of the realty would be recorded or registered to affect such realty.

As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof, but to be severable without material injury to the freehold, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto, shall be filed before they are affixed, in the office where a deed would be recorded or registered to affect such realty. 10

The aforesaid act alters the fixture rule—established as a general rule of law prior to its enactment, wherein the intent of the parties to a conditional sale contract was regarded as the paramount test as to whether chattels affixed to realty so as to become part thereof should remain personalty or not. In *Harrington's Sons Co. v. Jersey City*, 78 N. J. L. 610, it is said that when the legislature frames a new and general rule covering an entire subject-matter, all earlier and different rules touching the same matter are to be discarded in favor of such later rule. In *General Motors Acceptance Corporation v. Smith*, 101 N. J. L. 154, the Court referring to the Uniform Conditional Sales Act, *supra*, said, "This act stands by itself." 30

The first part of Section 7 of the aforesaid act is inapplicable to the matter *sub judice* because it applies to a case in which goods con- 40

Conclusions of Fallon, V. C. Re Sale.

ditionally sold are not sold severable from the realty to which affixed, without material injury to the freehold. Under Part Two, if the seller's goods are severable without material injury to the freehold, the reservation of title is void after the goods are so affixed only as against subsequent purchasers of the realty * * * unless the contract, or a copy thereof * * * shall be filed before such purchase * * *. Under part three, the seller's reservation of title to goods is void only as against the "owner" of the realty * * * unless the contract, or a copy thereof * * * shall be filed before the goods are affixed * * *.

In the case *sub judice* the vendor's goods were conditionally sold directly to the Regna Construction Company, the owner of the realty. The receiver is not vested with title to the goods which are the subject-matter of the contracts aforesaid, as against the vendors, even though in one or more instances the vendors have not strictly complied with the requirements of Section 7 aforesaid. He holds the property coming into his possession by the same right and title as the Regna Construction Company. Said company not having acquired title to the goods could not resist the claims of the vendors, and consequently the receiver cannot do so. The receiver claims he should be regarded as the "owner" of the realty within the purview of the third part of Section 7 of the aforesaid act, and relies upon Section 68 of the General Corporation Act (Revision of 1896) which provides, "All the real and personal property of

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an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto." He refers also to *Freeholders of Middlesex Co. v. State Bank at New Brunswick*, 29 N. J. Eq. 268, aff'd in 30 N. J. Eq. 311, wherein it was held that on the appointment of a receiver of an insolvent corporation title to its property is divested by force of law, and such divestiture is perfect and absolute. I regard the statutory provision and cited case aforesaid as inapplicable to the matter *sub judice*, and the receiver's claim untenable as against the vendors. The third part of Section 7 of the Uniform Conditional Sales Act, *supra*, ostensibly was intended to apply to the case of a sale of goods to a contractor to be affixed to real property owned by a person other than such contractor. The commissioners who framed said act, referring to the third part of Section 7, said, "A separate sentence has also been inserted to cover the peculiar case of the sale of goods to a contractor to be affixed by him to the real property of another, in other words, the case of the validity of the conditional sale of a fixture as against the "owner of the realty." See *Uniform Laws Annotated*, 2 U. L. A. at page 13, and 2a U. L. A., page 106, Section 70. See also, *Köhler v. Brasun*, 249 N. Y. 224, 164 N. E. 31, wherein the New York Court of Appeals considered the third sentence of Section 67 of the New York Personal Property Law, which

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is substantially the same as the third part of Section 7 of our Uniform Conditional Sales Act, *supra*.

10 The Consolidated Securities Corporation, as mortgagee, claims to be a subsequent purchaser of the aforesaid realty for value and without notice of the reserved title of the vendors to the goods conditionally sold, and that its mortgages are a lien upon the vendors said goods, as part of the realty. One of the mortgages of said corporation (\$30,000) is dated September 30, 1927, and was recorded October 1, 1927. The other (\$20,000) is dated November 29, 1927, and was recorded November 30, 1927. The Regna Construction Company executed a purchase money mortgage for \$9,500 to Harry C. Leidinger, dated August 31, 1927, recorded on the same date. Said mortgage was postponed to the lien of the aforesaid mortgages of Consolidated Securities Corporation. "Purchaser," as defined in Section 1 of our Uniform Conditional Sales Act, *supra*, includes mortgagee. 20 Said mortgagee is not a subsequent purchaser of the realty of the Regna Construction Company as against the reserved title of the above-named vendors to the goods which are the subject-matter of the conditional sale contracts affixed to the realty so as to become part thereof but severable without material injury to the freehold. It appears that judgment based on mechanic's lien claims and otherwise, 30 mechanic's lien claims for work done upon and materials furnished to the realty aforesaid, and 40 general claims for a considerable sum of money

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owing by the Regna Construction Company, remain unsatisfied. Whatever rights and priorities may be claimed therefor, they are subordinate to the liens of the mortgages aforesaid, and to the rights of the above-named conditional sale vendors in and to the goods which are the subject-matter of the sale contracts. 10

If the sales price aforesaid (\$96,500) is sufficient to meet the administration expenses herein, moneys due to the aforesaid conditional sale vendors, and satisfy the aforesaid mortgages of Consolidated Securities Corporation and Harry C. Leidinger, I will advise an order confirming the receiver's sale; otherwise I will direct a resale of the property unless the purchasers are willing to make payment, in addition to their bid of \$96,500, the purchase price of the goods conditionally sold, as aforesaid upon the vendors joining with the receiver in transferring to the purchasers title thereto. 20

Dated, Hoboken, N. J., May 18, 1929.

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**Petition of Consolidated Securities Corporation
Re Sale of Land, Filed June 19, 1929.**

To the Honorable Edwin Robert Walker,
Chancellor of the State of New Jersey:

10 The petition of Consolidated Securities Corporation, a corporation of New Jersey, having its principal office in the City of Union City, County of Hudson and State of New Jersey, respectfully shows:

20 1. Petitioner is the owner and holder of two mortgages made by the defendant, Regna Construction Company, the first bearing date September 30, 1927, given to secure the sum of Thirty Thousand (\$30,000.00) Dollars, which mortgage was recorded in the Bergen County Clerk's Office on October 1, 1927, in Liber 989 of Mortgages for said County, on page 271, and the other of said mortgages bears date November 29, 1927, given to secure the sum of Twenty Thousand (\$20,000.00) Dollars, recorded in the Bergen County Clerk's Office November 30, 1927, in Liber 1007 of Mortgages for said County, on
30 page 260. Both of said mortgages are past due and bear interest at the rate of six per cent per annum from their respective dates. The said mortgages were given to secure payment of the said sums to be advanced for the erection and construction of a building on the lands covered thereby.

40 2. On or about June 28, 1928, Warren Dixon,

*Petition of Consolidated Securities Corporation
Re Sale of Land.*

Jr., was appointed by this court as Receiver of the above named defendant and the above named defendant was declared insolvent and title to all property belonging to the above named defendant vested in said Receiver. 10

3. That by an order entered in this cause the said Receiver was directed to sell the said property covered by the petitioner's mortgage at public sale, free and clear of all liens and encumbrances of every kind, except a first mortgage in the sum of Eight Thousand (\$8,000.00) Dollars held by Charles H. Enders, Jr., and Emilia Enders, his wife, with interest thereon, and excepting also municipal taxes and assessments and accrued interest thereon. 20

4. That on September 15, 1928, said Receiver did sell at public vendue, the said property covered by the petitioner's mortgages, free and clear of all liens and encumbrances, except the aforesaid Enders mortgage and taxes and assessments, and did report said sale to this court, and by an order to show cause entered herein all parties interested were directed to show cause before this court why said sale should not be confirmed. 30

5. That on the return of the said order to show cause why the sale should not be confirmed, objection was made to the confirmation by counsel representing parties who sold to the above named defendant, refrigerators, kitchenettes, gas ranges and lighting fixtures, under contracts reserving the seller's title to the goods until purchase price was paid. 40

*Petition of Consolidated Securities Corporation
Re Sale of Land.*

10 6. That the Receiver herein did, on the report of said sale, report that certain of the conditional sales contracts were invalid and that title to the goods covered thereby was vested in the said Receiver.

7. That by conclusions filed in the above entitled cause on or about May 18, 1929, this court found that reservation of the title by the conditional sale vendors was valid against this Receiver and that said Receiver did not have title to the goods conditionally sold.

20 8. That on June 17, 1929, the Receiver moved the confirmation of said sale before this court, and that at that time petitioner appeared by counsel and objected to such confirmation on the ground that the proceeds of said sale, to wit, the sum of Ninety-six Thousand Five Hundred (\$96,500) Dollars is not sufficient to pay the amounts due to the conditional vendors, this petitioner on its mortgages, the amounts due to the
30 lien claimants who are entitled to priority over the mortgages of this petitioner and for moneys that were not actually paid and used in the erection of the building and the amount due to Harry C. Leidinger on his mortgage, and that in the event of the confirmation of said sale on this basis this petitioner will sustain a loss on its mortgages.

40 9. This court, having found that the reservation of title in the conditional vendors is valid and that the Receiver has not title, this petitioner contends that the only remedy of the conditional vendors is to remove the said goods, sell

*Petition of Consolidated Securities Corporation
Re Sale of Land.*

the same in accordance with the Uniform Conditional Sales Act and file a claim with the Receiver for any deficiency, which deficiency claim would not be entitled to priority over other claimants against the insolvent corporation. 10

10. As pointed out in the brief filed with this Honorable Court upon the confirmation of the original sale under Point Three thereof, this petitioner still has a lien upon the building in question without the chattels sold on the conditional sales contracts and any money realized upon the sale of the building without the chattels, could not be applied to the payment of the balance due to the conditional vendors, and to do this would be to impair the security of the mortgages of the petitioner and would be grossly inequitable. On the other hand, to sell the building as a whole, including these chattels, assuming that the conditional vendors would join therein, would compel this mortgagee to become an unwilling purchaser of these goods. 20

11. Petitioner did attend at the sale held September 15, 1928, and did bid there at, at which sale it was announced by the Receiver that the same would be free and clear of all liens, and this petitioner did assume that this included the liens of the conditional vendors, and that thereby the Receiver has title to the goods conditionally sold, and that any moneys due to the conditional vendors on their contracts was subordinate to the mortgages of this petitioner. If this petitioner knew at that time that the conditional sales contracts were prior to its mort- 30 40

*Petition of Consolidated Securities Corporation
Re Sale of Land.*

gages, it would undoubtedly have increased its bid so as to cover the full amount due to it on its mortgages after the payment of all prior
10 liens.

12. That on September 10, 1928, by an order entered in this cause, it was ordered that the petitioner herein be permitted to use the sum of Twenty-one Thousand Six Hundred Seventy-three Dollars and Forty (\$21,673.40) Cents, part of the moneys due to it on its mortgages above referred to, as part of the purchase money or
20 consideration for the premises to be sold by the receiver in the above entitled cause, and that in the event that it shall become the purchaser of said premises, at said receiver's sale, its lien of the balance due on its mortgages to attach to the proceeds of said sale according to its right and priority, and it was further ordered that in the event of the petitioner becoming the purchaser of said premises, that the aforesaid sum should
30 be considered as deposit on the purchase price and in such event, the claim of petitioner filed with the Receiver be reduced by the sum aforesaid.

13. In order to protect the lien of its mortgages, this petitioner is now willing and hereby offers to the Receiver in the above entitled cause, a bid for the property covered by its mortgages in the sum of Ninety Thousand
40 (\$90,000.00) Dollars, said bid to be subject, however, to the lien of the Enders mortgage with interest thereon, and subject to the rights of the conditional vendors, said sale to be consummated

*Petition of Consolidated Securities Corporation
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within fifteen days after the same is confirmed by this court, and does hereby tender to the Receiver herein a deposit in the sum of Forty-five Hundred (\$4500.00) Dollars on account of said purchase price. As an alternative proposition, this petitioner is willing to enter into a contract to purchase the said property from the Receiver for the sum of Ninety Thousand (\$90,000.00) Dollars, and, in the event that a new sale shall be ordered by this court, subject to the conditional sales contracts, and if, at said sale, the Receiver shall not obtain a bid for said property for a sum in excess of the sum of Ninety Thousand (\$90,000.00) Dollars, then this petitioner will carry out and perform its bid hereby made and will guarantee to the Receiver the payment of the sum of Ninety Thousand (\$90,000.00) Dollars, as and for the purchase price of said premises, upon the execution and delivery of a valid Receiver's deed for said premises under the order and direction of this court, and attached hereto is a statement of such offer in writing, signed by the proper officers of the petitioner.

14. That the petitioner shall be permitted to use, as part payment of the purchase price under its aforesaid offer, the sum of Twenty-one Thousand Six Hundred Seventy-three Dollars and Forty (\$21,673.40) Cents, part of the moneys due on its mortgages above referred to, the claim filed with the Receiver herein to be reduced by that sum; and the balance due on its mortgages to attach to the balance of proceeds of sale according to its rights and priority over other claims.

*Petition of Consolidated Securities Corporation
Re Sale of Land.*

Petitioner therefore prays:

10 (1) That this Honorable Court may, by its order, direct the Receiver appointed in the above entitled cause to sell and convey to this petitioner, premises owned by him situate in the Borough of Ridgefield Park, County of Bergen and State of New Jersey, covered by the mortgages of the petitioner referred to herein, said sale to be subject to the following encumbrances:

20 (a) Mortgage held by Charles H. Enders, Jr., and Emilia Enders, his wife, given to secure the sum of Eight Thousand (\$8,000.00) Dollars, with accrued interest thereon.

(b) Municipal taxes and assessments, with accrued interest thereon.

30 (c) Subject to the effect, rights or remedies of the holders of conditional sales contracts for goods sold to the defendant in the above entitled cause wherein title to said goods is reserved in the seller until the purchase price is paid. Said sale to be free and clear of all other liens and encumbrances.

Title to said property to close on or before thirty days subsequent to the confirmation of said sale by this Honorable Court; or

40 2. That the receiver shall be directed to hold another sale of said premises covered by petitioner's mortgages at public vendue upon due advertisement, subject to the encumbrances set forth in the last preceding paragraph, and free

*Petition of Consolidated Securities Corporation
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and clear of all other liens and encumbrances, said sale to be to the highest bidder and upon the terms and directions fixed by the Receiver.

3. That the receiver shall be directed to enter 10
into a contract with this petitioner wherein and
whereby it shall be agreed that in the event that
the Receiver shall not be able to obtain a bid of
more than Ninety Thousand (\$90,000.00) Dol-
lars for said premises at such new sale, then
that this petitioner shall purchase the said
premises for the sum of Ninety Thousand
(\$90,000.00) Dollars and that this petitioner will 20
guarantee to the Receiver the payment of the sum
of Ninety Thousand (\$90,000.00) Dollars for a
deed for said premises, in the event that a
greater sum shall not be realized.

4. That all persons interested shall be by order
of this court directed to show cause at a short
day why the prayer of the petitioner herein
should not be granted.

And your petitioner will ever pray, etc.

RINALDI & SHANLEY, 30
Solicitors for Petitioner.

State of New Jersey,
County of Hudson, ss:

Frank J. Rinaldi, of full age, being duly sworn
according to law, upon his oath, deposes and
says:

I am secretary of Consolidated Securities Cor- 40
poration, a corporation of New Jersey, and I am

*Petition of Consolidated Securities Corporation
Re Sale of Land.*

familiar with the mortgages held by said Corporation covering property formerly owned by Regna Construction Company and I am the du-
 10 authorized agent of said Corporation for the purpose of making this affidavit.

I have read the foregoing petition and the facts therein stated are true.

The written offer attached hereto was authorized by a Resolution of the Board of Directors of said Corporation at a regular meeting held June 17th, 1929.

FRANK J. RINALDI.

20 Sworn and subscribed to before me, this
18th day of June, 1929.

Teaneh Trolio,
A Notary Public of New Jersey

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*Petition of Consolidated Securities Corporation
Re Sale of Land.*

June 17th, 1929.

To Warren Dixon, Jr.,
Receiver of Regna Construction Co.

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Dear Sir:

The Consolidated Securities Corporation, the holders of the two mortgages covering the property to which you hold title as Receiver of Regna Construction Company, does hereby offer to you to purchase the said property, free and clear of all liens and encumbrances, except the following:

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1. A mortgage made by Harry C. Leidinger to Charles Enders Jr., and Emelia Enders, his wife, given to secure the sum of Eight Thousand (\$8,000.00) Dollars, dated December 6, 1926, recorded in the Bergen County Clerk's Office in Book 900 of Mortgages for said County, page 1.

2. Municipal taxes and assessments due on said property to the Borough of Ridgefield Park, Bergen County, New Jersey, with accrued interest thereon.

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3. The conditional sales contracts of:

(a) Domestic Electric Co., Inc., dated October 28, 1927.

(b) Contract of Joseph Neidorff and Samuel Milnis, trading as Liberty Lighting Fixture Company, dated March 6, 1928.

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*Petition of Consolidated Securities Corporation
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(c) A contract held by Weismuth-Endicott Co. for conditional sale of twenty-six cabinets and refrigerators used in the building.

10 (d) A contract of J. Rose & Company for sale of twenty-six gas ranges now in said building.

(e) A contract of N. J. Weather Strip Co. for screens now in said building.

The purchase price of said property to be the sum of Ninety Thousand (\$90,000.00) Dollars which is to be paid in the following manner:
20 By the application of Twenty-one Thousand Six Hundred Seventy-three Dollars and Forty (\$21,673.40) Cents, part of moneys due on our mortgage covering this property which by order of the Court of Chancery entered September 10th, 1928, in and by which you were appointed Receiver, we were given permission to apply as part of the purchase price of said premises at the sale held September 15th, 1928;
30 balance of said moneys to be paid in cash on or before fifteen days after the same is confirmed by the Court of Chancery and on delivery of proper Receiver's deed in accordance with said order.

As an alternative proposition we do hereby agree that the above offer may be accepted by you and performance on your part to be delayed until after a public sale of said premises
40 under an order of the Court of Chancery, and in the event that you are unable to obtain a bid greater than Ninety Thousand (\$90,000.00)

*Petition of Consolidated Securities Corporation
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Dollars at said sale, then we shall carry out the above bid and do hereby guarantee to pay to you the sum of Ninety Thousand (\$90,000.00) Dollars, as and for the purchase price of said premises upon the terms and conditions set forth above. 10

This confirms an offer made in open court this morning by our solicitors, Rinaldi & Shanley, and they are hereby directed to petition this court for the acceptance of this offer, or an order directing the Receiver to hold a new sale of said property subject to the encumbrances above set forth in Paragraph One hereof. 20

Respectfully yours,

CONSOLIDATED SECURITIES CORPORATION

By: Frank A. DeRiso,

Pres.

L. S. Frank J. Rinaldi,
Sec.

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Order to Show Cause on Petition of Consolidated Securities Corp., Re Sale of Land, Filed June 19, 1929.

10 Upon reading and filing the duly verified petition of Consolidated Securities Corporation, a corporation of New Jersey, wherein and whereby it appears that the said corporation is willing to purchase the property held by the Receiver in the above entitled cause and willing to guarantee to the Receiver a price in excess of the price realized at a sale held September 15, 1928; and it appearing that to the best interests of the creditors who have filed claims herein, that said offer be accepted;

20 It is, on this 19th day of June, Nineteen Hundred and Twenty-nine, on motion of Rinaldi & Shanley, solicitors of Consolidated Securities Corporation, a corporation of New Jersey, Ordered that John H. Sheridan, Mervin Herzfeld, Warren Dixon, Jr., Receiver in the above entitled cause, and all other person, persons, firms or corporations who filed claims herein, and the holders of contracts for the sale of goods to the defendant in the above entitled cause whereby
30 title to said goods is vested in the sellers, show cause before the Chancellor at Chancery Chambers, No. 1 Exchange Place, Jersey City, on Monday, the 24th day of June, 1929, at ten o'clock in the forenoon (Daylight Saving Time), why the prayer of the petition of Consolidated Securities Corporation filed herein should not be granted.

40 And it is further Ordered that true copies of this order and of the petition on which it is

Order to Show Cause on Petition of Consolidated Securities Corp., Re Sale of Land

based, certified to be such true copies by the solicitors of Consolidated Securities Corporation, be served upon the above named parties in interest either personally or by mailing same to them, so that they receive same not later than Friday, June 21, 1929. 10

E. R. WALKER,
C.

Respectfully advised,
JOHN J. FALLON,
V. C.

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Order Confirming Sale, Filed July 1, 1929.

This matter being opened to the court by Samuel Tartalsky, of Counsel with Receiver of the above named defendant company, and it appearing by the report of Said Receiver on file in the office of the clerk of this court that the said receiver has sold the lands and premises of Regna Construction Company situate at Ridgefield Park, Bergen County, New Jersey, together with the appurtenances, for the sum of \$96,500.00 subject and assuming the payment of a mortgage held by Charles Enders and Amelia Enders, his wife, for \$8,000.00 with interest thereon from December 26, 1926, subject also to municipal taxes against the said premises for years 1927 and 1928 amounting approximately to the sum of \$594.72, water taxes amounting approximately to \$20.00; assessment amounting to approximately \$166.80 with interest of approximately \$10.00 thereon and subject also to a snow and ice assessment of \$1.25; that said sum was the highest and best price the same would then bring in cash and proof being made of the mailing of the Order heretofore made in this cause, bearing date the Twenty-first day of September, 1928, directing the stockholders and creditors of the above named defendant company to show cause on the First day of October, 1928, why the said sale should not be confirmed, on which date the hearing on said confirmation was continued and the court having considered the matter and being of the opinion that the said price hereinbefore mentioned is the highest and best price that the said lands and premises would bring;

Order Confirming Sale, Filed July 1, 1929

It is, on this first day of July, 1929, on motion of Samuel Tartalsky of Counsel with Receiver Ordered that said sale be in all things confirmed and that the said Receiver do proceed to make conveyance of the lands and premises of the Regna Construction Company situate at Ridgefield Park, Bergen County, New Jersey, together with the appurtenances thereto belonging, sold by him according to the conditions of sale, and that said Receiver hold the moneys derived therefrom to abide the further order of this Court. 10

E. R. WALKER,

C. 20

Respectfully advised,

JOHN J. FALLON,
V. C.

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Order Setting Aside Fund, Filed July 1, 1929.

10 This matter coming on to be heard on this First day of July, 1929, on motion of Samuel Tartalsky of Counsel with Warren Dixon Jr., Receiver of Regna Construction Co. and in the presence of Carey & Lane, Solicitors for Was-

20 muth Endicott Co., and Green & Green, Solicitors for Domestic Electric Co., and Louis Rubenstein, Solicitor of Liberty Lighting Fixture Co., and Meisterman & Katchen, Solicitors for J. Rose & Co. Inc., Conditional Vendors, and application therefor having been made;

It is Ordered that Warren Dixon Jr., Receiver herein set aside from the proceeds of sale of the property of Regna Construction Co. the sum of \$7,279.30, which sum shall be kept in a separate fund to await the determination of the Court of Errors and Appeals on an appeal concerning the said conditional sales, and in the event of the decision by said Court of Errors and Appeals distribution of said fund shall be made in accordance therewith;

30 And it is further Ordered that in the meantime and until the further order of this court said conditional vendors be and they are each hereby restrained and enjoined from interfering with said goods conditionally sold by them respectively.

E. R. WALKER,
C.

40 Respectfully advised,
JOHN J. FALLON,
V. C.

New Jersey Court of Errors and Appeals

ON APPEAL FROM CHANCERY.

Between:

ELBERT M. CROWN, trading as
CHAS. T. WALKER SHADE Co.,
Complainant,

AND

REGENA CONSTRUCTION COMPANY, a
corporation,
Defendant.

APPEAL OF
CONSOLI-
DATED
SECURITIES
CORPORATION

BRIEF OF APPELLANT.

RINALDI & SHANLEY, Sol'rs. of Appellant.

G. FRANK SHANLEY, of Counsel.

Facts.

The defendant in the above entitled cause, a New Jersey Corporation, was on June 29, 1928, decreed to be insolvent, and Warren Dixon, Jr., was appointed Receiver in accordance with the provisions of the Corporation Act, (Rev. of 1896). (Case, pg. 34 to 38.)

In or about the month of September, 1927, the said defendant corporation was engaged in the

erection and construction of a four-story brick apartment dwelling on lands owned by it situate in the Borough of Ridgefield Park, Bergen County, New Jersey, and known as No. 101 Mt. Vernon Street. (Case, pg. 15, f. 36-39; Case, pg. 55, f. 14-24; f. 34-41; Case, pg. 56, f. 1-4.) At the time the said corporation purchased said property, there existed thereon a mortgage given to secure the sum of Eight Thousand (\$8,000.00) Dollars held by Charles Enders and wife, (Case, pg. 54, f. 1-6), and said defendant corporation gave back a mortgage to its vendor as part of purchase price, to secure the sum of Ninety-five Hundred (\$9,500.00) Dollars, which mortgage is held by Harry C. Leidinger, or his legal representatives. (Case, pg. 54, f. 13-21.)

At the time of the commencement of the above mentioned building, the said corporation applied to this appellant for a mortgage thereon in the sum of Thirty Thousand (\$30,000.00) Dollars, and at that time submitted to this appellant plans and specifications of the building intended to be erected by it. The proceeds of said mortgage loan to be advanced to the said defendant from time to time as its building progressed. This appellant thereupon agreed to loan to the said defendant such sum, to be advanced in the course of the erection of the building, and on September 30, 1927, the defendant made and executed its bond and mortgage to this appellant to secure the sum of \$30,000.00, which mortgage was on October 1, 1927, recorded in the Bergen County Clerk's Office in Liber 989 of Mortgages for said County, page 271. (Case, pg. 51, f. 11-25.)

The moneys for which the said mortgage was given as security were advanced to the said defendant company and to material men and la-

borers who furnished materials or performed labor in the erection of said building. (Case, pg. 52, f. 10-20, Case pg. 75 and 76.)

In or about November, 1927, the said defendant, finding the sum loaned by this appellant insufficient to complete the said building, applied to the appellant for a further loan of Twenty Thousand (\$20,000.00) Dollars, such sum to be likewise disbursed as the building progressed and on November 29, 1927, the defendant made and executed its bond and mortgage to this appellant to secure the said sum, which mortgage was on November 30, 1927, recorded in the Bergen County Clerk's Office in Liber 1007 of Mortgages for said County, page 260. (Case, pg. 51, f. 27-36.)

One Thousand (\$1,000.00) Dollars of the proceeds of the mortgage first above mentioned was paid to Harry C. Leidinger on account of his mortgage, and at the time of said payment, said payment being in consideration therefore, the said Harry C. Leidinger postponed the lien and operation of his mortgage to the lien and operation of the \$30,000.00 mortgage held by this appellant (Case, pg. 54, f. 13-42). Out of the proceeds of the \$20,000 mortgage held by this appellant, there was paid the sum of One Thousand (\$1,000.00) Dollars to Harry C. Leidinger on account of his mortgage and at the time of said payment, said payment being in consideration therefor, the said Harry C. Leidinger postponed the lien and operation of his mortgage above mentioned to the lien and operation of the said mortgage. (Case, pg. 54, f. 13-42.) At the time of recording of the above mentioned mortgages of appellant, no mechanics' lien claims had been filed against said property.

Numerous persons who furnished materials or performed labor in the erection of said building entered into written agreements with this appellant whereby they agreed to postpone any lien they might have by virtue of the Mechanics' Lien Act, to its mortgages, and other persons who furnished materials or performed labor in the erection of said building, whose work was performed or materials furnished subsequent to the disbursement of the appellant's mortgage money, did not postpone their rights of mechanics' liens to its said mortgages, and were, at the time of the appointment of the Receiver and still are, entitled to priority over the mortgages of the appellant to the extent of the mortgage moneys which were not actually advanced and paid by this appellant and applied to the erection of the building.

The claims so entitled to priority are the following:

P. Goranson & Co.	\$ 140.00
American Radiator Co	1,964.26
N. Y. Heater Supply Co.	1,032.00
Montgomery Supply Co.	8,337.86
Peter C. Nelson	546.00
Morris Jaffe	859.15
N. J. Wall Paper Co.	437.73
Antonio Valenti	2,592.00
Hudson Co. Marble Co.	3,800.00
George M. Brewster	12,981.61
	<hr/>
Total	\$32,690.61

This appellant admits the priority of the above mentioned claims over its mortgages to the extent of the mortgage moneys not actually applied to the erection of the building, the amount

thereof not having, as yet, been determined by the Receiver.

The property of the defendant was in this status at the time of the appointment of the Receiver and on July 9, 1928, the Receiver applied to the Court of Chancery for permission to sell the lands of the defendant free and clear of all liens in accordance with the provisions of Section 81 of the Corporation Act. (Case, pg. 39 to 50.)

On July 11, 1928, the appellant applied to the Court of Chancery for an order permitting it to foreclose its mortgages above referred to. (Case, pg. 50 to 53.)

On July 16, 1928, the Receiver filed an additional affidavit in support of his application for a sale free and clear of liens. (Case, pg. 53 to 65.)

On July 24, 1928, a hearing was had on both petitions; the application of this appellant for permission to foreclose was denied, and on that day an order was made directing the Receiver to sell all the real property of the defendant corporation at public vendue, free and clear of the lien of the appellant's mortgages and all other liens and encumbrances, except the Enders mortgage and municipal taxes. (Case, pg. 65 to 70.)

On September 10, 1928, this appellant applied to the Court of Chancery for an order permitting it to use that part of the mortgage money due to it which the Receiver admitted were actually advanced by this appellant and applied to the erection of the said building, (Case, pg. 70 to 76), and on the same day an order was made permitting this appellant to apply the sum of Twenty-one Thousand Six Hundred Seventy-three Dollars and Forty (\$21,673.40) Cents, due

on its mortgages, to the purchase price for the property to be sold by the Receiver, in accordance with the order above referred to. (Case, pg. 77 to 78.)

On September 21, 1928, the Receiver filed his report of sale, wherein it is set forth that the property of the defendant corporation was sold at public vendue on September 19, 1928. (Case, pg. 79 to 87.)

The appellant attended at said sale and bid thereat to an amount which it deemed sufficient to reimburse it for its mortgage moneys then due. The appellees, John H. Sheridan and Mervin Herzfeld, having bid at said Receiver's sale in the sum of Ninety-six Thousand Five Hundred (\$96,500.00) Dollars, and they being the highest bidders, the Receiver struck off and sold the said premises to the said parties and they paid, as a deposit on the purchase price of said property the sum of Four Thousand Eight Hundred Twenty-five (\$4,825.00) Dollars. (Case, pg. 83, f. 20-42; 84 f. 1-20.)

By the conditions of sale returned to the Court with the Receiver's Report, the said property was offered for sale by a metes and bound description and reference to a filed map and also the Receiver represented that the same was sold "together with the appurtenances thereunto belonging" (Case, pg. 84, f. 28-42; and 85), and said sale was to be made free and clear of all liens and encumbrances except the Enders mortgage above referred to and municipal taxes. (Case, pg. 86, f. 11-23.)

On September 21, 1928, an order was made directing all parties interested to show cause why the sale so reported by the Receiver should not be confirmed (Case, pg. 88 to 90) and the

Receiver directed to make, execute and deliver a deed to the purchasers for the said premises "and the appurtenances thereunto belonging." (Case, pg. 89, f. 41-45; 90, f. 7-10.)

Up to the time of the sale this appellant had no knowledge whatsoever of any claims by conditional vendors for articles of equipment then installed in the said apartment house and appurtenant to the building.

On the return of the order to show cause relating to the confirmation of the sale, the appellees Domestic Electric Company, J. Rose & Company, Inc., Wasmuth-Endicott Company, Joseph Neidorff and Samuel Milnis, partners trading as Liberty Lighting Fixture Co., appeared and objected to the confirmation of said sale for the reason that each of said parties claimed to have title to certain equipment sold to the defendant corporation on contracts of conditional sale.

The Domestic Electric Co. having installed and furnished thirty Frigidaire cabinets, thirty coils in said cabinets and two compressors, (Case, pg. 92, 93 and 94), and claimed that there was due to it the sum of \$2,690.00 with interest (Case, pg. 92, f. 40-42) and requested that it be permitted to take possession of said equipment or be paid the amount due to it if the purchaser at said sale desired to retain the same. (Case, pg. 93, f. 19-31.) The Receiver entered into a Stipulation of Facts (Case, pg. 99 to 101) with the said Domestic Electric Co., this appellant, however, not having any notice of said Stipulation of Facts or never having an opportunity to examine the said conditional vendor respecting the property to be conditionally sold, and on October 15, 1928, the Receiver herein filed his report regarding the claim made by Domestic

Electric Co., whereby he found that the said goods were sold as personalty "but the same were so affixed to the realty as to become part of it but to be severable without material injury to the freehold," and rejected the claim of said company for its failure to file its conditional sales contract in accordance with the provisions of the Uniform Conditional Sales Act. (Case, pg. 95 and 96.)

The respondent J. Rose & Co., Inc., claimed it had sold to the defendant twenty-six gas ranges and installed the same in the apartment house on the premises in question and that there was due to it the sum of \$936.00 with interest (Case, pg. 104 to 106) and on September 18, 1928, filed a petition in the Court of Chancery (Case, pg. 104 to 111) praying that it might be decreed that the Receiver have no right to, interest in, or lien upon, its gas ranges and that it might be permitted to enter said apartment house and re-take possession of same (Case, pg. 106, f. 15-24) and on October 15, 1928, the Receiver filed his report regarding the said claim and attached thereto is the testimony taken before the Receiver relating thereto. (Case, pg. 112 to 125.) In said report the Receiver found that J. Rose & Co., Inc., were "entitled to the return of the goods or payment by the Receiver". Receiver also found from the testimony taken before him that the said gas ranges were affixed to the freehold as to become a part thereof, but were, nevertheless, severable without material damage to the freehold. (Case, pg. 113, f. 27-33.)

The appellee Wasmuth-Endicott Co., sold to the defendant corporation certain machinery, compact and cabinets, which were installed in the kitchens of said apartment house, and claimed

that there was due to it the sum of \$2,840.00, the purchase price therefor (Case, pg. 131, f. 14-25). The Receiver reported that the goods sold by said respondent and installed by it in said apartment house are affixed to the realty so as to become part thereof but are severable without material injury to the freehold, (Case pg. 133, f. 10-14) and attached to his said report is a transcript of testimony taken by said Receiver in support of said claim, (Case, pg. 136, to 146), and reported that the said respondent was not entitled to the return of the goods conditionally sold, but that it had a general claim against the defendant corporation as a general creditor. (Case, pg. 135, f. 14-19.)

The respondents, Joseph Neidorff and Samuel Milnis, partners trading as Liberty Lighting Fixture Co., claim to have sold to the defendant corporation certain lighting fixtures which they installed in the premises of the defendant, and that title to the said fixtures was retained by the seller until full payment of the sum of \$1,050.00, the purchase price therefor. (Case, pg. 158 to 162.) No testimony was taken by the Receiver on this claim and the Receiver filed his report in which he found that the said respondent was not entitled to return of said goods for the reason that they had elected to treat the sale as an unconditional sale and actually did file a claim with the Receiver as a preferred creditor for the purchase price. (Case, pg. 158, f. 9-16.)

On the return of the Order to Show Cause relating to the sale, this appellant appeared by its Solicitors and objected to the Reports of the Receiver relating to the various conditional sales contracts, and each one of the conditional vendors appeared and objected to the confirmation

of said sale, and the Receiver's report affecting their rights, unless the amount paid on their respective conditional sales contracts were paid to them by the Receiver out of the proceeds of his sale. The same was argued before the Hon. John J. Fallon, *V. C.*, and it was agreed in open court and the matter be submitted to the court as if exceptions had been filed by the various parties interested.

On May 20, 1929, the Vice Chancellor filed his Conclusions, (Case, pg. 167 to 179), wherein he found that the reservation of title by the various conditional vendors was valid and that the title to the goods conditionally sold was still vested in the vendors and that the Receiver had no title thereto. The matter came on to be heard again before the Vice Chancellor subsequent to the filing of his Conclusions, and this appellant again objected to the confirmation of said sale, and, at the direction of the Court, did, on June 19, 1929, file its petition wherein it offered to purchase the said property from the Receiver, subject to the rights of the conditional vendors in the equipment installed in said building, for the sum of Ninety Thousand (\$90,000.00) Dollars, which price would net the Receiver more money than the bid at the previous public sale, or, in the alternative to guarantee to the said Receiver, a price of not less than \$90,000.00 if the said premises were again sold at public vendue, subject to the rights of the conditional vendors. (Case, pg. 180 to 191.) The matter was argued on the return of an Order to Show Cause granted on that petition (Case, pg. 192 and 193) and the application of this appellant was denied and an order was made on July 1, 1929, confirming said sale. (Case, pg. 194 and 195.) On

the same day, Orders were entered directing the Receiver to pay to the various conditional vendors the amount due on their various contracts with interest, out of the proceeds of said sale, in preference of the mortgages of this appellant. (Case, pg. 102 and 103; Case, pg. 129 and 130; Case, pg. 155 and 156; Case, pg. 165 and 166.)

The purchasers at said Receiver's sale have not taken title to the said property or paid the purchase price therefor.

Whereupon, the appellant, feeling aggrieved by the Orders made by the Court of Chancery respecting the rights of the conditional vendors and the Order Confirming Receiver's Sale, filed its Notice of Appeal, whereby it appealed to this Court from the said Orders and every part thereof. (Case, pg. 1 to 3.)

POINT I.

The reservation of title by the sellers under the conditional sales contracts are void as against this appellant.

This point involves the Construction of the First Paragraph of Section 7 of the Act of the Legislature of New Jersey entitled. "An Act Concerning Conditional Sales and To Make Uniform the Law Relating Thereto" which is as follows:

"If the goods are so affixed to realty, at the time of a conditional sale or subsequently as to become a part thereof and not to be severable wholly or in any portion without material injury to the freehold, the reservation of property as to any portion not so

severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation."

The Receiver, by his various reports filed, has found as a fact, that all of the goods sold by the various conditional sale contracts were affixed to the realty so as to become a part thereof, but to be severable without material injury to the freehold. In this regard this appellant maintained before the Vice Chancellor and here maintains that the Receiver was in error for the reason that there were no facts before him to justify such a finding.

By the conclusions of the Vice Chancellor he finds the fact to be "That the goods which were the subject matter of the conditional sale contracts were affixed to the realty so as to become a part thereof, but severable without material injury to the freehold," (Case, pg. 174, f. 6-12) and that this was conceded by counsel for the vendors and for the Receiver. This appellant, however, has never conceded that to be the fact. On the contrary, it is our contention that from the nature of the goods sold, the manner in which they were affixed, and the character of the building in which they were placed, that the goods are not severable "without material injury to the freehold." There was not any fact question raised before the Vice Chancellor, this appellant taking the legal evidence adduced before the Receiver as true, not admitting, however, the conclusions testified to by the witnesses and stipulated between the Receiver and Counsel for Domestic Electric Co., that the goods in question were severable without material injury to the freehold.

We come, therefore, to the question as to whether those goods are "severable either wholly or in part without material injury to the freehold."

As a proposition of law, we say these goods conditionally sold are such integral and component parts of the apartment house and indispensable in its operation as such, that they cannot be removed without material injury to the freehold.

The building was erected for the sole purpose of occupancy by thirty-two families as dwellings, and in each of these separate units or apartments in the building there is installed as part of the equipment for the proper operation of said building, a gas range, lighting fixtures, one kitchen cabinet and refrigerator and coils for electric refrigeration connected with tubing in the wall running from compressors in the cellar. All of these things are necessary to the ordinary use of the building just as much as any other permanently constructed part of the building. Take these various things out of the building and it is no longer fit for the use for which it was intended. It would be impossible to rent this building without this equipment. What meaning is to be given to the words of the Act? Does "material injury to the freehold" mean physical injury to the building itself? I think not. The first part of the Act says "affixed to the realty" and it is significant that the word realty is not used in the latter part of the sentence, instead the word "freehold" is used, this word having a definite meaning in law, that is, "an estate in real property."

Black's Law Dictionary (2nd Edition) p. 523 "includes not only the land itself, but everything connected with it or appurtenant thereto."

I have been unable to find any cases in any of the States where the Uniform Conditional Sales Act has been adopted construing this part of the Act. We have, however, the statement of the draftsman of the Act as to what he had in mind in drawing it. From the commentaries on this Act by George Gleason Bogert we find this language:

“The first sentence of Section 7 is intended to perpetuate the common law doctrine that there are limits to the powers of sellers and buyers with respect to the reservation of title to fixtures conditionally sold. They may not, as far as persons who have not consented to the reservation are concerned, agree for the reservation of title to an article which is so closely attached and incorporated in the land as to lose its identity. A test of such close incorporation is that *material injury to the freehold* will result if the chattel is removed. This phrase will doubtless be construed as continuing in force the doctrine stated in the preceding paragraph regarding attachment of such a character as to cause the chattel to be a part of the land regardless of filing.”

Uniform Laws Annotated, Vol. 2 A, pg. 99.

By subsequent language contained in these commentaries it would appear that the draftsman fell into error as to the meaning of the words “material injury to the freehold” but the primary intention was, however, to perpetuate the old law of fixtures.

In order to see what meaning was given to these words, which were incorporated in the act, we must therefore look at the decisions under the old fixture law. We admit that the passage of

this act alters the fixture rule established as a general rule of law prior to its enactment and that all questions as to the intent of the parties has been eliminated. Also that the provisions of the act are to take precedence over the old fixture law. However, in order to assist us in determining the intention of the legislature in adopting this act and the meaning to be given the words "without material injury to the freehold" we must look to the decisions wherein these words are construed.

One of the elements to be considered in determining whether or not an article was a fixture as between a mortgagee and a creditor of the mortgagor was, as appears by the language used by Vice-Chancellor Pitney:

"The application of the chattel to the use or purpose to which the part of the realty with which it connected is appropriated, and the intention of the parties in making an annexation to make a permanent accession to the freehold, and where the actual annexation is slight, the question is as to an article which is capable of an actual separate existence and of being moved and used in some other place, and its removal will work no material injury to the freehold. The prevailing element is one of intention."

General Electric Co. v. Transit Equipment Co., 57 N. J. Equity, page 460 at 470, and cases cited therein.

It will be noted that the Vice Chancellor gives a very different meaning to the words in question than that given by the draftsman of the Act.

Again we have the language of Vice Chancellor Backes:

"The building in which the machinery and appliances were contained was used by

Cruse, the mortgagor, as an engineering and machine shop and factory, for the machining and fabrication of iron and steel materials and construction work. The articles in question were installed by the mortgagor and were fitted for and intended to be, and were, used by him in the carrying on of that business on the mortgaged premises, and for that purpose were affixed to the ground and building. They were removable without injury to the real estate, but this circumstance is of little moment. They were integral parts of a common plant, and with the building, formed a unit for the prosecution of a common purpose. Undoubtedly, they were intended by the mortgagor to remain indefinitely, and were designed by him to be not a temporary, but a permanent accession to the freehold."

Chancellor v. Cruse, 83 N. J. Equity, page 232.

Again we have the language of Justice Jonathan Dixon. He refers to the rules laid down on *General Electric Co. v. Transit Equipment Co.*, *supra*, and the cases cited therein, then says:

"In our judgment, these requisites are proved * * * All the stationary apparatus were actually fastened to the ground. It was used directly in the quarrying and shipping of stone, the only purposes to which the real estate was put, or which it seems to have been valuable, and it had been attached to the land by the owner of the fee, no doubt with the intention that it should remain there until it was worn out, used in a business which was likely to consume it utterly."

Speiden v. Parker, 46 N. J. Equity, page 292.

Prior to this decision Vice Chancellor Bird said:

“It would seem that when a building is erected for a particular purpose and machinery is placed therein to effectuate that purpose and is reasonably necessary therefor and is in some substantial manner attached to the land or the building, and consequently to the freehold, so as to give the idea of permanency, and to evince an intention of making a fixture of it, the courts incline to regard such machinery as part of the realty, irrespective of weight or size.”

Roddey v. Brick, 42 N. J. Equity, page 218.

The Hon. Chief Justice speaking for the Court of Errors and Appeals in discussing this same question, said:

“The rule laid down in *Feder v. Van-Winkle*, 8 Dick. Chanc. Rep. 730 and followed in *Temple Co. v. Penn Mutual Life Insurance Co.*, 40 Vroom 36, states the true principal to be applied in the determination of the question when it is presented. Whenever chattels have been placed in and annexed to a building * * * as a part of the means to carry out the purposes for which the building was erected or to which it has been adapted, and with the intention of permanently increasing its value for the use to which it is devoted, they become as between the owner and his mortgagee, fixtures, and as much a *part of the realty as the building itself*. And this is true notwithstanding that such chattels may be severed from and taken out of the building in which they are located without doing any injury to them or to it and advantageously used elsewhere, and notwithstanding that the building itself may

thereafter be readily devoted to a use entirely different from that which was contemplated when the annexation was made."

Knickerbocker Trust Co. v. Penn Cordage Co., 66 N. J. Equity, 305 at pg. 309.

In the case of *Crane v. Brigham*, 11 N. J. Equity, page 29, in discussing the question as to whether an article was intended to become a fixture as between mortgagor and mortgagee, and speaking of the element of permanency said:

"As to the permanency, that does not depend so much on the degree of physical force with which a thing is attached as upon the motive and intention of the parties in attaching it. If it is placed there for the permanent improvement of the freehold, it may not be removed. They were placed there by the owners and from their adaption to the use and design of the real estate, the manner in which they were annexed and the length of time they had been used as fixtures, the legal inference is that they were affixed to the freehold for the benefit of the inheritance and not for any inferior purpose."

This very question was involved in a case before the United States District Court for the District of New Jersey wherein Samuel Olsen & Co. filed its petition asking that a lien upon the proceeds of a Receiver's sale be imposed for moneys due to it for materials furnished by it which were used in the building, the Willys Plant at Elizabeth. The materials having been furnished under conditional sale contracts which were not recorded until after the appointment of the Receiver. To quote from the Memor-

andum filed in that case by Hon. Justice Bodine, then sitting as District Judge:

“The petitioner’s materials became part of the realty and there seems to have been no dispute with respect to this. * * * Further the goods are not severable without material injury to the plant.”

The materials sold in this case were “conveyors” and “subveyors” installed throughout the large automobile manufacturing plant at Elizabeth and to remove them would, no doubt, have destroyed the purpose for which the plant was erected. (*Ohio Savings Bank v. Willys Corp.*, Case No. 3306, United States District Court.) (Not officially reported.)

By Section 30 of the Uniform Conditional Sales Act as follows:

“This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it,”

we find that the Legislature has clearly defined its intention. For the act is to be construed and interpreted so as to make uniform the law, not only in this State, but to make the law of this State conform to the laws of the other States adopting the Act. We might, therefore, look at the decisions of other States to see how these words have been defined or how the Court has treated the rights of the parties under similar circumstances, and also to see how other Courts have looked upon the removal of like goods, as to whether to remove them would materially injure the freehold.

In *Thomson v. J. S. Smith*, (Iowa) 83 N. W. 789, 50 L. R. A. 780, the question was as to

whether wagon scales were a part of the realty, and the Court said:

“So while these scales may not have been physically attached by bolts, nails or cement to the land, they were nevertheless, held thereto. Besides, such scales are ordinarily placed for permanent use in connection with particular real estate. True, they might have been removed by taking apart, without injury to the land. This, however, is not a controlling circumstance and is of chief importance as bearing on the intention with which the attachment is made.”

In *Tippett & Wood v. Barbour*, 180 Fed. 76, 74, we find:

“To make an article a fixture, it must not merely be essential to the business of the structure, but it must be attached to it in some way or at least, it must be mechanically fitted so as in the ordinary understanding, to constitute a part of the structure itself. It must be permanently attached to or the component part of some erection, structure or machine which is attached to the freehold, and without which the erection, structure or machine would be imperfect or incomplete.”

In *Tippett & Wood v. Barborn*, 180 Fed. 76, 103 C. C. A. 430, the Court, in determining whether or not a standpipe was intended to become part of the realty, said:

“The standpipe is part of the original work of a system of water works intended to be constructed and an indispensable part of such system, as without such standpipe it would have been then impossible for the water company to have furnished its consumers with water. That it is one of the

integral parts of the property which, as a whole, was to constitute the security of the mortgage creditors."

The Court speaks of the rule laid down by this Court in *Campbell v. Roddy*, 44 N. J. Equity, page 244, and then refers to the other rule known as the Mass. Rule and says:

"We think this latter doctrine announces the correct principal, especially where the application is, as in the present case, confined to a case wherein the mortgage has been drawn for the purpose of embracing the entire working plant of the corporation, as in such cases it is usually true that the mortgage is given at a time when the real estate is but very insufficient security for the debt and which subsequent accessions are very generally made by the expenditure of the funds * * * secured by such a mortgage and the mortgage is given and received in contemplation of such accessions."

Again in the case of *Otis Elevator Co. v. Palmeto Construction Co.*, 237 Fed. 769, 772, the Court, speaking of elevators in an office building, says:

"The elevators are, in their nature, fixtures expressly essential to the use of the building and not removable without serious injury to it."

In *Voorhis v. Freeman*, 58 Penn. Sup. Ct., Report 116., the Court says:

"Whether fast or loose therefor, all machinery of a manufactory which is necessary to constitute it and without which it would not be a manufactory, it all must pass for a part of the freehold."

In *Titus v. Poland Coal Co.*, 119 At. Reports, page 540 @ 542, we find:

“The Pennsylvania rule is that a chattel placed in an industrial establishment for a permanent use and necessary for the operation of a plant becomes a fixture, and, as such, a part of the real estate, although not physically attached thereto. In other words, where an article, whether fast or loose, be indispensable in carrying on a specific business, it becomes a part of the realty. Whatever is a necessary part of the machinery for carrying on the business is a fixture irrespective of the manner of its attachment,” and cites *Christian v. Dripps*, 28 Pa., 271.

In *Hall v. Burns*, 225 S. W. 227, an Arkansas case decided in 1920, discussing the proposition as to whether or not a cabinet installed in a kitchen in a one-family house was a fixture, said:

“The undisputed evidence not only shows that the cabinet was a necessary and convenient improvement attached to the use of the house as a residence, but was attached so that it could not be removed without prizing it up or first removing the moulding which has been nailed to the floor around it and when removed, it left the room in an unfinished condition. These undisputed facts established the cabinet to be a fixture.”

In *Schoenman v. Davis*, 200 Iowa, 873; 205 N. W. 502, the Court, discussing the question as to whether or not the heating plant may be removed from a building, said:

“The pipes were enclosed between the studding and the radiators installed in the floors or partitions. It is possible that the furnace proper might be removed without

serious damage to the building, but if this were done, the integral character of the improvement would be destroyed and the radiators, at least, left to mar the rooms in which they had been placed.”

In *Kent Storage Co. v. Grand Rapids Loan Co.*, 239 Mich. 161; 214 N. W. 111, it was said:

“The steam radiators were attached to the steam pipes in the floor on which they rested by being screwed to those pipes. These radiators were put in immediately after the building was erected. There is no reason to hold that the owner did not intend them to be permanently annexed to the steam plant and therefore permanently annexed to the realty. Such radiators are an essential part of such plant and are rarely furnished by the tenants or temporary occupants of the building as part of their furniture brought with them or carried away with them.”

In *Snedeker v. Waring*, 12 N. Y. Rep. 170, the court held that statuary and a sun dial placed about the grounds of a private residence and not affixed except by their own weight, were such an essential part of the residence property as to become a part of the freehold and could not be removed or levied upon as personal property.

In *re Moultrie Creamery Products*, 2 Fed. (2nd) 129 (Georgia 1924), the Court, in discussing the question as to whether machinery sold on conditional sale contracts were removable by the seller, said:

“It (the machinery) could not be removed without destroying the property *as a creamery plant*, although it will leave the building practically unhurt for future uses in conjunc-

tion with that or similar machinery as a creamery plant. The machinery could not be used except in conjunction with that or some similar building. It was therefore at law a fixture.”

Citing *Cummingham v. Cureton*, 96 Ga. 489; 23 S. E. 42;
Bringham v. Overstreet, 128 Ga. 447, 458; 57 S. E. 484;
 10 L. R. A. (N. S.) 452.

We therefore find, from the cases hereinbefore cited, that the greater weight of authority throughout the country seems to be that one of the tests to be applied as to whether an article becomes a fixture or not, was to determine, not whether an article could be removed from the particular building in which it was contained, but whether or not the removal of that article destroyed the use for which the building was erected, or that the article was some integral part or component part of such a building, even though it might be removed without actual physical injury to the building itself. If we look at Section 30 of the Uniform Conditional Sales Act as adopted in this State, it would seem that the words “without material injury to the freehold” contained in Section 7 of the Act would have to be construed to mean the same thing that those words meant, not only in this State, but in a number of States of the Union. If they therefore construed the Act in this manner, what effect does it have upon the law as defined by our Courts prior to the passage of the Uniform Conditional Sales Act? It merely is a ratification of the law that has been laid down time and again by our Courts. The only real ele-

ment of which has been eliminated insofar as fixtures sold on conditional sales are concerned, is the element of intention of the parties affixing the article to the realty. The Act specifically defines the rights of all parties where the article cannot be removed without material injury to the freehold, whereas, prior to the enactment of this law, the question as to reservation of title was different as between vendor and vendee, mortgagor and mortgagee, landlord and tenant, heir and legal representative, real estate mortgagee, and chattel mortgagee, the sellers and creditors of the buyer, and other instances, whereas, now it makes no difference as to what relation the parties have to each other. If the article is so affixed to the realty as to become a part thereof and not to be severable without material injury to the freehold, then the reservation of title is void as against any person not expressly assenting thereto, whether he come in any of the above classes or whether his mortgage shall be prior or subsequent to the affixing to the realty. From the cases herein cited, the Courts throughout the whole country have uniformly held, as between vendor and vendee, any article affixed to the realty with the intention that it shall become a part thereof, passed as appurtenant to the realty. So, in this case, if the defendant corporation had sold this building equipped with these various articles, I don't think there is any question but that this Court would hold that these articles were placed in the building for the permanent improvement thereof and with the intention that they remain therein, and that they were such an integral part of the building itself that they could not be removed without material injury to the freehold, even though the

conditional sales contracts were properly recorded in accordance with the second paragraph of Section 7.

As to the question whether or not these various articles are affixed to the realty within the meaning of the Act, the gas ranges are installed in each kitchen and attached by means of a coupling to gas pipes running between the walls of the building. It is true that they may be removed by simply disconnecting the coupling, but the Act does not go so far as to define the manner in which an article must be affixed, which was often one of the elements to be considered under the old law of fixtures, but simply says, "Affixed to the realty so as to become a part thereof."

Regarding the refrigeration machinery. This consists of two motors or compressors installed in the cellar of the building with copper tubing running from these compressors through the walls of the building to the various kitchens and connecting up with a set of coils which are fastened in some manner to the ice boxes in each kitchen. It is not possible to remove the copper tubing from between the walls of the building without tearing out the walls in at least several places. To disconnect the compressors and disconnect the coils would be to destroy the whole plant. I don't think it can be questioned that the tubing running through the walls is a part of the real estate, and I maintain that as that is a part of the real estate, the compressors and coils which make that tubing useful, are also a part of the real estate, and without question, are affixed to the realty so as to become a part thereof. The kitchen cabinets and refrigerators in each kitchen are nailed to the floor and were

intended when they were installed, to have a moulding around the bottom. The testimony in support of the claims of the vendors of these particular articles said, in response to the question as to how many nail holes in the wall of each kitchen there would be as the result of the removal of the same: As a rule there are not more than four, (Case, pg. 140, f. 25-27), and as to the Frigidaires, in response to the question as to whether or not the coils installed in the Frigidaires could be used in another cabinet without considerable alteration, said: "The lines would have to be changed, and you would have to find a refrigerator, which I believe is a hard job, that would exactly fit in the equipment. In other words, you would have to run pipe lines from each conduit outlet to the new refrigerator. You could not place the refrigerator where the cabinet is unless you removed the cabinet first and found another place for that or found a place for some cabinet. In other words, it would be quite a job" (Case, pg. 142, f. 6-16.)

As to the lighting fixtures, they are the usual, modern electric lighting fixtures used in any building. They are fastened to the ceiling or wall, as the case may be, by means of screws into the beams or into a fixture at the end of the electric lighting wires and the wiring in them is connected with the wires running throughout the house. I don't think there is any question that they are affixed to the realty so as to become a part thereof.

If these goods cannot be removed without material injury to the freehold, then the reservation of title is void as against this appellant. If there was any doubt as to whether this mortgagee was in the class mentioned in the Act, it

has been answered in the affirmative in *Samuel Olsen & Co. v. Voorhis*, 292 Fed. 113, and also in *Power Manufacturing Co. v. Bailey*, 131 Atl. 696, a Delaware case construing this express provision of the law.

The Courts of our State have held that where a question arises for the first time in this State out of the provisions of an act which was taken from a statute of a sister state and construed by her Courts, such construction is entitled to great weight and will be followed.

Scalise v. Uvalde Asphalt Paving Co.,
98 N. J. Law, 696 at Pg. 700 and
cases cited therein.

POINT II.

The remedies of the holders of the conditional sales contracts in question are specifically provided for by sections 16 to 24, both inclusive, of the Uniform Conditional Sales Act.

The pertinent sections of the Act referred to in this Point are as follows:

16. (If default goods retaken.) When the buyer shall be in default in the payment of any sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or in the performance of any promise, the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken

by legal process; but nothing herein shall be construed to authorize a violation of the criminal law.

17. Not more than forty nor less than twenty days prior to the retaking the seller, if he so desires, may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's fault. The notice shall state the default and the period at the end of which the goods will be retaken, and shall briefly and clearly state what the buyer's rights under this act will be in case they are retaken. If the notice is so served and the buyer does not perform the obligations in which he has made default before the day set for retaking, the seller may retake the goods and hold them subject to the provisions of sections nineteen, twenty, twenty-one, twenty-two and twenty-three regarding resale, but without any right of redemption.

18. If the seller does not give the notice of intention to retake described in section seventeen, he shall retain the goods for ten days after the retaking within the State in which they were located when retaken during which period the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand delivered personally or by registered mail

by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expense of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer ten dollars and also be liable to him for all damages suffered because of such failure. If the goods are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking. The provisions of this section requiring the retention of the goods within the State during the period allowed for redemption shall not apply to the goods described in section eight.

19. If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid at least fifty per centum of the purchase price at the time of the retaking, the seller shall sell them at public auction in the State where they were at the time of the retaking, such sale to be held not more than thirty days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the filing district where the goods are to be sold at least five days before the sale. If at the time of the retaking five hundred dollars or more has been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper published or having a general circulation within the filing district

where the goods are to be sold. The seller may bid for the goods at the resale. If the goods are of the kind described in section eight, the parties may fix in the conditional sale contract the place where the goods shall be resold.

20. If the buyer has not paid at least fifty per centum of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods as prescribed in section nineteen, unless the buyer serves upon the seller, within ten days after the retaking, a written notice demanding a resale, delivered personally or by registered mail. If such notice is served, the resale shall take place within thirty days after the service, in the manner, at the place and upon the notice prescribed in section nineteen. The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

21. The proceeds of the resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of the expenses of retaking, keeping and storing the goods, (3) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of such claims shall be paid to the buyer.

22. If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing, the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, or from anyone who has succeeded to the obligations of the buyer.

23. Where there is no resale, the seller may retain the goods as his own property without obligation to account to the buyer

except as provided in section twenty-five, and the buyer shall be discharged of all obligation.

24. After the retaking of possession as provided in section sixteen the buyer shall be liable for the price only after a resale and only to the extent provided in section twenty-two. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in section sixteen. But such right of retaking shall not be exercised by the seller after he has collected the entire price, or after he has claimed a lien upon the goods, or attached them, or levied upon them as the goods of the buyer.

In a situation similar to the one before the Court, wherein the lower court found that the holder of a conditional sales contract was entitled to a lien on certain real property, the New York Court of Appeals, in reversing this finding, said:

“The limits on which the effect which may be given a contract of conditional sale cannot result in a creation of a lien on or interest in the real property not created by grant, principle of common law or statute. Here no lien on the real property was created by grant. The contract merely provides for the reservation of title. No lien on the real property exists at common law and no such lien is created by statute.”

East New York Electric Co. v. Petmalund Realty Co., 243 N. Y. 477; 154 N. E. 530.

I might also say that this case was decided in 1926 and after the State of New York had adopted an act similar to our present Uniform Conditional Sales Act.

So, in this case, by the direction of the Court of Chancery to the Receiver to pay the amount due to the conditional vendors out of the proceeds of sale of the real property, it is, in effect, creating a lien in favor of the conditional vendors on the real property where none exists in the statute. On the contrary, the rights of the seller in the event of default by the buyer, are very fully set forth and the Legislature has even gone to the extent of providing that the buyer could not waive any of the Provisions of Sections 18 to 21, inclusive, and Section 25, showing an intention on the part of the Legislature to restrict, very closely, the rights of a conditional vendor in the recovery of his property or the purchase price. Even assuming, for the purpose of this argument, that this mortgagee should have known or realized that these articles could be removed from the building without material injury to the freehold, still there is nothing in the law compelling this mortgagee to use funds realized at a sale of its property or sale of property on which it has a lien, to be disbursed in this manner and compel this mortgagee to purchase the property so conditionally sold. It is true that this mortgagee was not the purchaser at the Receiver's sale. It was, however, present at the sale and did bid for the property an amount which it thought sufficient to protect its mortgages, but at no time did it expect, or should it have expected, that a part of the moneys realized by its bid at the sale would be turned over to some person who did not have

any lien on the real estate, but who, at most, could remove certain articles from the building. These articles might not be desirable insofar as this mortgagee is concerned in that building. They might be of a cost not warranted by the rents to be received or they might be of an inferior quality and not suitable for the other equipment in said building, and thereby might cause a lessening of the rental valuation.

I would call the Court's attention to the fact that this mortgagee did make, a bid to the Receiver for the property prior to the sale, of the sum of Ninety Thousand (\$90,000.00) Dollars, as appears by the Receiver's report of Sale, (Case, pg. 84, f. 12-16), and prior to the confirmation of the sale, did again offer to purchase the property subject to the rights of the conditional vendors (Case, pg. 180 to 191) for the sum of Ninety Thousand (\$90,000.00) Dollars, which sum would have netted more money than the sale which was confirmed by the Court.

POINT III.

Section 7 of an act of the legislature of the State of New Jersey entitled "An Act Concerning Conditional Sales and to Make Uniform the Law Relating Thereto," P. L. 1919, P. 461, Approved April 15, 1919, is unconstitutional, being violative of Art. IV, Section VII, Placitum 4 of the Constitution of New Jersey, as amended, in that said Section 7 of the "Act Concerning Conditional Sales and to Make Uniform the Law Relating Thereto," P. L. 1919, page 461, Approved April 15, 1919; embraces an object which is not expressed in the title of the act.

The Section of the Uniform Conditional Sales Act referred to under this Point is as follows:

"7. If the goods are so affixed to realty, at the time of a conditional sale or subsequent as to become a part thereof and not to be severable wholly or in any portion without material injury to the freehold, the reservation of property as to any portion not so severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation. If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof, but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly de-

scribing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office where a deed of the realty would be recorded or registered to affect such realty. As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be affixed to the realty as to become part thereof, but to be severable without material injury to the freehold, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto, shall be filed before they are affixed, in the office where a deed would be recorded or registered to affect such realty."

The Section of the Constitution which it is claimed this Act violates is as follows:

"To avoid improper influences which may result from intermixing in one and the same act, such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

Constitution of N. J. as amended,
Art. IV, Section VII, Placitum 4;
Vol. 1, Compiled Statutes of N. J., 1911.

We claim that this Act violates the constitutional mandate in that it is an attempt to legislate with relation to a subject which is, and always has been, a part of the real estate law of this State and of the Real Estate Law in force in this State at the time of the adoption of the Constitution and that object is not expressed in the title of said Act nor does the title of said Act give any hint as to the subject of the law.

The title of the act refers solely to conditional sales and says nothing whatsoever about the transition of personal property into real property under what has always been known in our law as the "Law of Fixtures." There is an attempt in Section One of the Act to bring the provisions of Section VII within the title by defining the meaning of the words "goods" as used in the Act, wherein it says, "Goods means all chattels personal other than things * * * attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale." This attempt would be effective as between buyer and seller, but certainly cannot be effective as between the seller and a third party. Any person dealing with a parcel of real estate could not be fairly expected to take cognizance of the provisions of this act simply by looking at the title of the act. There is no real hint in the title of the act which gives the real subject of the provisions of Section VII, insofar, at least, as that section applies to the property rights of a person dealing with the buyer.

In the case of *Londrigan v. McAlley*, 65 N. J. Law, page 161 @ 163, Justice Collins said, "To comply with the Constitution the title of a proposed law must give reasonable intimation of the matters under consideration * * * as the title must limit the enactment to matters within its scope." In this case the Court cites *Walling v. Deckertown*, 64 N. J. Law, page 203, in which the same Justice said: "One purpose of the constitutional requirement of the expression in a title of the object of a statute is to ensure a conspicuous declaration of the subject of legislation; a notice so that the public or such part

of it as may be interested, may receive a reasonable intimation of the matters under legislative consideration.”

While it is true that generality in the title of an act is not objectionable, yet where the title is so very vague and general as not to furnish any intimation at all of the actual contents of the act, is therefore calculated to mislead the legislature and the public, and it will be declared unconstitutional.

26 *American and English Ency. of Law*,
2nd Edition page 582, Section bb.

In *Roder v. Township of Union*, 39 N. J. Law, p. 509, Chief Justice Beasley, in discussing this question, said:

“The purpose of this provision, that is, the provision of the Constitution above set forth, is plainly two-fold; first to ensure a separate consideration for every subject presented for legislative action; second, to insure a conspicuous declaration of such purpose. By the former of these requirements, every subject is made to stand on its own merits, unaffected by improper influences, which might result from connecting it with other measures having no proper relation to it; and, by the latter, a notice is provided, so that the public, or such part of it as may be interested, may receive a reasonable intimation of the matters under legislative consideration. These are the intents which the Court, in its application of this clause of the constitution, is called upon to further, and as far as may be practicable, to carry into effect. The Act brought into question in this case was an act entitled, ‘An act in relation to streets in Union Township, Union County’ and by the provisions thereof, the Legislature attempted to create

a body politic and corporate, to be called the 'Southeasterly Road District of the Township of Union, in the County of Union' for the purpose of laying out, opening and improving streets, roads, highways, and public parks within the boundary set forth. It was objected that this act gave the right to construct and make public parks and that these improvements had no relation to the general legislative provisions as defined in the act. The Court then 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 it is doing. Unless it does this, it can answer no useful end. It is not enough that it embraces the legislative purpose—it must express it, and where the language is too general, it will accomplish the former, but not the later; and the Court goes on to point out that a law entitled 'An Act in Relation to Silk Goods', would not indicate, in the faintest outline, a purpose to incorporate a body for the manufacture of such fabrics,'

and so, in this case, the general title of the act certainly does not embrace the subject of Section VII, at least insofar as the rights of this appellant in the particular property are concerned.

The Courts have sometimes held that any subject which is germane to the title as expressed in the act, such enactment would not violate the constitution. We maintain that a change in the fundamental law of fixtures as established in this State as between the conditional vendor and persons dealing with the conditional vendee, is not at all germane to the general title of this act. So, we find that the Courts have declared that an act to provide for the regulation and

incorporation of insurance companys, as containing provisions regulating the business of individual insurers, was declared unconstitutional. *Schenck v. State*, 60 N. J. Law, page 381.

An Act to regulate party walls which embraced other walls in which there is a community of title, was declared unconstitutional. *Church v. Railway Co.*, 63 N. J. Law, page 470.

In the case last mentioned, Justice Collins, speaking for the Supreme Court, says:

“The railway excavation was within the terms of this statute, but not within its title. A party wall is one in which there is a community of use. The wall disturbed for the excavation of the railroad was not such. Under the Constitution (Art. IV, Section VII, Placitum 4) the act is applicable only as to party walls.”

Is the object of Section VII of this act germane to the general subject of conditional sales? We find in Vol. 2, Words and Phrases, 1st Series, page 383: “Germane means akin, closely allied.” Thus when properly applied to a legislative provision, the common tie is found in the tendency of the provision to promote the object and purpose of the act to which it belongs. Any provision not having this tendency, which introduces a new subject matter into the act, is not germane to it. It is an error to suppose that two things are, in a legal sense, germane to each other merely because there is a resemblance between them or because they have some characteristics common to them both.”

It has been held that the connection between the provisions of the act and subject stated in the title must be so obvious that ingenuous reading is not requisite to show it. It should

be evident to the ordinary intellect as well as to the trained mind, (Vol. 26, Amer. & Eng. Ency. of Law, pg. 589, Par. b.) and also where the language employed in the title is such that would lead a reasonable man to suppose that the legislature intended to restrict the scope of the act within certain limits specified in the title, such act is unconstitutional so far as concerns any provisions outside of the limits thus marked out, even though such provisions might be properly included in the act. Thus in *Kreigh v. Board of Freeholders*, 62 N. J. Law, 178, title of the act relating to the employment of veterans in the employment of the Public Service of the State of New Jersey, was held not to include clauses in the body of the act relating to cities, counties, towns or villages of the State, as violative of the above article of the Constitution.

If then, this Court finds that this Section of the Act violates the Constitution, it leaves this appellant's rights in the property governed by the old fixture rule as laid down by our Courts. Then, under the cases above cited in Point I of this brief, the articles are clearly fixtures and pass under the appellant's mortgages or under rule laid down in *Campbell v. Roddy*, 44 N. J. Equity, 251, that "where the articles are of such a character that their detachment would involve the dismantling of an important part of the realty, their annexation might well be regarded as an abandonment of the lien by him who impliedly assented to the annexation."

POINT IV.

The order confirming the receiver's sale herein is against equity and good conscience and should be reversed.

The Court, in considering this point, must bear in mind the position in which this appellant was placed at this sale. It held two mortgages, the validity of which were unquestioned at that time. The mortgages were construction mortgages, or as called in the Mechanics' Lien Act, "Advance money mortgages." They were given prior to the construction of the building and the moneys secured by the mortgages were advanced to the various persons performing work and furnishing materials in the erection of the building as the same progressed. One mortgage was given shortly after the commencement of the building and the other given about two months later. Between the time of the making of the first mortgage and the expenditure of all that money, and the giving of the second mortgage, certain persons became entitled to mechanics' lien claims against the building and refused to stipulate with this appellant as to the priority of its mortgage over their mechanics liens. Then the mortgagor, the defendant corporation, is declared insolvent. The application of this appellant for permission to foreclose its mortgage is denied and the Receiver directed to sell the property free and clear of the lien of this appellant's mortgages. In other words, the Court of Chancery said to this mortgagee, "You may not foreclose your mortgage because in doing so, you might injure the rights of the other creditors of this insolvent corporation. We will there-

fore, foreclose the mortgages and protect your rights therein." The property was sold by the Receiver herein a short time thereafter, without any finding as to the priority between the various mechanics' lien claimants and this mortgagee. This mortgagee is compelled to go in and bid at the Receiver's sale to create a fund large enough to meet the payment of the amount due on its mortgages and the amount due to all persons claiming priority thereto, and with no means of ascertaining what these priorities were. For the building had not been completed for four months and the sale held by the Receiver was held within four months after the date of his appointment, so that so far as this mortgagee could ascertain the priority as to its mortgages, it had only the record of the Clerk's Office, and even after the sale which was held September 19, 1928, some persons may, and as a matter of fact, actually did, file notice of mechanics' lien claim with the Receiver and with the Clerk of Bergen County.

Under these conditions the appellant attended at the sale and bid for the property against other creditors and mechanics' lien claimants and the whole general public, having no knowledge whatsoever of the claims being made by the conditional vendors. At the sale some person asked the question as to the manner in which the Receiver was selling and whether or not the property was subject to claims by conditional vendors. The Receiver offered the property for sale free and clear of all liens and encumbrances whatsoever and also all the appurtenances belonging to the real estate particularly described. If the Receiver knew that there were certain conditional sale contracts existing in which cer-

tain persons claimed title to the said property and equipment, or to use the legal term, "of appurtenances in the building," it was his duty to make that known, for, if this were the fact and the Receiver thought that the claims might be sustained, he, of course, would not be able to conduct the sale in the manner represented, for he was then and there selling an apartment house fully equipped and at that time, occupied by, as appears by his own statement, eleven tenants. Therefore, this mortgagee was entitled to believe that there were no other encumbrances or claims except the claims filed by the various mechanics' lien claimants, or claims which might be filed by such mechanics' lien claimants a few days after the sale. The Receiver subsequently and before presenting the confirmation of the sale, inquired into the rights of the conditional vendors and found that certain of them were entitled to remove certain parts of the property, and in effect, that he did not have title to them, and, as to others, found that they had waived their reservation of title and that their property passed under his sale. Whereupon, the matter was appealed to the Vice Chancellor and it was found that Receiver was incorrect in his report, and the Vice Chancellor said, in his conclusions (Case, pg. 179, f. 13-25) that if the sales price were not sufficient to meet the administration expenses, the money due to the conditional vendors and satisfy the mortgages of this appellant and Harry C. Leidinger, that he would direct a resale unless the purchasers were willing to pay the purchase price of the goods conditionally sold. The purchasers thereafter appeared to be unwilling to pay the additional moneys and this appellant called the Court's attention

to the fact that in addition to the moneys to be paid as found by his conclusions, there were also certain persons entitled to moneys due on mechanics' lien claims which were prior to this appellant's mortgages and that in the event that this sale was confirmed, this appellant would sustain a loss on its mortgages, notwithstanding the fact that this appellant still had a lien on the building in question without the chattels sold on conditional sales contracts, and that any moneys realized on the sale of the building without the chattels, could not be applied to the payment of the balance due to the conditional vendors, and to do this would be to impair the security of the mortgages of the appellant. The very thing that this Court impliedly takes upon itself not to do. Furthermore, the Receiver is attempting to convey and the Court has confirmed, a sale and directed him to convey property to which he has not title and cannot get title except by the act of the conditional vendors. I therefore say that the Court of Chancery was without jurisdiction to confirm this sale in accordance with the principles laid down in the case of *Bahler v. Robert Treat Baths*, 100 N. J. Equity, p. 525, for this is a sale under Section 81 of the Corporation Act and the jurisdiction of the Court is limited solely by the provisions of that Section which is as follows:

“Where property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the Court of Chancery may order the receiver to sell the same, clear of incumbrances, at public or private sale, for

the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court shall direct."

The Court has always held and it has always been the policy of this Court to upset any sale held by any officer of the Court or by Sheriff if there was such a misrepresentation made or the sale was conducted in such a manner as to amount to a misrepresentation or surprise to the purchaser, and so here the action and conduct of the Receiver and the manner in which he conducted the sale amounts to a misrepresentation, or, at least, a surprise to this appellant, a very interested party at this sale, and the sale in equity should not be permitted to stand.

It appears from the record that the creditors of this insolvent corporation will not lose in any way whatsoever as they have the guarantee of this corporation and this corporation stands ready and willing to guarantee to the Receiver actual proceeds in his hands greater than the amount which will be realized for the creditors, outside of the conditional vendors, as the proceeds of this sale. This appellant is not objecting to the action of the Vice Chancellor or the prayer of its petition for permission to advance its bid or advance the bid in the Receiver's sale. We are, however, objecting to the confirmation of this sale on the general equitable grounds hereinbefore stated. Of course, if Point I or Point II herein is resolved in favor of this appellant, this appellant will not object to a confirmation of this sale as that is the ex-

act position that this appellant took when bidding at the sale and the proceeds of said sale should be enough to pay the amount due on this appellant's mortgages.

A judicial sale will be set aside where there is surprise or misapprehension created by the conduct of the purchaser or of the officer who conducted the sale.

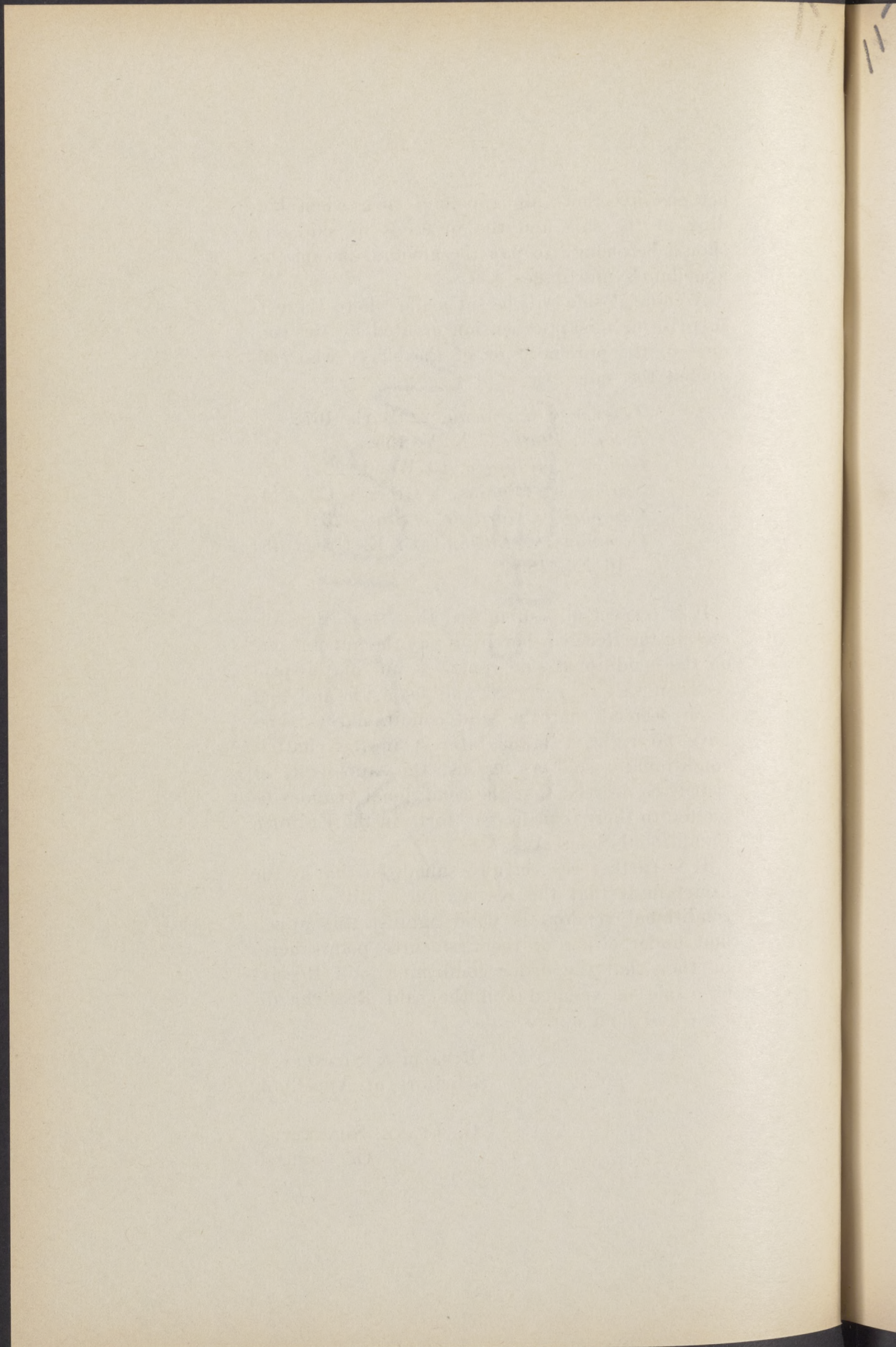
Leferne v. Laraway, 22 Barb. 167;
King v. Platt, 37 N. Y. 155;
Collier v. Whipple, 13 Wend. 224;
Seaman v. Riggins, 1 Green's Ch. 214;
Campbell v. Gardner, 3 Stat. 423;
Commons v. Little, 1 C. E. Green 48;
 16 Eq. 48.

It is respectfully submitted that the orders directing the Receiver herein to pay the amount due on the conditional sale contracts out of the proceeds of sale be reversed and set aside and that it be decreed that the said conditional vendors have no right, title or interest in the chattels conditionally sold as against this appellant, or that it be decreed that the conditional vendors be limited to their remedies set forth in the Uniform Conditional Sales Act.

It is further respectfully submitted that if the Court finds that the reservation of title by the conditional vendors is valid against this appellant under either of the first three points herein, then that the order confirming said Receiver's sale be vacated and the said Receiver directed to hold a new sale.

RINALDI & SHANLEY,
 Solicitors of Appellant.

G. FRANK SHANLEY,
 Of Counsel.



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New Jersey Court of Errors and Appeals.

On Appeal of Consolidated Securities Corporation
from Court of Chancery.

BETWEEN

ELBERT M. CROWN, trading as
Chas. T. Walker Shade Co.,
Complainant,

—and—

REGNA CONSTRUCTION COMPANY,
Defendant.

**BRIEF OF RESPONDENT, DOMESTIC
ELECTRIC CO., INC.**

GREEN & GREEN, Counsel for Respondent, Harry
Green, of Counsel.

Statement.

This respondent, Domestic Electric Co., Inc. (herein called "Conditional Seller"), desires to controvert the statement of facts set forth in the appellant's brief, in the following respects:

1. There is nothing in the record to support the following statement:

"At the time of the commencement of the above mentioned building, the said corporation applied to this appellant for a mortgage thereon in the sum of \$30,000,

and at that time submitted to this appellant plans and specifications of the building intended to be erected by it. The proceeds of said mortgage loan to be advanced to said defendant from time to time as its building progressed. This appellant thereupon agreed to loan to the said defendant said sum, to be advanced in the course of the erection of the building. * * *

The moneys for which the said mortgage was given as security were advanced to the said defendant company and to material men and laborers who furnished materials or performed labor in the erection of said building. * * *

In or about November, 1927, the said defendant, finding the sum loaned by this appellant insufficient to complete the said building, applied to the appellant for a further loan of \$20,000, said sum to be likewise disbursed as the building progressed. * * *

One Thousand (\$1,000) Dollars of the proceeds of the mortgage first above mentioned was paid to Harry C. Leidinger on account of his mortgage, and at the time of said payment, said payment being in consideration therefor. * * * Out of the proceeds of the \$20,000 mortgage held by this appellant, there was paid the sum of \$1,000 to Harry C. Leidinger on account of his mortgage, and at the time of said payment, said payment being in consideration therefor * * * (pp. 2 and 3, of Appellant's Brief; also the first paragraph on p. 4).

2. There is nothing whatsoever in the State of Case to support the following statement which appears on page 7 of appellant's brief:

"Up to the time of the sale, this appellant had no knowledge whatsoever of any claims

by conditional vendors for articles of equipment then installed in the said apartment house and appurtenant to the building."

3. There is nothing in the State of Case to support the following statement of appellant's counsel on page 7 of its brief:

"This appellant, however, not having any notice of said stipulation of fact, or never having an opportunity to examine the said conditional vendor, respecting the property to be conditionally sold."

Order overruling Receiver's report on claim of conditional seller, dated July 1st, 1929, shows that appellant's counsel participated in the argument thereon, which was necessarily based upon the stipulation of fact and the supplemental stipulation of fact (Case, pp. 99-103). From July 1st, 1929, to time of taking appeal, August 7th, 1929, appellant made no objection to said stipulations of fact, or questioned their correctness in any manner whatsoever.

4. On page 10, appellant's counsel states that it filed a petition "at the direction of the court". There is nothing in the State of Case to support same.

5. On page 11, appellant's counsel states:

"The purchasers at said Receiver's sale have not taken title to the said property or paid the purchase price therefor."

There is nothing in the State of Case to support this statement.

Argument on Facts.

Appellant's grievance, rid of all non-essentials, is that the Court of Chancery refused to entertain its belated bid of \$90,000, subject to four conditional sale contracts, on which there was due \$7,516, and instead confirmed sale to highest bidders at public sale theretofore held for \$96,000.

In its brief, however, appellant practically confines all its argument, and concentrates its attack, upon the conditional sale contracts and the orders made confirming same, and claims it is aggrieved thereby.

May we point out briefly the facts in the record to show that appellant cannot be aggrieved by said orders concerning the conditional sale contracts?

The bid confirmed by the Court was \$96,500 (Case, pp. 194-5).

Although defendant corporation executed to appellant two construction mortgages on which moneys were to be advanced from time to time, aggregating \$50,000, there is no proof in the record that \$50,000 was advanced thereon. There is only a statement of counsel in a petition, which petition is neither signed by appellant or an officer thereof, nor verified by it, both the petition and common form of affidavit being signed by counsel (Case, pp. 52-53). Not only is this not proof, but this practice was condemned by Chancellor Walker in a recent case, by holding that petition must be signed by petitioner and not counsel. Furthermore, the only proof beyond dispute of moneys actually advanced on said mortgages and paid in to the building for materials and labor used in the erection thereof is \$25,448.40, which was further reduced to

\$21,673.40, and appellant was to receive a credit for the latter amount in case it was a bidder at the sale (Case, pp. 71-78). Under Sections 14 and 15 of the Mechanic's Lien Act, appellant was entitled to priority to this extent over mechanic's lien claimants (3 C. S. 3302, 3). The total amount due on the conditional sale contract was \$7,516. Leidinger postponed the \$9,500 mortgage, which was reduced to \$7,500. The difference between the successful bid and the amount due on conditional sale contracts and undisputed amount due on appellant's mortgages is \$67,310.60. This appellant was unsuccessful in proving that it advanced the balance of \$28,326.60 into the building on which the mortgages were placed, and that it therefore had priority over the mechanic's lien claimants. It is readily apparent, therefore, that there is more than sufficient to pay appellant's costs of administration, etc. Moreover, 5% of appellant's \$30,000 mortgage, or \$1,500, was deducted as a bonus (Case, p. 56), and \$1,000 was deducted for expenses and fees (Case, p. 58). How can it be said, therefore, on the facts, that appellant is aggrieved by the orders providing for payments of amounts due on condition sale contracts?

POINT I.

Conditional seller's reservation of property against appellant is valid.

Under Point I, appellant contends that the reservation of title by the sellers under the conditional sales contracts are void as against this appellant, and it points out that this in-

volves a construction of Section 7 of the Uniform Conditional Sales Act, which was adopted in this State in 1919 (c. 210, Laws of 1919, p. 461, at p. 462).

This respondent is the Conditional Seller which installed the "Frigidaire" cabinets, etc., in the premises in question under a conditional sale contract, dated October 28th, 1927. However, the "Frigidaire" equipment was not delivered on the job until March 30th, 1928, and the same was not completely installed until May 12th, 1928. These dates become very important, because the mortgages are dated and the moneys were advanced *prior* to the delivery and installation of said "Frigidaire" equipment, the mortgages being dated September 30th, 1927, and November 29th, 1927, and the first mortgage moneys were advanced September 30th, 1927, and the last of said moneys advanced in February, 1928.

At the very threshold of this case, therefore, it is clear and undisputed that this mortgagee (appellant) is a *prior* mortgagee, and not a *subsequent* mortgagee.

Point I of the appellant's brief has no applicability whatsoever to our situation, because it is clear and undisputed and it was so stipulated, that this respondent's goods "when sold, was personalty, but the same was so affixed to the realty as to become part of it, but to be severable without material injury to the freehold". The situation, therefore, is not controlled by sentence 1, but by sentence 2 of Section 7 of the said Uniform Conditional Sales Act (Case, pp. 97-101). As stated by Vice-Chancellor Fallon, it was certainly conceded by counsel for all concerned, at the hearing, that the goods which were the subject matter of the conditional sale con-

tract, were affixed to the realty so as to become a part thereof, but severable without material injury to the freehold, and at no time until appellant's brief was received was any question ever raised by appellant concerning the same. Appellant's statement contained on page 12 of its brief are not correct. As a matter of fact, appellant participated in the argument taken on this respondent's appeal from the Receiver's determination, and the said stipulations formed the basis of the facts from which the appeal was argued before the Vice-Chancellor, and neither at that time nor at any other time until the brief was delivered, did appellant contend otherwise. (See order overruling Receiver's determination, Case, p. 103, ll. 20-21).

Appellant states, contrary to the facts contained in the stipulation, and without any proof whatsoever, on page 13 of its brief, that "as a proposition of law, we say these goods conditionally sold are such integral and component parts of the apartment house and indispensable in its operation as such, that they cannot be removed without material injury to the freehold". This is rather a bold statement for counsel to make, without any foundation whatsoever to support same, and in utter disregard of the stipulations and the statement made by Vice-Chancellor Fallon.

Appellant states, on page 13 of its brief, that "it would be impossible to rent this building without this equipment". What difference does it make whether a building is rendered untenable by the removal of chattels by conditional sellers? This is what the United States Circuit Court of Appeals for the Fifth Circuit said in *Wheat v.*

Otis Elevator Co., 23 Fed. (2nd) 152, in answer to a similar contention:

“If the fixtures can be removed without substantial damage to the hotel building, then they did not lose their character as personalty, and title thereto remains in the Elevator Company under its contract. The right of removal would not be defeated by proof that the hotel could not be successfully operated without elevators, or that they had been attached by bolts and screws to the building. *Holt v. Henley*, 232 U. S. 637, 34 S. Ct. 459, top of 58 L. Ed. 767; *Detroit Steel Co. v. Sistersville Brewing Co.*, 233 U. S. 712, 34 S. Ct. 753, 58 L. Ed. 1166.”

Appellant states (p. 13, Brief), “Does ‘material injuries to the freehold’ mean physical injuries to the building itself?” It says not. It then becomes difficult to follow appellant in its argument. Appellant states that the word “freehold” has a definite meaning in law, namely, “an estate in real property”. We have no quarrel with this definition, and we fail to see the distinction which appellant impliedly attempts to make, namely, that freehold and realty or real property mean entirely different things. Chief Justice Marshall, of the Ohio Supreme Court, in *Ralston Steel Car Co. v. Ralston*, 147 N. E. 513, 39 A. L. R. 334, in discussing various kinds of estates, said, “An estate of inheritance is necessarily a freehold, and a freehold is necessarily real property”. The word “freehold” in said phrase, “without material injury to the freehold,” means real property. If the meaning of this phrase as contended for by appellant is to be considered, it should be considered concerning the words “material injury”, and not the word “freehold”. For the sake of

clarity, let us look at the entire phrase: "If the goods are so affixed to realty * * * as to become a part thereof, and not to be severable wholly or in any portion without material injury to the freehold," then the reservation of property "as to any portion not so severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation". What are the definitions of the pertinent words? "Severable" means "admitting of severance or separation, capable of being divided". "Material," here used as an adjective, means, "pertaining to matter; having a corporeal existence; physical; pertaining to matter in a corporeal relation". "Injury" means "any wrong or damage done to another, either in his person, right, reputation, or property" (Black's Law Dictionary, Second Edition, p. 627).

It is apparent from all the cases cited by appellant's counsel that the matter of intention is one of the prerequisites even of the old fixture rule. How can there be an intention to regard the chattels as realty, when they are severable without material injury, which from the context of Section 7, and the numerous decisions submitted by the draftsmen of the act, that this means severable without inflicting physical injury or damage to the freehold, and not merely a diminution in value. Aside from this, if the Legislature intended by this phrase to mean a material injury to the value of the freehold, they would have said so, as in Section 81 of the General Corporation Act, where the Court may order receivers to sell encumbered property in litigation free of liens, if "the property is of a character materially to deteriorate in value pending the litigation". Judge Bodine, now a member of this Honorable Court,

while a Federal Judge, construed this section in the case of *H. G. Vogel Co. v. Frederick Spitalny et al.*, in a memorandum filed in the U. S. District Court for the District of New Jersey on December 21st, 1926, which does not appear to be reported. As the opinion is brief and to the point, the same is herewith quoted in full:

Bodine, District Judge:

"The plaintiff seeks possession of a sprinkler apparatus it installed in the plant of the Superior Products Corporation. The parties entered on February 26, 1924, into an ordinary conditional sales agreement. The installation was completed about August 1, 1924, and payments aggregating \$12,000 were subsequently made. On April 28, 1925, the Superior Novelty Manufacturing Company was adjudged insolvent by the Court of Chancery of New Jersey.

On May 4, 1925, the conditional sales contract was recorded. On May 26, 1925, the Chancery Receiver sold, at private sale, the entire assets of the corporation to Simon Spitalny, the secretary of the company, for the sum of \$35,000 in cash and the assumption of the corporation's debts. Spitalny later sold to the Superior Products Corporation.

The conditional sales contract was recorded before the sale, and the Court of Chancery has quite properly held that the sale merely affected the property rights of the corporation, the Receiver taking subject to the contract of sale. See *Koerner v. United States Waxed & Coated Paper Co.*, 94 N. J. Eq. 655.

The purchaser, Spitalny, not only had constructive notice but actual notice; as an officer of the corporation he knew all about the conditional sales contract long before he became the purchaser. The conditional sales contract was recorded before

he became the actual purchaser of the property to which the sprinkler system had been affixed.

The evidence shows that the sprinkler system is severable from the freehold without material injury. A great part of it can be removed without any injury to the freehold whatever. The only portions which may not be removed without some injury are certain pipe sections which pass through the building walls. These pipe sections may be cut and filled without doing any injury whatsoever to the freehold. As Mr. Justice Holmes said in *Detroit Steel Cooperage Co. v. Sistersville Brewing Co.*, 233 U. S. 712, the damage that will be done by removal in this case is trifling and the petitioner offers to make it good.

The underground piping was placed in pits and trenches, provided by the owner of the property, and can certainly be removed from these places without injury to the freehold.

Obviously, the plaintiff is entitled to the amount due on the contract, with interest, from the time of demand, or it may take its property.

Judgment may accordingly be entered."

Counsel for appellant quotes from Volume 2A, Uniform Laws Annotated, Commentaries on Conditional Sales, by Bogert, at page 99, but fails to quote the paragraph immediately preceding, which is as follows:

"Goods so closely incorporated as to lose their identity. The common law has long recognized that goods may be so closely united to land or so securely attached to it that no one will be allowed to assert that they any longer have any legal existence separate and distinct from the land. They are swallowed up or drowned in the realty. Thus, Mr. Justice Holmes, in speaking for

the United States Supreme Court in a case where it was held that brewery tanks, though bricked in, did not lose their identity, said: 'When the obvious destination of an article is to be incorporated into a structure in such a way that to remove it would destroy the other work, like bricks or beams in a building, there is still stronger ground for not giving to title an absolute right of way.' *Detroit Steel Cooperage Co. v. Sistersville Brewing Co.* (1914), 233 U. S. 712, 717, 34 S. Ct. 753, 58 U. S. (L. Ed.) 1166. And Hough, J., in *In re Seward Dredging Co.* (1917), 242 Fed. 225, 230, 155 C. C. A. 65, says: 'In every jurisdiction it is possible that the vendor by conditional sale or other legal device for retaining title until payment made, may, even under an agreement *per se* entirely lawful, permit his chattels to become so thoroughly a part of real property that they can no longer be severed therefrom, wherefore in common parlance they 'become realty'. See also Denio, J., in *Ford v. Cobb* (1859), 20 N. Y. 344, 350. Chattels have been said in other cases to retain their identity if they can be removed 'without any serious harm' to the real property, or in such a way as not to 'affect the integrity of the structure'. *Holt v. Henley* (1914), 232 U. S. 637, 34 S. Ct. 459, 58 U. S. (L. Ed.) 767. And in *Landigan v. Mayer* (1898), 32 Ore. 245, 51 Pac. 649, 67 Am. St. Rep. 521, it is said that title to goods may not be reserved if the goods lose their identity by annexation, or their removal will materially injure or destroy the structure, or destroy or unnecessarily impair the value of the chattels."

Appellant's counsel also fails to quote the last sentence of the paragraph which he quoted, and which is as follows:

"To expect a purchaser of land to look

for a conditional sale contract reserving title to the seller in bricks built into a house, would be unreasonable."

Then appellant's counsel begins to take issue with the statement of the law as laid down by the draftsman. In other words, he sets up a statement of the construction of the law as given by the draftsman, and then he "knocks" it down. This is very interesting, because appellant's counsel also takes issue with Section 7 of the Uniform Conditional Sales Act, which is the law of this State, and undertakes to repudiate it by citing decisions of our courts handed down years ago, before the Uniform Conditional Sales Act was enacted, although this Court held, in *General Motors &c. Corp. v. Smith*, 101 N. J. L. 154, that "this act stands by itself".

However, let us examine even these decisions to see if they are inconsistent or in conflict with the statements of law contained in Section 7, *supra*.

Appellant's counsel only quotes excerpts which seem to support appellant's contention.

In *General Electric Co. v. Transit Equipment Co.*, it quotes from opinion of Vice-Chancellor Pitney on the three elements of a fixture, which portion of opinion is found on page 470 (57 N. J. Eq.).

The mortgage in that case was much stronger than that held by the mortgagee in this case, because it contained an after-acquired property clause.

Now let us see just what Vice-Chancellor Pitney said just before and just after the quotation as given by mortgagee's counsel:

"And the first question is whether this is

after-acquired property, and if not, second, whether it can be held under the mortgage by reason of its having become a fixture, and so by conversion a part of the freehold.

Now, as to the first claim, it seems to me too plain for argument. The mere statement of the case shows that the mortgage cannot prevail, for, in point of fact, this property never was 'acquired' by the traction company, the mortgagor. When furnished it was a chattel, and for the purpose of the present argument we must treat it as still a chattel, and if the title never vested in the traction company then the property never was acquired by the traction company and never became subject to the mortgage. In other words, the acquisition of the title to it by the mortgagor was a condition precedent to its becoming subject to the mortgage.

The second question is whether it became so affixed to the freehold as to come under the dominion of the mortgage as a part of the real estate."

Then follows the excerpts of the opinion as stated by mortgagee's counsel, and then Vice-Chancellor Pitney continues as follows:

"Now let us see how the principles alluded to apply to this case.

The building in which the machines were erected and are at present found is a large barn-like structure, which comprises under one roof a car-barn and a power-house, including steam-boilers and engines for power and the machines in question. The place was prepared for the machines without touching the structure proper by simply building up solid brick piers from the earth to the proper level, of a size sufficient to bear the weight of the machines, which is about fifteen tons each. Upon those brick

piers was fastened to each a wooden platform. This was all done by the Union Traction Company, and the same forms no part of either the building or machines, but simply a foundation and bed upon which the latter rest. The removal of the machines will leave those foundations uninjured and undisturbed and ready at once for the reception of other machines of the same size and character. The actual annexation is affected by simply placing upon the wooden platform certain iron rails and fastening them thereto with ordinary screw-bolts penetrating the wood. On those rails, which are called 'shears', the machines are placed and so arranged that they may be moved slightly in a direction corresponding with the direction of the belts by which they are driven, so that when the machines are not in motion certain set-screws may be loosened and the machines moved along on these iron rails or shears in such a manner as to tighten the belts and thus save the labor and expense of cutting them and shortening them every time they become a little too loose to be efficient. The door of the building is large enough to permit their removal without injury to the structure.

So much for the three machines.

With regard to the switchboard, that is a large metallic plate set up on one side of the building and affixed by bolts or spikes driven into the brick wall, and upon it are placed all the apparatus by which the electric current is distributed. That, too, may be removed without any serious injury to the building; is in itself a complete instrument and may be set up in another building and used for the same purpose as it is used there.

There is nothing, then, in the annexation which would make these articles fixtures against the will and intention of the parties. * * *"

And Vice-Chancellor Pitney then said:

“But that adaptability and that purpose and intention, it seems to me, must be held subject to the lack of right and power of the party to make the application and carry out the intention to make an addition to the freehold. It seems to me that it is an essential part of an efficient annexation of a chattel of this character and its resultant conversion, that the chattel shall be the property of the person who performs the act of annexation, or that the purpose of annexation shall be acquiesced in by the owner of the property. The intent and purpose of the mortgagor in the act of annexation must be accompanied with the power to do it, arising out of either the ownership of the chattel or the consent of the owner thereof. *And here we encounter the element of the hardship and injustice of taking one man's property, without his consent, to advance the pecuniary interests of another. It was the hardship and injustice in this respect of the old law of fixtures which led to its modification in favor of the tenant against his landlord.*

*If the case were res nova, I should be of opinion, on general principles, that the right of the owner of the chattel, under present circumstances, should prevail. It is impossible, under the evidence, to charge the owner with having consented that the chattels should become a part of the freehold. The contract itself, which contains not only a reservation of the title but also a right to remove them from the premises, forbids the idea of such consent. * * **

But I think that the question is *res adjudicata* in New Jersey, and is covered by the case of *Campbell v. Roddy*, 44 Stew. Eq. 244, which is a decision of the Court of Errors and Appeals. The syllabus of that case is this:

‘A vendor of an engine, boiler and ma-

chinery, knowing that they were to be annexed to real estate, took a chattel mortgage upon them for a part of the price, but failed to register it. The mortgagor of the chattels afterwards annexed them to real estate upon which he had already given a mortgage. * * * Held, that the lien of the chattel mortgage should be protected, so far as it would not diminish the security which the real estate mortgagee would have had if the annexation had not been made.'

The machinery there, as appears by the report below, in 15 Stew. Eq. 218, was one large steam crane, one jack, one steam engine and boiler, one large lathe, one small lathe, one planer, one drill press, one drill upright, one Mackenzie blower, two small pumps; shafting, belting, &c.; one large truck scale, one wire rope and drum, one jigsaw and stand, one pair of bellows, two anvils, one large anvil, one iron hoisting-block and chain, &c., machinery for operating an iron foundry and pipe factory. The description, in 15 Stew. Eq. 223, of the mode in which they were attached to the land shows that they were annexed with much greater thoroughness than the machines here in question. In that case the sale was absolute, and a chattel mortgage was taken back, so that there was a passing of the title with a retention of a lien only. Here there is a retention of the title itself, so that the argument from that case to this is *a fortiori*." (Italics ours.)

So far as *Chancellor v. Cruse*, 83 N. J. Eq. 232, is concerned, in that case the so-called fixtures were affixed to the land when the mortgage was made, which is not the situation in the case at bar, and said decision is therefore inapplicable.

In *Speiden v. Parker*, 46 N. J. Eq. 292, the question for decision was, whether the appliances

were to be fixtures as between mortgagee and mortgagor, which decision was handed down in 1889, 30 years prior to the enactment of the Uniform Conditional Sales Act.

Roddy v. Brick, 42 N. J. Eq. 218, cited by appellant, was reversed in *Campbell v. Roddy*, 44 N. J. Eq. 244.

Knickerbocker Trust Co. v. Penn Cordage Co., 66 N. J. Eq. 305, was a contest between the Receiver of mortgagor corporation and the mortgagee. Appellant's counsel omits a vital phrase from the opinion of Chief Justice Gummere, where he has the series of ***'s. He fails to state that whenever chattels have been placed in and annexed to a building *by their owner* as a part of the means, etc., they become a part of the realty. In the case at bar, the owner of the building, the defendant corporation, did not place in and annex to the building the chattels, but the petitioner did. This decision is not a precedent in the case at bar because the contest there was between mortgagor's receiver and the mortgagee, and not between a mortgagee and a conditional vendor, as in the case before your Honors.

With regard to *Olson v. Vorhees*, 292 Fed. 113, cited by mortgagee, the District Judge found that the materials had become so affixed to, and a part of, the realty, that they were not severable wholly or in any portion from it without material injury to the freehold. He therefore held that the reservation of title was void against the Receiver. Judge Davis said that:

“that case was determined on petition and answer. It is nowhere alleged in any of the petitions that the materials have not

become a part of the realty, or that they were severable from it without material injury to the plant. Each of the petitions contained a description of the materials furnished, showing that they were suitable for use in the construction of the plant, and the answers to the petitions in each case set up the fact that petitioners had filed mechanic's liens against the premises, and that the materials furnished by the Olson Company and the Wilmot Company had actually been 'used in the erection and construction of the building'. There was no specific denial made at any time that they were thus used. * * *

The answer contained a specific allegation that the materials were used in the 'erection and construction of the building'. If this allegation were untrue, it could have been easily and specifically denied; but it was not denied, and in the absence of any denial, it should be accepted as true. * * * The appellants have not shown to our satisfaction that the District Judge erred in finding that the materials were affixed to the realty, became a part of it, and could not be severed wholly or in part without material injury to the freehold."

It is therefore apparent that this case is *not* applicable to the situation at bar.

On page 19 of appellant's brief, it refers to Section 30 of the Uniform Conditional Sales Act, which provides that "this act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it".

Then appellant proceeds to cite cases from states which have *not* enacted the Uniform Conditional Sales Act, namely, Iowa, Virginia (the two Federal cases cited on page 20 of Appellant's Brief), Massachusetts, South Carolina, Arkansas,

Michigan and Georgia. These states have *not* enacted the Uniform Conditional Sales Act and the cited cases therefore have no relevancy, and should not have been cited in connection with said Section 30. So far as the cited cases of Pennsylvania and New York are concerned, they were decided before the Uniform Conditional Sales Act was adopted in said states.

Appellant might have cited *Madfes v. Beverley Development Corporation et al.* (Court of Appeals of New York, May 28th, 1929), 251 N. Y. 12, 166 N. E. 787 (New York having adopted the Uniform Conditional Sales Act, Section 67 of said Act being the same as Section 7 of our Act). In that case gas ranges were sold on conditional sale to the owner of an apartment house, who, subsequent to their installation, executed a mortgage upon the premises. The mortgagee had no knowledge of the contract of conditional sale. After the execution and delivery of the mortgage, and subsequent to its recordation, the conditional sale contract was filed.

The question was, whether in an action to foreclose the mortgage, the gas ranges were subject to the lien thereof, and would, therefore, pass to the purchaser at the foreclosure sale.

The Court was of the opinion that it was the legislative intent of Section 67 of the Personal Property Law (Section 7 of the Uniform Conditional Sales Act) that the condition reserving title in the seller should not have the effect of converting into real estate that which, irrespective of an agreement to that end, is intrinsically personalty. In order that property become real estate so that the statutory provision take effect, it must be property which after annexation, except

for an agreement to the contrary, would have become part and parcel of the realty. The Court distinguished this case from that of *Koehler Co. v. Brasun*, 249 N. Y. 224, 164 N. E. 31, in which the machine purchased was such as to have taken on the character of real property after annexation. The judgment was modified to provide that the gas ranges are property of seller, and not subject to lien of mortgage on the realty. In the case distinguished by the Court of Appeals—*Koehler Co. v. Brasun*—a purchaser of certain hotel property, and the foreclosure of a land contract, was held entitled to an electric light plant which had been purchased and placed on the premises under a conditional sale agreement. The seller of the electric light plant failed to comply with the statute requiring the filing of the contract, and the Court therefore held that the seller was not protected against the third party, who purchased without actual or constructive notice of the reservation of title.

It is apparent that the *Koehler* case has no applicability to this mortgage situation, but that the *Madfes* case is on all fours with the case at bar from the mortgage standpoint, and is from a sister state which has the same act as we have, and which comes, therefore, within the intention expressed by our Legislature in Section 30.

We also have the decision of the Supreme Court of Appeals of West Virginia, which also adopted the Uniform Conditional Sales Act, in a decision decided on May 21st, 1929, in *Kanawha National Bank et al. v. Blue Ridge Co. Corporation et al.*, 148 S. E. 383. The Court held that in order that machinery or equipment used in connection with real estate shall become a fixture, it must be shown that the machinery or equipment was not

only attached to the real estate and adapted to the use being made of the part of the real estate to which it is attached, but also that the intention of the parties placing it there was to make it a permanent part of the freehold. Consequently, where the evidence showed that it was not intended that the equipment become part of the freehold, the seller's reservation of title was good against the Receiver, although the contract of conditional sale, when recorded, did not contain a statement briefly describing the realty and stating that the machinery was to be affixed thereto, as required by Section 7 of the Uniform Conditional Sales Act. (This is the same section as our Act.)

At this point, we desire to refer to a statement of appellant's counsel, on pages 26 and 27 of its brief. There is not a scintilla of evidence or proof to support the following statement: "It is not possible to remove the copper tubing from between the walls of the building without tearing out the walls in at least several places. To disconnect the compressors and disconnect the coils would be to destroy the whole plant. I don't think it can be questioned that the tubing running through the walls is a part of the real estate, and I maintain that as that is a part of the real estate, the compressors and coils which make that tubing useful, are also a part of the real estate, and without question, are affixed to the realty so as to become a part thereof". In the first place, appellant unfoundedly attempts to support said statement by certain testimony which was offered on an entirely different claim, that of Wasmuth-Endicott Company; in the second place it does not quote all the testimony of the witness, which tends to create a different situa-

tion than what existed; in the third place, nowhere does it appear that this respondent even claims or desires to remove any tubing; and in the fourth place, it is contrary to the stipulations of fact which expressly provide that the "Frigidaire" equipment is severable without material injury to the freehold (Case, p. 97, l. 40). And as hereinbefore stated, this appellant based its argument upon said stipulations before Vice-Chancellor Fallon when the order of July 1st, 1929, was made (Case, p. 103, ll. 20-21). However, we desire to quote from the testimony of the salesman for the Wasmuth-Endicott Company, on the hearing of the claim of Wasmuth-Endicott Company, at which we were present and did not participate in, and knew nothing about the same:

"Q. Now, then, in the 'Frigidaire' there is a motor and coils which goes into the refrigerator?"

* Mr. Moser (counsel for Wasmuth-Endicott Company): I object to that. *We have nothing to do with the 'Frigidaire'* (Italics ours.)

A. There is no motor. The motor is down in the cellar. There is merely a pipe line running in the wall, which then goes through a hole into the refrigerator and into the refrigerating compartment. In that compartment is a coil which has been installed in there by the 'Fridigaire' or Domestic Electric Company.

Q. You did not install or furnish the coils which go into the cabinets? A. We did not. * * *"

(The previous questions were propounded by counsel for the Receiver, and then the following questions were propounded by the Receiver himself.)

"Q. Could the coils used in the refrigerator be used in another cabinet without con-

siderable alteration? A. Without considerable alteration?

Q. Yes. A. The lines would have to be changed, and you would have to find a refrigerator—which I believe is a hard job—that would exactly fit in the equipment. In other words, you would have to run pipe lines from each conduit outlet to the new refrigerator. You could not place the refrigerator where the cabinet is unless you remove the cabinet first and found another place for that or found a place for some cabinet. In other words, it would be quite a job.

By Mr. Moser (He is the attorney for Wasmuth-Endicott Company, and did not represent us):

Q. It could be done? A. It could be done.

Q. The coil system has nothing to do with the cabinets? A. It has nothing to do with the cabinets. It can be installed in any refrigerator.

By the Receiver:

Q. Are the cabinet and refrigerator separate units? A. No; they are one unit.

* * * * *

By Mr. Tartalsky:

Q. The pipes which are put in the building from the cellar so far as the refrigerating system—their purpose is to connect with the refrigerator, is it not? A. Not with the refrigerator; only with their coils in the refrigerator, and the coil is attached to our refrigerator.

Q. How are the pipes in the wall connected with the coils which are placed in the refrigerator? A. With a lock-nut.

Q. Through a connection with the pipe which is at the wall? A. Yes.

Q. To the icebox? A. Yes" (Case, p. 140 bottom, p. 141 bottom, p. 142 top, p. 143 bottom, p. 144 top).

May we refer your Honors to Schedule "A" of our petition (Case, p. 94), which only refers to the following:

30 Frigidaire cabinets
5 TF coils
2 "C" compressors,

also stipulation of facts, paragraph 4 (Case, p. 97, ll. 30-35).

Assuming that this is legal and proper proof, so far as this respondent is concerned (which is denied), even the testimony of the kitchen equipment salesman shows that the cabinets, coils and compressors can be removed without "material injury to the freehold", which is in accordance with the said stipulation, and which was conceded in open court before Vice-Chancellor Fallon, as stated in his opinion.

Re Point II of appellant's brief.

As appellant states on page 33 of its brief, "it is true that this mortgagee was not the purchaser at the Receiver's sale", and we are at loss therefore to understand how this has any bearing on the controversy. In providing for payment of the conditional sale contracts, the Court merely carried out the terms and conditions of the bid. As stated at the beginning of this brief, the appellant cannot be aggrieved thereby. The appellant talks as if it was the successful bidder, but in fact it was not, and the bidder raises no question or objection. It again becomes apparent that appellant is not aggrieved at the orders pertaining to the

conditional sale contracts, but that it is aggrieved because it missed the opportunity of becoming the successful bidder and then tried to have a resale, by offering \$90,000, which was \$6,500 less than the successful bid, and was willing that the same should be subject to the conditional sale contracts, which amounts to about the same thing, because the difference between said \$90,000 plus the amount due on the conditional sale contracts, \$7,516, and the successful bid of \$96,500 is only the difference of \$1,016. It requires no citation of authority or extended argument that an increase of about \$1,000 on a \$96,500 bid should not result in setting the first sale aside and ordering a new sale.

Re Point III of appellant's brief.

The unconstitutionality of Section 7 of the Uniform Conditional Sales Act was neither raised nor argued in the Court below. It is an afterthought, and is apparently thrown in to strengthen a weak cause. However, this Court may desire to pass upon it as a matter of public policy, in view of its importance.

The situation here is comparable to that in *Wallach v. Stein*, 103 N. J. L. 470, in which case this Court upheld the constitutionality of the Uniform Stock Transfer Act. The language used in that opinion by Justice Lloyd precisely covers the situation presented here, if in place of "transfer or stock" you will substitute "conditional sale".

Re Point IV of appellant's brief.

Under this point, appellant contends that the Receiver's sale herein is against equity and good

conscience, and should be reversed. We believe the order confirming the sale is proper for the reasons as stated herein. The appellant had the opportunity to bid, it was a low bidder, and it should not for a small difference of \$1,000 on a bid of approximately \$100,000, be permitted to have the sale set aside. It is difficult to perceive or conceive, as stated by appellant on page 46 of its brief, that there was a misrepresentation or surprise, and therefore it did not bid high enough. There is no merit to this, because the terms and conditions of sale were well known to every one, including the appellant, who did not see fit to bid sufficiently high, then apparently recanted, and now wants to set aside a perfectly *bona fide* and proper bid. There was no surprise or misapprehension created by the Receiver or the purchasers, the terms and conditions of the sale were openly announced, appellant was there, appellant knew just what title he would get at the sale, and the facts remain that the purchasers received the title for which they bid.

CONCLUSION.

It is, therefore, respectfully submitted that appellant is not aggrieved by the orders made, and that the orders of the Chancellor, advised by Vice-Chancellor Fallon, should be affirmed, with costs to respondent.

GREEN & GREEN,
*Solicitors of Respondent,
Domestic Electric Co., Inc.*

HARRY GREEN,
Of Counsel.

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New Jersey Court of Errors and Appeals

Between

ELBERT M. CROWN, trading as
Chas. T. Walker Shade Co.,

Complainant,

AND

REGNA CONSTRUCTION Co.,

Defendant.

On Appeal
from
Chancery.

Appeal of Consolidated Securities Corp. Reply Brief of Appellant

RINALDI & SHANLEY, Sol'rs. of Appellant.
G. FRANK SHANLEY, of Counsel.

Re Brief of Domestic Electric Company

As to Par. 1, Page 1 of the Domestic Electric Co. Brief regarding the statement of fact contained in this appellant's brief (the 2nd Par. of Page 2). This statement must be read in connection with the preceding paragraph and also the succeeding paragraph. By referring to case page 55, f. 21-42, we find excerpts from the testimony taken before the Receiver which, I believe, amply supports this statement of fact. Again on case page 180, f. 29-38, we find the facts again set up and these facts are verified by the Secretary of the appellant (case p. 187, f. 37-41 and case p. 188).

As to the payments to Leidinger, we find on case page 56, f. 20-28; and case page 58, f. 33-35,

the Receiver reports the payment of these sums; and again on case page 75, f. 23, we find the fact of one of said payments alleged in this appellant's petition and verified by affidavit of its Secretary and the other of said payments are shown by the Schedule of payments attached to the said petition (Case p. 75, f. 33).

As to Par. 2 of said Brief. The state of the case is not abridged insofar as to the matters involved in this appeal and nowhere in the record does it appear that the appellant had knowledge of any claim by conditional vendors. The first petition filed by Domestic Electric Co. was filed on October 6th, 1928, after the return of the Order to Show Cause Why the Receiver's Sale should not be Confirmed (Case p. 91 to 94).

As to Par. 3, suffice to say this appellant is not a party to the Stipulations of Fact entered into with the Receiver, and never became a party thereto. We have always maintained that these stipulations were not binding upon us.

As to Par. 5, here again, we say the state of the case contains the whole record and the fact is that title has not yet been taken by the purchasers.

In the argument on the facts, the Domestic Electric Co. attempts to show that this appellant is not aggrieved by the orders appealed from. The record plainly shows that there will be a deficiency. Not only does the petition filed by this appellant (Case p. 50 to 53, and Case p. 180 to 188) show there will be insufficient moneys, but if this were not the fact, how would this appellant ever have been able to contest the conditional sale contracts before the Vice Chancellor?

As to Point I of Domestic Electric Co. Brief. This appellant admits that, as to this conditional vendor, it is a prior mortgagee and not a "subsequent mortgagee" as defined by the Act. This, however, does not change our position if the rights of the conditional vendors is governed by the first paragraphs of Section 7 of the Act. For by that provision, it makes no difference so long as we have not expressly assented to the reservation of property.

In the 3rd Par., Page 6, there is a flagrant attempt to deceive the court, where it is made to appear that this appellant conceded that the goods of the Domestic Electric Co. were severable without material injury to the freehold. A reference to the Conclusions of Vice Chancellor shows, to quote therefrom:

"It was conceded by *counsel for the vendors and for the Receiver* and I find the fact to be that the goods which were the subject matter of the conditional sale contracts were affixed to the realty so as to become a part thereof; but severable without material injury to the freehold."

(Case p. 174, f. 5-12.)

There is also an attempt to show that this appellant never raised this question before. This appellant filed its brief along with the other parties and was the only party interested, to contend that the reservation of title by the vendors was void, and at that time consumed a large part of its brief on this question, and the conditional vendors filed a brief attempting to sustain the opposite view. The order referred to (Case p. 1 and 3) makes no such finding.

Re H. C. Vogel Co. v. Spitalny, this case apparently follows the case of *Spitalny v. Superior Novelty Co.*, 98 Eq. 523, where the same plaintiff attempted to secure a priority in the insolvency proceedings, and, failing in that, went to the U. S. District Court in replevin. The court points out that the purchaser has actual notice of the reservation of title and *from the evidence before it the court found, as a fact, the goods were severable without material injury*. We have not the benefit of that evidence and certainly sprinkler equipment would not be essential to the operation of a factory, it would not and could not be a component part of the building. Would the Court have carried this same reasoning to include shafting and belting, the heating or power plant? It also appears that the purchaser at the sale was an officer of the insolvent company, certainly sufficient evidence for the court to have denied his right to avoid payment of the Purchase Price, even on only equitable grounds. No statute should be construed so as to work a fraud.

Re Madfes v. Beverly Development Corp.,
166 N. E. 787-251 N. Y. 12, cited at p. 20 of
Respondent's Brief.

This was an action to foreclose a mortgage on an apartment house and the conditional vendor of gas ranges installed therein claimed that its reserved title was valid against the mortgagee and asked a decree that the mortgage was subject to the vendor's title. The reasoning of the majority of the New York Court of Appeals in construing the 2nd Par. of Section 7 of the Uniform Conditional Sales Act places the stress of its

whole argument on the meaning of the words "if the goods are so affixed to realty as to become a part thereof" and it seems to find that, notwithstanding Section 7 of the Uniform Act, goods do not become "a part of real estate" unless they are so affixed to the realty that they cannot be removed without practically destroying the goods, or where the goods, or a part of them, are essential to the support of that to which they are attached, and therefore, no part of Section 7 applies to such goods. The Court bases its opinion on the old fixture law in force in that State. This seems to me to be making a very fine distinction and getting away from the evident intention of the Act as defined in Section 30 thereof. However, for our purposes, if this reading be applied to the facts of this case, whether the articles in question can be removed with or without "material injury to the freehold," would not seem to make any difference. We would then be back to the principles of the old fixture law of this State as defined by our Courts in the cases cited in Point I of the main argument in this cause. However, I think that the reasoning in the dissenting opinion of Judge Crane in this same case is much sounder.

Again in *Kanawha National Bank v. Blue Ridge Coal Corp.*, 143 S. E. 382, decided one week previous to the *Madfes v. Beverly Development Corp.* case, and one day subsequent to the filing of the Vice Chancellor's conclusions in this matter, in which case the conditional vendor of certain machinery used in connection with a coal mine, seeks to recover possession of the goods from the receiver, the lower court found that the machin-

ery was a *part of the realty but to be severable without material injury to the freehold*, and because the contract of conditional sale had not been recorded as required by the 2nd Par. of Section 7 of the Uniform Act, that the reservation of title was void as against the receiver of the conditional vendee. Here again, the court decides that because the articles conditionally sold did not become a part of the realty under the principles of the old fixture law as laid down by its courts, that Section 7 of the Act did not apply.

If the construction placed upon Section 7 of the Act by these two decisions is to be supported, then what becomes of the uniformity of the law? For instance, our rules of law regarding the question as to when personalty becomes a fixture are entirely different than the law in either of these States. Such reasoning would seem to do away with Section 7 of the Act for all practical purposes. Again I say, however, that if this is the proper construction, then under our fixture law as laid down by the cases cited in Point I of the main argument in this cause, the articles in question are a part of real estate and cannot be removed without material injury to the freehold.

Re Point III, page 26.

Even though the Constitutional question was not raised before the Vice Chancellor, and frankly we say it was not, but was unintentionally not raised simply for the reason that this appellant had not sufficient time to give this question the thought and preparation it required before the Court of Chancery. The question could not have been obviated before the lower court, even if raised. In a similar situation, this Court said:

“It is sometimes said that this court, on appeal, will not permit parties to raise objections which they did not present to the Court below, not only in justice to that court, but also to prevent surprise and abuse by reserving points expressly for further litigation. These results should always be guarded. But where the entire proceedings are before the appellate court for review, there can be no reason where there is no intentional omission, and the parties have acted in good faith, why the whole case should not be examined and determined on appeal. It would cause needless delay and expense to send the cause back to the Chancellor for re-hearing upon the same pleadings and facts, when the result might be that the cause would be returned here for further consideration of this court.

“Where a cause has been defended below and comes up for review, and a point is made here which could not be obviated in the court below by proof or amendment, this court ought not to refuse cognizance of such point. This court loses the benefit of the reasoning of the court from which the appeal is taken, but the more careful and repeated preparation of the cause, for re-argument here, gives the appellate court great advantages in reaching the full merits of the controversy between the parties. It cannot therefore consist with sound reason or a regard for justice, that this court should refuse to hear and consider a point which may decide a cause, because it has

not been before observed. A fuller and more exact examination of a cause, in all its bearings, than is often possible on its first presentation, is the most important office of the higher court on appellate proceedings, and for this they have great advantages, both in the constitution of the court where several judges may confer, and from the previous discussion and preparation in the former arguments and decision."

Woodward v. Bullock, 27 Eq., p. 507.

This point is raised in good faith and there has been no intentional attempt to reserve this point for further litigation. The order to show cause why the sale should not be confirmed was made September 21, 1928 (Case p. 88). Then the receiver took testimony and his report was filed October 15, 1928 (Case p. 95) and the matter was argued the same day and briefs submitted within ten days. From the time this appellant ascertained the findings of the receiver and the argument before the Vice Chancellor, only about two or three weeks elapsed—surely a short time within which to consider a matter of this kind.

Walach v. Stein, 103 N. J. L. 470, does not apply. That act relates to "transfer of stock" and a transfer of stock by attachment or levy surely comes within such a title, as the court says, "one reading the title would of necessity be put on guard to examine the body of the act to ascertain the various means of transfer contemplated by its title." Can the same thing be said of the title of the Uniform Conditional Sale Act, insofar as Section 7 is concerned? I think not.

Re Point IV, Page 26.

Why is this respondent so concerned about upsetting this sale? If, as it contends, it still holds title to the goods conditionally sold, how can it be injured if a new sale is ordered? Why didn't it appear at the sale and see that its title to the goods was protected? Why did it not apply to the Court of Chancery for protection, knowing that a sale had been ordered free of all liens? The only answer to these questions is that the respondent intended to create just such a situation as it did in this case and then expect to force either this mortgagee to pay the amount due to them or to compel the purchaser at the sale to do so, knowing that anyone bidding on the *apartment house* would expect to get the building equipped, for the price of its bid, and not have to pay an additional amount to the respondent and other persons.

Re: Brief of Warren Dixon, Jr., Appellee

In the Receiver's brief great stress is laid upon the position taken by this appellant, that if the Court finds the reservation of title by the conditional vendors is void as against this appellant, then it will not object to the sale. The statement by this appellant is undoubtedly unnecessary for if Point I or II is resolved in its favor, then it cannot be aggrieved by the order confirming the sale, for there will be ample funds in the Receiver's hands to pay it the full amount due on its mortgages.

While it is true this appellant did not object to the sale on the return of the order to show cause for confirmation, there was a very good reason for its action. If the rights of the conditional

vendors were subsequent to our mortgages, we could not object to the sale and this fact was not ascertained until the filing of the Vice Chancellor's Conclusions. After that, when the Receiver moved for the confirmation of the sale on June 17, 1929, the appellant objected thereto (Case p. 182, f. 20-38).

The Receiver argues that the purchasers at the sale are to be protected. The purchasers have never objected to a setting aside of the sale. They were parties to this appeal and have not appeared to protect any rights they may have.

By raising the question of the payment of interest on this appellant's mortgages, the Receiver would have the court believe that this appellant is only interested in getting the property. We do not want the property. We want what is equitably due to us—the amount due for principal and interest on the mortgages. The only reason an offer was made by this appellant at all was to protect the Receiver against loss in the event of a new sale, and there would have been no loss sustained, for interest is payable on appellant's mortgages up to the time the purchase moneys are paid to the Receiver.

Agnew v. Paterson, 83 N. J. Eq. p. 49 and 67.

Hoover Steel Ball Co. v. Schaefer Ball Bearing Co., 90 N. J. Eq. p. 515.

If a new sale were ordered and the guarantee of the appellant of \$90,000.00 were accepted, the Receiver could not have sustained any loss.

It is a significant fact that although the Receiver opposes this appellant on its appeal, by his

argument in the last paragraph of page 24 of his Brief, he seems to have taken an "about face" and in quoting the excellent language of Judge Crane in his dissenting opinion in *Madfes v. Beverly Development Corp.*, *supra*, he seems to argue for the sustaining of Point I of the main brief in this cause, and I do not believe that any better language could be used to sustain my argument than that used by Judge Crane. I also believe that had the Receiver been able to see the facts in this case in this light when his reports were filed, all this litigation would have been avoided.

Respectfully submitted,

RINALDI & SHANLEY,

Solicitors of Appellants.

G. FRANK SHANLEY,

Of Counsel.

II

THE HISTORY OF THE

ROYAL SOCIETY OF LONDON

IN THE SEVENTEENTH CENTURY

BY JOHN VAUGHAN

IN TWO VOLUMES

VOLUME THE SECOND

LONDON

PRINTED BY R. CLAY AND COMPANY

PRINTERS, BUNGAY, SUFFOLK

1963

BY APPOINTMENT TO HER MAJESTY

THE QUEEN

PRINTED BY RICHARD CLAY AND COMPANY

BUNGAY, SUFFOLK

1963

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New Jersey Court of Errors and Appeals

Between

ELBERT M. CROWN, trading as
Charles P. Walker Company,
Complainant,

and

REGNA CONSTRUCTION
COMPANY,
Defendant.

ON APPEAL
FROM
CHANCERY.
ON APPEAL
BY CONSOL-
IDATED
SECURITIES
CORPORA-
TION.

**BRIEF FOR APPELLEES, JOSEPH NEIDORFF
AND SAMUEL MILNIS, PARTNERS TRAD-
ING UNDER THE FIRM NAME OF LIBERTY
LIGHTING FIXTURE CO.**

Statement.

The appeal in this case is taken by the Consolidated Securities Corporation from five orders made by the Court of Chancery in this cause bearing date July 1st, 1929 (see Case, pp. 4-8). These appellees are only interested in two of the orders, one of which upholds the validity of the conditional sales contract held by these appellees, and the other order confirming the Receiver's sale.

The appellees' conditional sales contract was dated March 6th, 1928, and was filed on March 30th, 1928, in the Bergen County Clerk's Office, being the office where a deed of realty is recorded or registered in the said County. The appellees supplied and installed the electrical fixtures on

April 14th, 1929. Appellant is the holder of two construction mortgages on the real estate in question, one dated September 30th, 1927 and recorded October 1st, 1927, to secure the sum of \$30,000.00 and the other dated November 29th, 1927 and recorded November 30th, 1927, to secure the sum of \$20,000.00. Both of these mortgages were recorded prior to the filing of the conditional sales contract held by these appellees and the installation of the electrical fixtures. The appellant did not advance any money on the strength that the electrical fixtures were paid for, and neither was the said appellant a subsequent purchaser for value within purview of the Conditional Sales Act in so far as the electrical fixtures are concerned furnished by these appellees.

On June 22nd, 1928, Elbert M. Crown, trading as Charles P. Walker Company, filed a bill of complaint in the Court of Chancery against Regna Construction Company praying for the appointment of a Receiver of said corporation on the ground that the said corporation was insolvent. Such proceedings were had thereon, that on June 28, 1928, one Warren Dixon, Jr., was made permanent receiver with the usual powers conferred by the Corporation Act.

On July 9, 1928 said Receiver filed a petition praying for leave to sell the lands and premises of Regna Construction Company, free and clear of all liens and encumbrances except a first mortgage held by Charles Enders, Jr. and Amelia Enders, his wife, for \$8,000.00, said encumbrances, liens and equities to attach to the proceeds of said sale. On the filing of which an order to show cause was made on said date directing the appellant and all other parties in interest to show cause why said property should not be sold free and clear of all mortgages, liens and encumbrances except as aforesaid (see Case, p. 65). Subse-

quently, and on July 23, 1928 the Receiver was directed to sell the property. Said Receiver sold the property in accordance with the mandate to sell and filed a report thereof, which sale was confirmed by order of the Court dated July 1, 1929, copy of which is printed in detail at page 194 of the State of Case.

The only testimony on the claim of these appellees was the proof of claim filed with the Receiver on September 20th, 1929, being one day after the Receiver's sale (Case, p. 158). The appellees insisted upon payment from the proceeds of the sale of the property in preference to all mortgages, mechanic's lien creditors, judgment creditors and all other liens on said premises. The conditional sales contract attached to the proof of claim and made part thereof contained the usual reservation of title until the purchase price was fully paid and also provided "that the same (meaning electrical fixtures) are to be installed and affixed to the realty so as to be severable without material injury to the freehold". It further provided that "the sellers may at their election regard the property as sold as unconditional and file mechanic's lien and to pursue any other remedy for the collection of the within consideration".

The Receiver in his report arbitrarily and without any legal justification regarded the property as sold unconditionally, because of the failure to insist upon the return of the electrical fixtures, and that these appellees treated the sale as an unconditional sale; title thereto passed to the Receiver, the said appellees being only entitled to payment as a general creditor (Case, p. 157).

The electrical fixtures of these appellees were sold by the Receiver prior to the filing of the proof of claim, and consequently he was unable to return the electrical fixtures and restore these

appellees in *status quo*. The learned Vice Chancellor in his opinion decided there was no proof whatever warranting the determination by the Receiver to treat the transaction as an unconditional sale to the Regna Construction Co. or the Receiver of the Regna Construction Co. and overruled the Receiver's Report and directed payment to the Liberty Lighting Fixture Co. from the proceeds of the sale in preference to the mortgages and mechanic's lien claimants as appears by the order (Case, p. 165).

If it could be determined the sale was treated as unconditional sale, it was the sale between these appellees and the Receiver with the express promise to pay the full consideration price due these appellees from the proceeds of the sale as provided by the order of the Court to sell the property, otherwise the Receiver should have returned the electrical fixtures to these appellees.

POINT I.

The reservation of title by the Liberty Lighting Fixture Company under the conditional sale contract is valid and binding upon the appellant Consolidated Securities Corporation.

The claim of the appellees Joseph Neidorff and Samuel Milnis, partners trading under the firm name of Liberty Lighting Fixture Company, is based upon a conditional sale contract which was entered into by the Regna Construction Company for the purchase and installation of electrical fixtures for the sum of \$1050.00 upon condition that title to the fixtures is to remain the property of the said Liberty Lighting Fixture Company until the entire payment of the purchase price. The contract is dated March 6, 1928, and was filed on March 30th, 1928, in the Bergen County Clerk's

Office, being the office where a deed of the realty is recorded or registered in said county. The appellees supplied and installed the fixtures on April 14th, 1929.

Part 2 of Section 7 of the Uniform Sales Act, 2 Comp. Stat. 1911-1924, Supp. Sec. 183-93, pp. 3130-3131, reads as follows:

“If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof, but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office where a deed of the realty would be recorded or registered to affect such realty.”

The only testimony on the claim of these appellees is the proof of claim filed with the Receiver (Case, p. 158). Counsel for the appellant at the middle of page 27 of his brief concedes that electrical fixtures can be removed from the realty by unloosing a screw. Furthermore, the conditional sale contract, which is annexed to the proof of claim and made part thereof, provides that the fixtures are not to be regarded as a permanent part of the building (Case, p. 159). The learned Vice Chancellor found the fact to be that “the goods were affixed to the realty so as to become part thereof, but severable without material injury to the freehold” (Case, p. 174).

There is no evidence in the State of Case to show that these electrical fixtures cannot be removed without material injury to the freehold.

It is well settled law that where there is evidence to sustain a finding of fact, this Court will not disturb the finding of fact by the Court of Chancery.

Counsel for appellant at pages 11 and 12 in his brief, quotes the first part of section 7 of the Uniform Conditional Sales Act. This part of section 7 is inapplicable to the case at bar because it applies to a case in which goods conditionally sold are not severable from the realty without material injury to the freehold. He proceeds further and quotes numerous cases decided prior to the adoption of the Conditional Sales Act, all of which cases have no application whatever to the case at bar. Mr. Justice Katzenbach in the case of *General Motor Acceptance Corporation v. Smith*, 101 N. J. L. 154, said in referring to the Uniform Conditional Sales Act: "This act stands by itself."

As to the question whether or not these appellees regarded the transaction as unconditional sale, it will be treated under Point II of this brief for the purpose of avoiding repetition.

POINT II.

The appellant is estopped in good equity and conscience to assert that the appellees, Liberty Lighting Fixture Company, are limited to remedies provided for by Sections 16 to 24, both inclusive, of the Uniform Sales Act.

Under order made by the Court of Chancery dated July 9th, 1928, the Receiver was authorized and directed to sell the property free and clear of all liens together with the appurtenances thereto belonging except a first mortgage held by Enders (Case, p. 65). Appellant was heard by the Court before the making of the order. No appeal

was taken from the order by the appellant. In pursuance to the mandate of sale, the Receiver sold the property at a public sale regularly held on September 19th, 1928, to John H. Sheridan and Mervin Hersfeld for the sum of \$96,000.00 free and clear of all encumbrances, together with the appurtenances thereto belonging except municipal liens and the mortgage held by Enders.

By the Receiver selling the property including the electrical fixtures he claimed title to the property adverse to the appellees, and as result thereof was liable to these appellees in an action for conversion. The appellees, a day after the sale, filed a proof of claim with the Receiver, insisting upon payment in preference to all mortgages, mechanic's lien creditors, judgment creditors and all other liens on the said premises out of the fund realized from the sale of the premises (Case, p. 158). The Receiver denied the claim of the appellees as a preferred creditor, notwithstanding the fact he had already sold the property of these appellees, and was reversed by the learned Vice Chancellor, saying in his opinion:

“The receiver claims said vendors should be regarded as having elected to treat the transaction as an unconditional sale. I do not find anything in the proofs to warrant such claim” (Case, p. 173).

In the case of *Spitalny v. Superior Novelty Mfg. Co.*, 98 N. J. Eq. 523, Vice Chancellor Buchanan held that the Receiver has no power to sell property affected by a conditional sale contract until the full purchase price is paid. The Court points out on page 527 that a Receiver would be entirely justified in paying the conditional vendor in full in order to be able to make sale of the goods to better advantage. The order to sell and the Receiver's report of the sale (Case, p. 79) states “it

is for the better advantage to sell the property free and clear of all encumbrances including the electrical fixtures of these appellees". This is the position taken by the Receiver upon condition it is determined by this Court that the conditional sale contract of these appellees is valid (Case, p. 196). No appeal was taken from this order. The learned Vice Chancellor in his opinion upheld the validity of the conditional sale contract of these appellees (Case, p. 173).

POINT III.

Section 7 of the Uniform Conditional Sales Act is constitutional.

Counsel for the appellant contends that Section 7 of Uniform Conditional Sales Act is unconstitutional because it embraces an object which is not expressed in the title of the act in violation of the Constitutional Provision that every law shall embrace but one object, and that shall be expressed in the title. He contends that the act refers solely to conditional sales and says nothing whatsoever about the transition of personal property into real property formerly governed by the "Law of Fixtures."

The title of the act is "An Act Concerning Conditional Sales and to Make Uniform the Law Relating Thereto". The complaint made by counsel for the appellant is that a person dealing with a parcel of real estate could not be expected to take cognizance of the provisions of this act simply by looking at the title of the act. It is well known that personal property is purchased under a conditional sale contract, and that personal property is affixed to realty which can be removed without material injury to the freehold. The title

of the act is clear and broad to include a conditional sale on personal property wherever the same may be later situated.

The title of the act gives reasonable intimation to prudent persons dealing in real estate and therefore is constitutional. *Londrigan v. McNally*, 65 N. J. L. 161.

POINT IV.

The order confirming the Receiver's sale herein should be affirmed.

The legality of both of the mortgages held by the appellant was questioned (Case, p. 63). The order to sell the property free and clear of the appellant's mortgages follows Section 81 of the Corporation Act quoted by counsel for appellant at page 45 of his brief (Case, p. 65). Furthermore, this order was never challenged by appeal by the appellant herein.

The sale was held and conducted in accordance with the terms of the Order to Sell, and thereafter confirmed by the Court. The appellant is now estopped to claim that the order of confirmation of sale is now against equity and good conscience.

As to the contention that action of Receiver in selling the property free and clear at the sale amounted to a misapprehension or surprise to the appellant is untenable. The Receiver complied with the Order to Sell (Case, p. 79). The fact that appellant was ignorant of the law is no excuse.

Counsel for appellant at page 47 in his brief cites numerous cases to support his contention that a judicial sale will be set aside where there is surprise or misapprehension created by the conduct of the purchaser or of the officer who con-

ducted the sale. There are no facts in the case at bar to bring the appellant within the rule established in the cases cited.

CONCLUSION.

It is respectfully submitted that the orders appealed from should be affirmed.

Respectfully submitted,
LOUIS RUBENSTEIN,
Solicitor of Appellees.

CHAS. RUBENSTEIN,
Of Counsel.

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New Jersey Court of Errors and Appeals

Between
ELBERT CROWN, trading as
CHARLES P. WALKER COM-
PANY,

Complainant,

and

REGNA CONSTRUCTION COMPANY,
Defendant.

On Appeal from
Chancery.
On Appeal by Consoli-
dated Securities Cor-
poration.

BRIEF FOR WASMUTH-ENDICOTT CO., APPELLEE.

Statement.

The appeal in this case is taken by Consolidated Securities Corporation from five orders entered in the Court of Chancery in this cause bearing date July 1, 1929 (see Petition of Appeal, pp. 4-8). Four of said orders deal with the rights of conditional sale vendors. The other order confirms a sale by the receiver of the real estate owned by the defendant corporation. This appellee, Wasmuth-Endicott Co., is only interested in the order referring to its claim and set forth in paragraph "C" of the petition of appeal (p. 5), and incidently in the order confirming sale referred to in paragraph "E" (p. 5). Appellant is the holder of two mortgages on the real estate in question. Appellee's conditional sale contract was dated November 9, 1927, and was recorded in the Bergen County Clerk's Office on November 14, 1927 (pp. 147-152).

The goods were delivered on the ground in February, 1928, and were not put in the building until the early part of March, 1928 (p. 132). Appellant is the holder of two mortgages on the real estate in question. One dated September 30, 1927, and recorded on October 1, 1927, to secure the sum of \$30,000, and the other dated November 29, 1927, and recorded November 30, 1927, to secure the sum of \$20,000. The first mortgage, therefore, *was both executed and recorded prior* to the execution and filing of appellee's conditional sale contract. The second mortgage, while recorded two weeks after the filing of appellee's conditional sale contract, was recorded *over three months prior to the placing of any of appellee's goods in the building*. It cannot, therefore, be said that as to either mortgage, appellant can be considered to be "*a subsequent purchaser for value*" under Section 7 of the Conditional Sale Act.

It is also important to note that appellant was *not* the purchaser of the property at the sale.

A decree of insolvency was entered against the defendant corporation on June 29, 1928, and a receiver was appointed in accordance with the provisions of the Corporation Act (pp. 34-38). In the fall of 1927 the defendant corporation was engaged in the erection and construction of an apartment house on lands owned by it, situate on Mt. Vernon Street, Ridgefield Park, Bergen County, New Jersey. The corporation executed the bonds and mortgages to appellant on the dates aforementioned and they were recorded as hereinbefore set forth. There was also a first mortgage on said lands and premises at the time the corporation purchased the land and the corporation gave back a second purchase money mortgage in the sum of \$9,500, on which latter mortgage \$1,000 has been paid off.

Counsel in his brief sets forth that the moneys on appellant's two mortgages were advanced from time to time as the buildings progressed. There is no proof, however, that any portion of these moneys was advanced *after* the goods sold by appellee *were placed in the building* or as a matter of fact, *after they were delivered on the ground*. Reference to the petition of appellant to apply the debt to purchase price and particularly Schedule "A" on pages 75-76, would indicate that most of the moneys on the \$30,000 mortgage were advanced *prior to even the date of the appellee's conditional sale contract* and that the moneys on the mortgage of \$20,000 dated November 29, 1927, *were advanced three months prior to the placing of the goods, sold by appellee under conditional sale contract, in the building*.

At the outset, therefore, *it cannot be said* that appellant, as to either of its mortgages, was deceived and advanced its mortgage moneys on the assumption that the goods of appellee had been paid for, or that as to appellee it was "*a subsequent purchaser for value*" as is necessary in order for it to be in a position to attack appellee's rights under its conditional sale contract.

As stated above, appellee is only incidently interested in the order confirming sale. If the order is affirmed and the receiver has elected to sell appellee's goods and to pay appellee its full purchase price under the order of the Court, *then appellee is entitled to be paid the full amount of the purchase price*. If the order of sale is not affirmed, then the receiver has no right to sell appellee's goods and *it is entitled to an order for their return to it*. There is no doubt but that the action of the receiver in so electing *was beneficial* to the estate in obtaining a higher price for the property, the receiver, by so doing in relation to all of the con-

ditional sale vendors, *being enabled to offer for sale a fully equiped apartment building.*

Further, the appellant is *estopped* from objecting to a sale in this manner for, upon the return of the order to show cause why such a sale should not be had, it not only did not object but filed a petition for permission to use a portion of the moneys due to it under its mortgage loan as part of the purchase price, and to have its lien of the balance of the moneys due on its mortgages to attach to the balance of the proceeds of said sale according to its right and priority over other claimants and in fact affirmatively obtained an order permitting this to be done (pp. 70-78).

The sale was held and the property sold to a third party for \$96,500 subject to the first land mortgage of \$8,000.

In addition to the appeal taken by appellant, the receiver has appealed from the three orders directing the payment of the purchase money due to conditional sale contract claimants, including appellee, out of the proceeds of sale. The receiver *has not appealed* from the order confirming sale and in fact *applied* in the Court of Chancery for said order and *resisted* the efforts of appellant to set aside the sale. These two appeals will either, with the permission of the Court, be argued together or at least argued at the same term. In response to the receiver's appeal Wasmuth-Endicott Co. has filed its brief, copy of which has been served upon counsel for the appellant in this case. Appellee, therefore, respectfully requests that the Court may consider its brief in the receiver's appeal so far as pertinent for the determination of this appeal.

POINT I.

The order of the Court of Chancery directing the receiver to pay to Wasmuth-Endicott Co. from the proceeds of sale of the premises, purchase price of the goods sold under its conditional sale contract in preference of appellant, etc., should be affirmed.

The appellee filed with the receiver a demand for possession and petition in reclamation proceedings. Under order of the Chancellor dated June 28, 1928, the receiver took testimony and heard the matter in the presence of all of the parties interested, including counsel for Consolidated Securities Corporation, the appellant in this case (see Report of Receiver, p. 131).

As to the facts relating to the claim of Wasmuth-Endicott Co. there can be no question. A conditional sale contract for kitchenettes, cabinets, etc., was entered into by the Regna Construction Company for the purchase of the kitchenettes, cabinets, etc., for the sum of \$2,840 upon condition that title was reserved in the vendor until payment of the purchase price. The contract is dated November 9, 1927, and was filed in the Bergen County Clerk's Office on November 14, 1927. The goods were installed in the building in the early part of March, 1928. The conditional sale contract is printed at pages 147-151 of the record. There is no question as to the validity of the conditional sale contract. The only question raised is that the reservation of title by the sellers under the contract is void as against appellant for the reason that the *finding of fact* by both the receiver and the learned Vice-Chancellor below that the goods of appellee can be removed without "material injury to the freehold," is error and that as a conclusion of law

from the testimony the goods were not severable from the freehold without material injury to it. On the reclamation proceedings testimony was taken by the receiver in respect to the claim of Wasmuth-Endicott Co. This testimony was taken in the presence of all of the parties, including counsel for appellant, who cross examined one of the witnesses (pp. 115-125). The only evidence produced was that produced on behalf of this appellee. There is nothing in the conditional sale contract which indicates that the intent was to affix the goods to the freehold so as to become part of it. There is, however, in the contract an express reservation of title in the conditional sale vendor, appellee, until the full purchase price is paid. On page 136, Julius Steigler, who made the sale, testified as follows:

“Q. Are any of these chattels mentioned therein so affixed to the building that they cannot be removed without damage? A. They can all be removed without damage to the building.

“Q. They can? A. They can; yes.”

He was asked on page 139 as to the moldings and testified that the moldings were always fastened to the cabinet itself. And on page 143 he testified as follows:

“A. It certainly is intended for the building when it is sold for the building. There is no doubt about that. But it certainly can never become part of the building, because it is a piece of furniture. At least that is what I consider it and look upon it.

“Q. It is more than a piece of furniture in that it is affixed to the building, but your contention being that it can be removed without damage? A. Absolutely; and I only look at it as a piece of furniture.”

And on page 144 he testified that the connections with the ice box were made with a “lock

nut." This was the *only testimony produced* on this claim. Appellant offered no testimony to refute it. The receiver in his report *found as a fact* that the goods "are affixed to the realty so as to become part thereof but are severable without material injury to the freehold" (p. 133). The Vice-Chancellor affirmed the receiver in this respect and *found the fact to be* that "the goods were affixed to the realty so as to become part thereof but severable without material injury to the freehold" (p. 174).

Where there is evidence to sustain a finding of fact, this Court will not disturb the finding of fact by the Court of Chancery.

Counsel for appellant, at the bottom of page 14 of his brief, admits that by the Uniform Conditional Sales Act the question of the intent of the parties *has been eliminated*. He then goes on, however, to quote a large number of cases decided prior to the adoption of the Conditional Sales Act, none of which, so far as we can see, have any application whatever.

Mr. Justice KATZENBACH in the case of *General Motors Acceptance Corporation v. Smith*, 101 N. J. L. 154, said in referring to the Uniform Conditional Sales Act, "This act stands by itself."

Also in the case of *Harrington's Sons Co. v. Jersey City*, 78 N. J. L. 610, Mr. Justice GARRISON, speaking for this Court, held that where the legislature frames a new and general rule governing the subject-matter all earlier and different rules touching the same matter are to be discarded in favor of such later rule.

In the case of *Madfes v. Beverly Development Corporation, et al.* (Court of Appeals of New York), 25 N. Y. 12; 166 N. E. 787, the Court held that gas ranges attached by a coupling to the gas service pipe which delivered gas to the various apartments remained personal property. Judge

CRANE dissented, and the majority opinion says on page 78 in reference to his dissent:

“In his dissenting opinion herein, Judge CRANE reminds us that apartment houses today are massive affairs, housing hundreds of families and occupying entire blocks; that gas ranges are the universal equipment of every apartment in all such buildings. He expresses the view that in holding that gas ranges, after attachment to real estate, do not become a part thereof, we are pressing the facts into an old-fashion mold.”

In the case of *Spitalny v. Superior Novelty Mfg. Co.*, 98 N. J. Eq. 523, Vice-Chancellor BUCHANAN held that the receiver has no power to sell the property of a conditional sale vendor, the title of which remained in it, until the full purchase price is paid. The Court, however, pointed out on page 527, that a receiver would be entirely justified in paying the conditional vendor in full in order to be able to make sale of the goods to better advantage. This is the position taken by the receiver upon condition, however, that it be determined that the conditional sale contract of appellee is valid. The learned Vice-Chancellor in the case at bar wrote an elaborate and well-considered opinion upholding the conditional sale contract of appellee (p. 167).

POINT II.

Section 7 of the Uniform Conditional Sales Act is constitutional.

Counsel for appellant contends that Section 7 of the Act is unconstitutional in that it violates the constitutional provision that every law shall embrace but one object and that shall be expressed in the title.

He contends that the Act violates the constitution in that it is an attempt to legislate in relation to a subject which is and always has been a part of the real estate law. He further says that the title of the Act refers solely to conditional sales and says nothing whatever about the transition of personal property and to real property. We contend that the title of the Act fully complies with the constitutional provisions. The title is "An Act Concerning Conditional Sales and to Make Uniform the Laws Relating Thereto." Certainly nothing can be broader or more complete than this title. The Uniform Conditional Sales Act has been adopted in a *majority of the States*, and its provisions *have been uniformly upheld*. It embraces the entire subject of conditional sales. Complaint is made that any person dealing with a parcel of real estate could not be fully expected to take cognizance of the provisions of this Act simply by looking at the title of the Act. It is a well-recognized practice that personal property is sold under conditional sale contracts. It is also a well-recognized fact that personal property can be turned into real estate by reason of being so affixed thereto that, under well-recognized rules of law, it becomes part of the realty. Under the law of fixtures the question of intent was involved where the fixtures could be removed without material injury to the freehold and most of the cases cited by counsel on the question of fixtures turn upon the question of intent. In the first place, the intent of a conditional sale contract is that the vendor shall retain title to the personal property sold and shall have the right to remove it at any time, if it can be severable without material injury to the freehold, unless the purchase price is paid. A reading of Section 7 shows that the framers of this Act *were very careful in protecting the rights of persons dealing in real estate* when they

provided in the first sentence that goods that are so affixed to the realty as to not be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed *as against any person who has not expressly assented to the reservation.*

We have no fault to find with the decisions quoted by counsel upon this point. For instance, the case of *Londrigan v. McNally*, 65 N. J. L. 161, where Mr. Justice COLLINS held at page 163 that to comply with the constitution the title must give reasonable intimation of the matters under consideration as the title must limit the enactment to matters within its scope, and likewise his opinion in the case of *Welling v. Deckertown*, 64 N. J. L. 203.

The difficulty is that we contend that, applying the rationale of these decisions, that the title of the Conditional Sales Act fully expresses the matters legislated therein. *As a matter of fact the title does not confine* the Act to conditional sales of *personal property*, but is extensive enough to cover the conditional sales of *any property, including real estate.*

POINT III.

The order confirming the receiver's sale herein should be affirmed.

On this point, we assume that the main argument will be made on behalf of the receiver, as Wasmuth-Endicott Co., as we have previously pointed out, is only incidently concerned.

We contend, however, that the appellant has no standing to complain of the order confirming the sale.

In the first place, it made no objection to the order for sale and in fact, filed a petition for per-

mission to use part of its mortgage debt in payment of the purchase price and obtained an order permitting it to do so. Counsel claims that the order is against equity and good conscience and should be reversed. We can see no basis for any such contention.

Appellant does not contend that it was deceived in any way or fashion at the time of the sale. It knew the terms of the order for sale which were that the property was sold free and clear of all liens and encumbrances whatsoever except the land mortgage of \$8,000.00 and taxes and municipal liens (see p. 43 of its brief). Appellant, as hereinbefore stated, not only did not object to the order but actually obtained an order permitting it to use part of its mortgage money as part of the purchase price, but it took no appeal from the order for sale. Instead it acquiesced in the sale and appeared at the sale and counsel in his brief states that it bid at the sale. Whether or not it bid at the sale or how much there is no actual proof in the record. The receiver's report of sale found on pages 79-87 of the record does not so state. The petition of appellant *in re* sale of land on page 183 of the record states that appellant if it knew at the time of the sale "that the conditional sale contracts were prior to its mortgages," it would *undoubtedly* have increased its bid so as to cover the full amount due to it on its mortgages after the payment of all prior liens. Counsel on page 43 of his brief states that *some person (not it)* asked as to whether or not the property was subject to claims of conditional vendors. As a matter of fact the property was sold under the terms of the order free from encumbrances, the liens of all persons to attach to the proceeds. Appellant had full knowledge of the terms of the order and the fact that there were claims by conditional sale vendors. There is, therefore, nothing in the rec-

ord, unless I have overlooked it, that sustains the statement in appellant's brief that it bid up the property to a sufficient amount to pay its mortgage lien claim in full if the conditional sale vendors did not have priority over it. *Ignorance of the law is no excuse.*

Even if that were the fact, how can it be said that the sale was against equity and good conscience simply because of the fact that this mortgagee, who was not the purchaser, did not bid up to a sufficient amount to pay its mortgage lien in full? Particularly is this so when the order for sale expressly directed that the purchase price of the property should be held by the receiver subject to the same liens and equities of all parties interested in the said property and that all further equities of all persons whatsoever in and to the said premises were reserved (p. 65). Also, as a matter of fact, the affidavit of the complainant in the suit, who is a creditor, found on page 63 of the record, contests the lien and priority of appellant's mortgages over his claim for the reason that the said mortgages were not recorded until after the work on said lands and premises had been commenced and performed.

We desire to draw attention to the fact that on page 46 of appellant's brief counsel states that appellant is *not objecting* to the action of the Vice-Chancellor on the prayer of its petition for permission to advance its bid or advance the bid in the receiver's sale.

Counsel on page 47 cites a number of cases for support of the proposition that a judicial sale will be set aside where there is surprise or misapprehension created by the conduct of the purchaser or of the officer who conducted the sale. I have examined the record and appellant's brief with great care and I can find *no justification* for any contention that there was any surprise or mis-

apprehension created by the conduct of the purchaser or of the receiver who conducted the sale.

There is no support whatever for the contention of appellant in the cases cited. In the case of *Seaman v. Riggins*, 2 N. J. Eq. 214, Chancellor PENNINGTON set aside the sale in question upon the ground that the agent of an encumbrancer, whose interests were prejudiced by the sale, and who intended to purchase, was prevented from attending the sale by accident and by an unintentional mistake of complainant's solicitor. Likewise in the case of *Cummins v. Little*, 16 N. J. Eq. 48, Chancellor GREEN set aside a sale on the ground of gross inadequacy of price where it appeared that property of the value of \$5,000.00 to \$6,000.00 was sold for \$80.41 where the sheriff had announced to the bidders that if \$80.41 was bid he would strike the property off.

Counsel on page 45 of his brief quotes Section 81 of the Corporation Act. In the first place, for the reasons above stated, appellant cannot object to the sale, and in the second place, the order which was granted expressly follows the provisions of the statute. Furthermore, in the *Spitalny* case, *supra*, Vice-Chancellor BUCHANAN pointed out that the receiver had the right to sell the property purchased by the corporation on conditional sale contracts upon electing to pay the full purchase price.

It is respectfully submitted that there is nothing in the case which would justify the setting aside of the sale at the instance of the appellant mortgagee.

We desire to also call the attention of the Court to the statement of counsel at the foot of page 46 to the effect that if Points One and Two are resolved in favor of the appellant, that then the appellant will not object to a confirmation of the sale. It seems to us that appellant should either

take one stand or the other. Either the sale was good or bad and *there is nothing in either Point One or Two which would affect the validity of the sale one way or the other* so far as appellant is concerned.

CONCLUSION.

It is respectfully submitted that the orders appealed from should be affirmed.

Respectfully submitted,

HARRY LANE,
Of Counsel with Appellee.

CAREY & LANE,
Solicitors.

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New Jersey Court of Errors and Appeals

Between ELBERT M. CROWN, trading as Charles P. Walker Co., Complainant, and REGNA CONSTRUCTION COMPANY, Defendant.	}	On Appeal from Chancery. Appeal of Consolidated Securities Corporation.
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**BRIEF FOR WARREN DIXON JR.,
RECEIVER OF REGNA CONSTRUCTION CO., APPELLEE.**

This brief is in answer to Point IV of appellant's brief which relates to the confirmation of the sale of the realty of the defendant insolvent corporation.

Appellant does not absolutely appeal from the order of confirmation. It takes a rather unusual position before this Court. Appellant has taken what might be termed a conditional appeal, the use of which, in the writer's opinion, is contrary to accepted legal practice. Appellant only urges the reversal of the order of confirmation in the event that it is unsuccessful under other points of the case, and the affirmance of the order, if it is successful under other points. An appeal should not be entertained under such circumstances. At the bottom of page 46 of its brief, appellant says:

"Of course, if Point I or Point II is resolved in favor of this appellant, this appellant will note object to the confirmation of this sale
* * *"

and at bottom of page 47 of its brief:

*"if the Court finds that the reservation of title by the conditional vendors is valid against this appellant under either of the first three points herein, then that the order confirming said Receiver's sale be vacated * * *"*

Moreover, appellant did not object to the order when motion therefor was first made before the Court. In fact, it never objected. What appellant did long after the sale, was to file a petition praying that its bid be substituted for that of the purchasers at the sale.

The Facts.

On September 19th, 1928, appellee-receiver, at a public sale attended by appellant, sold the property of the insolvent corporation to John H. Sheridan and Mervin Herzfeld for \$96,500., the said purchasers assuming the payment of a certain mortgage for \$8000. and municipal liens. The purchasers paid a deposit and signed the terms of sale and memorandum of purchase. (Receiver's report of sale, Case, pp. 79-87.) The sale was subject to the confirmation by the court, motion for which was made on October 1, 1928 at which time appellant offered no objection.

Previously, on July 9, 1928, appellee filed a petition praying for leave to sell the lands and premises of defendant corporation in accordance with Section 81 of the Corporation Act. The petition and the affidavits thereon brought into question and dispute the legality and validity of appellant's mortgages and other liens and encumbrances. (Case, pp. 39-49 and 53-65.) An order to show cause issued, on the return day of which, July 24th, 1928, the court made an order (Case, pp. 65-70) author-

izing, empowering and directing the appellee, as receiver, to sell the property of the insolvent corporation together with appurtenances, free and clear of all lien and encumbrances except a certain first mortgage for \$8000. and municipal liens, for the highest and best price that the same would bring in cash, subject to confirmation by the court, the proceeds of sale to be held subject to the same equities as existed before the sale.

It is significant that appellant made no objection to the order for sale. It filed no affidavit disputing appellee's allegations that all of the moneys intended to be secured by the mortgages held by appellant were not actually used in the erection and construction of the building and also that certain mechanics lien claimants were entitled to priority over appellant to the extent of moneys not used in the erection of the building. In its brief, page 4, appellant now admits that there are persons entitled to priority over appellant as to funds not used in the building whose claims aggregate \$32,690.61.

The sale was duly advertised. Appellee offered the property for sale strictly in accordance with the order of the Court. Appellant was among the bidders, but as stated, the property was struck off to Messrs. Sheridan and Herzfeld, the highest bidders. At page 43 of appellant's brief, reference is made to a question asked of receiver at the sale. There is nothing in the record to this effect. The receiver made no representations except as contained in the court order that the property was to be sold free and clear of liens and encumbrances except those specifically mentioned. The report of sale discloses that the receiver so sold and the memorandum of purchase indicates that the purchasers so purchased (Case, 84-87). Appellant unwarrantedly gives the inference that the receiver

misrepresented the conditional sales. There is absolutely no basis in fact for such inference. The record speaks for itself.

On October 1, 1928, appellee moved the confirmation of the sale and at that time, the conditional vendors of some equipment in the property claimed their goods or payment. In open court, appellee was directed to take testimony concerning the claims of the conditional sales vendors. This appellee did so, filing his reports with the court. Appellee reported that three conditional vendors had waived the reservations of title. They appealed to the court which took the matter under consideration and subsequently filed an opinion overruling receiver's reports and directing payment.

The Vice Chancellor with whom appellee conferred deeming it equitable and just that the purchasers should receive a deed to the property with the equipment, made an order confirming the sale to the said purchasers (Case, 194-195) and also an order providing for the setting aside of a sum sufficient to pay the conditional vendors in the event of the affirmance by this Court of the orders of the Court of Chancery concerning the conditional sales contracts (Case, p. 196). The purchase price was \$96,500. and the sum required for the conditional sales aggregates \$7,279.30, leaving a net sales price of \$89,220.70, which appeared to the court to be the highest and best price and for the best interests of the estate. The order of confirmation at Case, page 194, reads:

“the court having considered the matter and being of the opinion that the price hereinbefore mentioned is the highest and best price that the said lands and premises would bring.”

Though the sale was held September 19, 1928, the first so-called objection of appellant to the sale was

made on *June 19, 1929*, when it filed a petition (Case, pp. 180-191) praying in effect that the bid of the purchasers be rejected and that the offer of appellant be substituted. Appellant offered \$90,000. and agreed to take subject to the rights of the conditional sales vendors. The court denied the petition and confirmed the sale made by receiver. It will be readily observed that the court's action was eminently proper for these reasons; first, the rights of the purchasers at a judicial sale were to be recognized; and second, though the offer of appellant appears to be about \$800. more than the purchasers had contracted to pay, the net estate would be less because the acceptance of the belated bid would require payment of interest on mortgages to the date of the new sale (July 1, 1929) which interest would have exceeded by far the \$800. additional offer of appellant. The receiver's public sale was held September 19, 1928, and under the law the receiver was not obliged to pay interest on mortgages after the date of the sale. It is, therefore, apparent that it was for the best interests of the insolvent estate that the receiver's sale be confirmed.

The Law.

The courts of our State have always endeavored to give the greatest stability to judicial sales, and have upheld them unless there be some strong, equitable or legal reason to the contrary. A purchaser at an official sale becomes invested with a fixed and definite legal right, which is recognized and enforced by law, and of which he cannot be deprived except upon some legal or equitable ground.

Where the judicial officer observes proper legal formalities at a judicial sale, and strikes off the property to a purchaser, who thereupon signs the

conditions of sale, thereby entering into a contract to purchase the property at the price and upon the terms named, the situation is the same as if the contract were between private parties voluntarily entering into a contract of sale and purchase.

Chamberlain v. Larned, 32 Equity 295;
Cropper v. Brown, 76 Equity 406.

A judicial sale fairly conducted vests in the purchaser an equitable title, which the court must recognize and protect. The objector has the burden of proving fraud or what is tantamount thereto.

Knickerbocker Trust Co. v. Carteret Steel Co., 81 Equity 130, affirmed at page 518.

The sale involved in this case was fairly conducted. There was no fraud nor misrepresentation. The purchasers entered into a contract to purchase the property. They charge no fraud or misrepresentation. They were willing and satisfied to complete their purchase. The court confirmed it. Assuming that appellant's offer is in fact about \$800. more than that of the buyers, surely such difference when a price of \$90,000. is involved, is not so great as to move a court of equity to disturb a contract entered into at a public sale. Actually, the sales price means more to the estate than appellant's offer.

Appellant attended and bid at the sale. It had the opportunity to purchase the property on the same terms as the purchasers. Appellant chose to permit the buyers to overbid it. No complaint was voiced by appellant. Even at the present time, appellant does not ask that the confirmation be set aside. It only expresses a desire that the confirmation be reversed if it prove unsuccessful in its other points. An appellant should not be permitted to straddle.

Appellant in its brief mentions surprise. The only surprise that appellant can assert is that the Court of Chancery did not uphold its contention with regard to the conditional sales contracts. Every unsuccessful litigant is surprised at the court's decision. Such surprise, however, is not sufficient cause for the reversal of a duly entered order of confirmation of a judicial sale. When appellant bemoans its fate because mechanic's lien claimants are entitled to priority over it, it has itself to blame for had appellant used all of the mortgage moneys in the erection of the building or had it secured proper postponement or releases of mechanic lien claims, such priorities would not have existed.

The order of confirmation of the Receiver's sale should be affirmed.

SAMUEL TARTALSKY,
Of Counsel with Warren Dixon, Jr.,
Receiver-Appellee.

New Jersey Court of Errors and Appeals

Between

ELBERT M. CROWN, trading as
CHAS. T. WALKER SHADE
Co.,

Complainant,

and

REGNA CONSTRUCTION COM-
PANY, a corporation,

Defendant.

*On Appeal of
Consolidated
Securities
Corporation
from Court
of Chancery.*

BRIEF OF RESPONDENT, J. ROSE & COMPANY, INC.

Meisterman & Katchen, Counsel for Respondent.
Ira J. Katchen, of Counsel.

FACTS.

Regna Construction Company, a corporation of New Jersey, was engaged in the erection and construction of a four-story apartment house on lands owned by it, situate in the Borough of Ridgefield Park, Bergen County, New Jersey. When the defendant corporation purchased the property, a mortgage lien in the amount of \$8,000 was in existence against said property, and a purchase money mortgage in the amount of \$9,500 was given by the defendant as part of purchase price to the vendor.

This property was at the time of purchase by defendant a vacant lot of land. Building operations were then commenced. A mortgage loan on this land dated September 30, 1927, was obtained by defendant from appellant in the amount of \$30,000, which mortgage was recorded on

October 1, 1927. On account of this mortgage there was actually disbursed by appellant \$8,723.40 (p. 75, State of Case). The last payment made on account of said mortgage was made on November 18, 1927 (p. 75, l. 34).

Subsequently and on November 29, 1927, another bond and mortgage was executed by defendant to appellant to secure a loan of \$20,000. This mortgage was recorded on November 30, 1927 (p. 71, ll. 19-25). On account of this mortgage there has been advanced the sum of \$16,725, (p. 72, ll. 14-22) also (p. 76). Of this sum \$1,592 was for payment of interest on mortgage loans.

This appellee, J. Rose & Company, Inc., sold to the defendant corporation twenty-six gas ranges for \$936.00 on a conditional sale contract dated December 23, 1927, reserving title to the vendor until payment in full was made (pp. 104 to 111). This contract was filed on March 22, 1928, with the Clerk of Bergen County (Registry Division) and deliveries were made to the apartment house of the defendant company on April 4, 1928 (p. 107). These gas ranges were installed in the apartment house owned by the defendant corporation hereinbefore mentioned. There was annexed to the copy of the Conditional Sales Contract as filed a statement signed by the seller (this appellee) briefly describing the realty and stating the goods to be affixed as provided by the statute (p. 127, State of Case; Exhibit C. S. 2).

On June 28, 1928, Warren Dixon, Jr., was appointed receiver of Regna Construction Co. (p. 34) and on July 9, 1928, petitioned the Court of Chancery for an order permitting him to sell the property free and clear of all liens in accordance with Section 81 of the General Corporation Act, Revision 1896, as supplemented and

amended, and on July 23, 1928, an order was entered directing the receiver to sell free and clear of all liens except the mortgages held by Charles Enders and Amelia Enders (p. 68, ll. 16-23). The property was sold on September 19, 1928, to John H. Sheridan and Mervin Herzfeld for \$96,500 (p. 80, l. 35 to l. 40, p. 81).

The receiver filed his report and on September 21, 1928, an order was made directing the stockholders and creditors to show cause on October 1, 1928, why the sale should not be confirmed. On the return day of this order the matter was heard by Vice-Chancellor Lewis, who, on objection of the conditional vendor to confirmation of sale, directed the receiver to take testimony concerning the validity of the conditional sale of J. Rose & Company, Inc. On October 9, 1928, testimony was taken by the receiver with reference to said conditional sale and the receiver on October 15, 1928, reported that same was valid and that J. Rose & Company, Inc., was entitled to return of goods or payment by the receiver (p. 114, ll. 33-36).

The receiver's report on the said validity of said conditional sale was confirmed by the Court on July 1, 1929 (p. 129) on an appeal taken from determination of receiver by this appellant.

The Court confirmed the sale on July 1, 1929 and also directed the receiver to retain sufficient moneys to distribute among the conditional vendors whose contracts had been determined valid.

POINT I.

The reservation of title by the seller, J. Rose & Company, Inc., under its conditional sales contract is valid as against this appellant.

Before proceeding with a reply to the appellant's legal arguments on this point this respondent, the seller of the gas ranges to the apartment of the insolvent company, wishes to make clear the following: While there are mentioned in the appeal of the Consolidated Securities Corporation four Conditional Sales Contracts, to wit, that of frigidaires, kitchen cabinets, lighting fixtures and gas ranges, the first three of these are also under attack on appeal by the receiver of the Regna Construction Company to the Vice-Chancellor's order of payment to them. As for the gas ranges contract, that of this appellee, the receiver found that this appellee was "entitled to the return of the goods or payment by the receiver" (pp. 112-114, Report of Receiver) and the Court confirmed the receiver's report (p. 129). Of all the Conditional Sales Contracts mentioned in this case, that of this appellee undisputedly has complied strictly with all the requirements of the Conditional Sales Act. A copy of the Conditional Bill of Sale for the gas ranges was properly filed in the proper place with a proper description of the realty annexed to it before filing; delivery was not made of the ranges until the copy of Conditional Bill of Sale was filed; then after default in payment and the insolvency of the owner, a proper demand was made and proper proof thereof and of the amount due given before the receiver, and there was then a determination by the receiver that the Conditional Sales Contract was valid.

The appellant, the mortgagee, now argues under Point I of his brief that the question involved

comes under the first section of paragraph 7 of the Conditional Sales Act pertaining to goods that are not severable without material injury to the freehold. Further he contends that the receiver and the Court below, with no facts to justify their findings, found as a fact that the goods of this appellee and other conditional vendors were severable without material injury to the freehold. Certainly there were facts before the receiver and the Court to justify their findings.

At the hearing before the receiver on the proving of this appellee's claim (pp. 118-125, State of Case) one of the witnesses for this appellee testified to the manner in which the gas ranges were affixed as follows (p. 118):

“A —Well, like all gas ranges they are affixed to the realty, but they are severable without material injury to the realty, because these ranges can be disconnected by simply turning a little valve on the pipe.”

And the above was on cross examination by this very appellant, the mortgagee, who attended the hearing by its attorney, Mr. Shanley, and no witnesses were introduced by the mortgagee or anyone else to controvert the above testimony.

Appellant's argument simply is that even gas ranges are not severable either wholly or in part without material injury to the freehold because if the ranges are removed, the building is of less value and therefore materially injured. And therefore since the mortgagee did not expressly *assent* to the condition sale, it is void against him.

We respectfully submit that the Conditional Sales Act by “material injury” means physical damages, like the breaking of a wall, and the courts of this and other States have so held.

Counsel for appellant quotes from Volume 2A Uniform Laws Annotated Commentaries on Conditional Sales by Bogert at page 99, first in apparent justification of his position and then he says the draughtsman of the act fell into error as to the meaning of the words "material injury to the freehold."

It appears to us that the determination as to what can be removed without material injury to the freehold and what cannot is a question to be settled in each case according to its own peculiar circumstances.

Mr. Bogert states in the Volume above referred to:

"To expect a purchaser of land to look for a conditional sale contract reserving title to the seller in bricks built into a house, would be unreasonable."

On the other hand, to quote further, page 99:

"Other goods may have such slight attachment to the realty as to be treated as mere furniture and as retaining their character as personalty in all circumstances. For example beds to be attached to the doors and walls of an apartment house have been so regarded (Southern California Hardwood etc. Co. v. Borton (1920) 46 Cal. App. 524; 189 Pac. 1022) as have ranges and heaters easily detachable (Keily v Clapp (1897) 15 App. Div. 37; 44 N. Y. S. 116)."

In our case, the evidence before the receiver showed that the gas ranges were detachable by simply turning a little valve on the pipe. Even counsel for appellant in his brief admits the ranges can be removed by simply disconnecting the coupling, but he attempts to argue that because the coupling is connected to gas pipes in the walls that under the old law of fixtures the range must be considered as affixed to the realty so as to become a part thereof.

Even conceding that, it should be remembered the Conditional Sales Act adds the requisite "but not to be severable without material injury to the freehold."

If it is to be argued that a gas range because it is coupled to gas pipes in the wall cannot be removed without damaging the building, it might just as well be said that a radio in this day and age of installment purchase could not be sold on conditional bill of sale to a tenant in an apartment house with title reserved to the vendor as against the owner of an apartment house because the electric current came from wires that ran through the walls and in that way makes the radio connected with the freehold.

The test really is the extent of damage or injury in order to determine how material it is. The courts have allowed conditional vendors to prevail even where there is material damage in removing the property provided repair is made of the injury. As Mr. Justice Holmes said in *Detroit Steel Cooperage Co. v. Sistersville Brewing Co.*, 233 U. S. 712, "the damage that will be done by removal in this case is trifling and the petitioner offers to make it good."

There is a recent case most applicable decided in New York, May 28, 1929, Court of Errors and Appeals, *Madfes v. Beverley Development Corp., et als.*, 251 N. Y. 12; 166 N. E. 787. New York has adopted the Uniform Conditional Sales Act, section 67 of said act being the same as section 7 of our act. That was a case of gas ranges sold on conditional bill of sale to the owner of an apartment house who subsequent to their installation, executed a mortgage upon the premises. The mortgagee had no knowledge of the contract of conditional sale. The Conditional

Sales Contract was not filed until after the recording of the mortgage. The Court held the gas ranges were the property of the seller and not subject to the lien of the mortgage on the realty. In that case the Court expressed that it was its opinion that the legislative intent of Section 67 of the Personal Property Act (Section 7 of the Uniform Conditional Sales Act) that the condition reserving title in the seller should not have the effect of converting into real estate that which, irrespective of an agreement to that end, is intrinsically personalty.

The attitude of the courts of this State is best summed up in the opinion of Vice-Chancellor Pitney in *General Electric Co. v. Transit Equipment Co.*, 57 N. J. Equity 470, in which case the mortgage in question even contained an after-acquired property clause, which the mortgage in the instant case does not contain. And Vice-Chancellor Pitney concludes that the right of the owner of the chattel should prevail, and he says:

“It is impossible, under the evidence, to charge the owner with having consented that the chattels should become a part of the freehold. The contract itself, which contains not only a reservation of the title but also a right to remove them from the premises, forbids the idea of such consent. * * *

“But I think that the question is *res adjudicata* in New Jersey, and is covered by the case of *Campbell v. Roddy*, 44 Stew. Eq. 244, which is a decision of the Court of Errors and Appeals. The syllabus of that case is this:

““A vendor of an engine, boiler and machinery, knowing that they were to be annexed to real estate, took a chattel mortgage upon them for a part of the price, but failed to register it. The mortgagor of the chattels afterwards annexed them to

real estate upon which he had already given a mortgage. Held, that the lien of the chattel mortgage should be protected, so far as it would not diminish the security which the real estate mortgagee would have had if the annexation had not been made.'

"The machinery there, as appears by the report below, in 15 Stew. Eq. 218, was one large steam crane, one jack, one steam engine and boiler, one large lathe, one small lathe, one planer, one drill press, one drill upright, one Mackenzie blower, two small pumps; shafting, belting, &c.; one large truck scale, one wire rope and drum, one jigsaw and stand, one pair of bellows, two anvils, one large anvil, one iron hoisting-block and chain, &c., machinery for operating an iron foundry and pipe factory. The description, in 15 Stew. Eq. 223, of the mode in which they were attached to the land shows that they were annexed with much greater thoroughness than the machines here in question. In that case the sale was absolute, and a chattel mortgage was taken back, so that there was a passing of the title with a retention of a lien only. Here there is a retention of the title itself, so that the argument from that case to this is *a fortiori*."

POINT II.

The remedy of the conditional vendor is payment of its claim.

In providing for payment of the conditional sales contract, the Court merely carried out the terms and conditions of the bid. It is not uncommon for the Court to order a sale free and clear of all liens and then order payment to be made out of the proceeds to those entitled to payment by order of their priority. Undoubtedly it was to the advantage of this estate of the receiver to be sold in an entirety so as to realize the best price rather than first permit

it to be stripped of its parts conditionally purchased and be offered up for sale in that way.

Besides it should be considered in equity and good conscience that the property of this appellee, the conditional vendor of gas ranges, has been used for almost a year and a half by the receiver, an officer of the court, and that as a result of this use, tenants have been satisfied from whom the receiver has been collecting rent. If the Court had in the first instance permitted this conditional vendor to remove its ranges because of the default in payment of the amount due, this vendor would have received its property back practically new, while the receiver would have been obliged to go out and buy other ranges in order to keep the tenants in possession.

In all fairness and equity therefor, the Court's order of payment to the conditional vendors should be sustained.

Why, however, the appellant has any grievance in this regard, we fail to see. He is not the purchaser. The only argument we can see in this point is that he hopes to have the sale reopened because his bid of \$90,000 subject to the conditional sales agreement of \$7,516 exceeds the bid confirmed by the Court of \$96,500 by \$1,016.

Merely to mention the above figures we believe a sufficient reply to an attempt to open up a judicial sale.

POINT III.

Paragraph seven of the Conditional Sales Act is not unconstitutional. The question of constitutionality is irrelevant to the issue involved.

If as a result of our argument under Point I it is conceded that this appellee's gas ranges are affixed to the realty in such a way as to be severable without material injury, then we come under the second section or sentence of paragraph 7 of the Conditional Sales Act instead of the first section as appellant tries to establish.

Under the *second* section or sentence:

"If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof, but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office where a deed of the realty would be recorded or registered to affect such realty."

Be it remembered that appellant's two mortgages both preceded appellee's conditional bill of sale, and were not subsequent thereto. The mortgages were \$30,000 dated September 30, 1927 and recorded October 1, 1927; the other \$20,000 dated November 29, 1927, and recorded November 30, 1927. Appellee's conditional sales contract was dated December 23, 1927, filed March 22, 1928 and the ranges delivered April 4, 1928.

Therefore this appellant is neither a subsequent purchaser (or mortgagee) of the realty for value whose rights need at all be considered on the question of constitutionality of that section of the act.

As for the third section or sentence of paragraph 7 quoted by appellant, that states:

“As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be affixed to the realty as to become part thereof, but to be severable without material injury to the freehold, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto, shall be filed before they are affixed, in the office where a deed would be recorded or registered to affect such realty.”

This section ostensibly was intended to apply to the case of a sale of goods to a contractor to be affixed to real property owned by a person other than such contractor. The commissioner who framed this act referring to the third part of section 7 said, “A separate sentence has also been inserted to cover the peculiar case of the sale of goods to a contractor to be affixed by him to the real property of another, in other words, the case of the validity of the conditional sale of a fixture as against the owner of the realty.” See Uniform Laws Annotated 2 U. L. A. at page 13 and 2a U. S. A. page 106, Sec. 70. See also *Kohler v. Brasun*, 249 N. Y. 224; 164 N. E. 31, wherein the New York Court of Errors and Appeals considered the third sentence of Section 67 of the New York Personal Property Law which is substantially the same as the third part of Section 7 of our Uniform Conditional Sales Act.

We have above dissected the section whose constitutionality the appellant attacks because we cannot see its relevancy—because even if the act were unconstitutional, still the appellee's ranges would not come under appellant's mortgages. We contend that the mortgagee's rights are not superior to ours under the first sentence of section 7 because our ranges are severable without material damage to the freehold. Under part 2 of section 7, the mortgagee is not subsequent to us, so that even if our conditional bill of sale were not filed, the reservation of title would still be good; as to the third part of section 7, the appellee's goods were sold conditionally direct to the Regna Construction Company, the owner of the realty and not to contractor, so that section is not applicable.

Appellant says it is unconstitutional because it legislates with relation to real estate law and that the title doesn't say anything about transition of personal property into real property. Certainly not and at no time has it even been contended that chattels sold under conditional bill of sale ever lose their status as personalty merely because they are affixed to the realty.

The question of constitutionality was not even raised or suggested in the court below, yet considering it now let us see why the appellant should feel aggrieved. He admits that the Uniform Conditional Sales Act alters the fixture rule of the old common law. Prior to the enactment of the act, the intention of the parties to a conditional sale contract was regarded as the paramount test as to whether chattels affixed to realty so as to become part thereof should remain personalty or not. The act changed that and imposed requisitions for the conditional vendor to comply with to preserve his personalty. Take

away the act by calling it unconstitutional and the mortgagee is in a much worse position, because if the old law of fixtures is to control, the conditional vendor must prevail since the intention to consider the property as personalty is expressed in the sales agreement and evidenced by the retention of title therein stated.

Certainly the title to this act indicates the purport and contents of the subject. Paragraph 7 and all the rest of it is within the purview of the title at all times. It refers to Conditional Bills of Sales consistently and constantly and in all its phases.

As stated in *Wallach v. Stein*, 103 N. J. L. 470, Justice Lloyd referring to the Uniform Stock Transfer Act, the constitutionality of which was attacked on similar grounds:

“It would be difficult to select a word of more comprehensive import than that employed here, or a word better adapted to indicate its obvious purpose—transfer of shares; not their sale or assignment alone, but, as the word implies (Webs. Dict.), ‘any act by which the property of one person is vested in another.’ One reading the title would of necessity be put on guard to examine the body of the act to ascertain the various means of transfer contemplated by its title.

As has been indicated in earlier decisions, the title of an act is neither a table of contents nor an index, but a label pointing the way to that which is to follow. ‘In giving effect to this constitutional provision, the courts give paramount consideration to the general object to the act—the general purpose of the legislative scheme. The general object of the act being ascertained, the power of the legislature is vindicated to include in it provisions of a multiform character, designed to carry into execution the legislative purpose, which are not in-

consistent with, or foreign to, the general objection of the act.' *Easton and Amboy Railroad Co. v. Central Railroad*, 52 N. J. L. 267, 272. In *Newark v. Mt. Pleasant Cemetery Co.*, 58 Id. 168, 171, this court said: 'That when a court is called on to determine whether a statute conforms to this requirement of the constitution (the one in question), the first duty is to scrutinize its provisions to see if they disclose the general object to the legislation. Then, if that object be one, and the various provisions of the statute tend to carry it out, and are not incongruous or improperly related, this requirement will have been complied with.' "

The legal reasoning above mentioned is applicable to the situation present here if in place of the words "transfer of stock" we substitute the words "conditional sale."

POINT IV.

The order confirming the receiver's sale should be affirmed.

Appellant contends under this point that the orders of the Court below were against equity and good conscience and begins by stating that the appellant held two mortgages, the validity of which was unquestioned at the time of the sale. This appellee wishes again to point out that there is due the appellant only \$8,723.40 on the face amount of its \$30,000 mortgage and \$16,725 on the face amount of its \$20,000 mortgage as appears from the petition of appellant made in the Court below to apply its said debt to the purchase price at the sale, and that this petition was filed August 29, 1928, and a court order entered thereon September 10, 1928, all of which was before the date of the sale which took place on September 19, 1928 (see *State of Case*, pp. 70-78). In other words, the Court

below by order filed September 10, 1928, gave appellant leave to apply \$21,673.40, part of the moneys due on its mortgages, as part of the purchase money or consideration for the premises of the defendant company to be sold by the receiver, in the event the appellant should become the purchaser (State of Case, p. 77).

On the strength of this order and in view of all the proceedings had up until then, appellant bid \$90,000 at the sale. Because it was not the successful or highest bidder, it now says that it is aggrieved and wants an opportunity to make a higher bid.

To permit the sale to be reopened because of a higher bid of practically \$1,000 that appellant desired to make, would be as has frequently been expressed by our courts "to make impossible the finality of judicial sales."

There can be no justification to appellant's claim of surprise or misapprehension as to the terms of sale as the Court's orders below are strictly in compliance with the terms of sale. It is merely the distribution of moneys that the appellant is aggrieved at.

It should be remembered that when appellant granted its mortgage loans to the defendant company it did not do so on the security of this appellee's property, to wit, gas ranges, as same had not yet been installed. If appellant had contemplated that the apartment house, which was security for its mortgages, was to be equipped with gas ranges it should have retained sufficient moneys to pay for the same, since title to the ranges was reserved by this appellee under a conditional bill of sale until payment thereof in full should be made.

We respectfully submit that it is most equitable that this appellee should be paid the amount proved to be due to it out of the proceeds of sale in preference to the mortgagee, whose lien covered the building at the time when the appellee's property was not yet installed.

Should a conclusion contended for by appellant prevail, we claim an injustice would be done to this appellee as was stated in a similar situation by Vice-Chancellor Pitney in *General Electric Co. v. Transit Equipment Co.*, 57 N. J. Equity 470

“And here we encountered the element of the hardship and injustice of taking one man's property without his consent to advance the pecuniary interests of another. It was the hardship and injustice in this respect of the old law of fixtures which led to its modification in favor of the tenant against his landlord.”

It is, therefore, respectfully submitted that the orders of the Chancellor advised by Vice-Chancellor Fallon should be affirmed, with costs to this appellee.

MEISTERMAN & KATCHEN,
Solicitors of Appellee,
J. Rose & Company, Inc.

IRA J. KATCHEN,
Of Counsel.

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