

New Jersey Court of Errors and Appeals.

WILLIAM GULDEN,
Complainant-Appellant,

vs.

AUGUST W. LUCAS, et al.,
Defendants-Respondents.

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BRIEF FOR APPELLANT.

The sole question that the appellant appeals from is whether or not a chattel mortgage made by Lucas to the appellant was recorded within the time required by Sections 4 and 5 of "An Act Concerning Chattel Mortgages" (Revision of 1902, Compiled Statutes, Vol. 1, page 463), so as to make it valid against creditors.

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August W. Lucas, the defendant, became indebted to William Gulden, the appellant, in the summer of 1908, for furniture sold by Gulden to Lucas. Lucas had agreed to pay cash for this furniture (p. 37, l. 25), but had not done so. About five o'clock on the afternoon of Friday, November 16th, 1908, Gulden and his attorney were in conference with Lucas, the purpose of the conference being to obtain the balance of \$853.23 due to Gulden from Lucas on this furniture. Gulden was obliged to leave the conference to keep an appointment, and after he had gone his attorney and Lucas agreed to the giving of a chattel mortgage to Gulden to secure the balance of \$853.23. After the terms of payment had been inserted in the chattel mortgage, and just prior to Lucas' signing it, Gulden attorney said to Lucas:

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"Of course Mr. Gulden said before he went away this is conditional and is dependent upon corroboration by him * * * as to terms, as now tacitly arranged between you and me. If he approves of the payments as indicated, then it will be all right; if he does not, then we have to prepare a new paper." (Case, p. 31, ll. 15-30.)

10 The chattel mortgage was then executed and acknowledged by Lucas (p. 31, l. 30), and the chattel mortgage was taken to Gulden's furniture store right away (p. 32, l. 24). Gulden was not there, he having gone to keep the appointment referred to above. One Hines, the agent and employee of Gulden, made the statutory affidavit and Gulden's attorney took the chattel mortgage and the next day (which was Saturday) endeavored to see Gulden to secure his approval of the terms of the chattel mortgage. After making several efforts he did see Gulden between one and 20 two o'clock Saturday afternoon (p. 32, l. 40) and handed the chattel mortgage to Gulden and speaking of the terms Gulden said: "Well, if that is "the best we can do, I suppose we will have to "take it" (p. 33, l. 4). Gulden took this chattel mortgage and handed it to Hines, his agent and office man, who in turn gave it to one Grod the "outside man" (p. 51, l. 30 on either Saturday night or Monday morning to be recorded. Grod, 30 the "outside man" was in the northern end of Hudson County (where Gulden's place of business is situated) Monday and on Tuesday when he was in Jersey City took the chattel mortgage to the Court House and recorded it, he says, about noon-time. (The mortgage shows that it was recorded at 12:29 o'clock, p. 109, l. 15).

The attack is made on this mortgage by creditors of Lucas who have reduced their claim to judgment and by an auditor in attachment.

40 The part of the decree of the Court of Chancery appealed from is as follows:

"The chattel mortgage made to the complainant by the defendant August W. Lucas, dated November 26th, 1909, and recorded November 30th, 1909, is void as against the claims of Einrich R. Wessels and Hugh J. Larkin, partners, etc., and Dougal Herr, auditor in attachment, creditors of said August W. Lucas." (p. 114, l. 1.)

This decree is based on the ground that there was no "immediate recording" of the chattel mortgage made by Lucas to the appellant as is required by the statute. 10

See opinion of V. C. Garrison, pages 110-111-112.

This conclusion the appellant contends was an error and it is on that ground that the appeal is taken.

See petition of appeal, page 116, line 27.

The Court of Errors and Appeals in construing the 4th and 5th sections of the chattel mortgage act requiring, in the absence of a transfer of possession of the chattels, the immediate recording of the chattel mortgage, said in the case of *Roe v. Meding*, 53 N. J. Eq. Reports, p. 350 at p. 368: 20

"The protection to creditors would be slight if the mortgagee could retain his priority over creditors by filing his mortgage long after it was taken by him, instead of taking possession of the goods mortgaged. The policy of the statute cannot be so easily defeated. *Immediate possession or immediate recording means as soon as may be by reasonable dispatch under the circumstances of the case.*" 30

In the present case the chattel mortgage was executed on Friday, November 26th, 1909, about five o'clock in the afternoon, subject to the appellant's approval as to terms (p. 31, l. 15). The appellant gave his approval the next day (Saturday) between one and two o'clock in the afternoon and knowing that the office of the Register of 40

Deeds would not be open Saturday afternoon, made no effort to record the chattel mortgage on that day, but he did give it to a trusted employee and agent who in turn gave it to the "outside man" to be recorded. It came into the custody of the "outside man" on Monday morning. The Vice Chancellor in his opinion lays stress on the fact that by mail the mortgage would be delivered the next morning to the Register (p. 112, l. 10). The action of the appellant in giving this chattel mortgage to his employee to record was not at variance with the conduct of a reasonable man. He was not bound by statute to trust his paper to the mails. If he had trusted this paper to the mail it might have been miscarried, delayed or lost and moreover the chattel mortgage would have been held by the Register of Deeds until the appellant was told the amount of the charges for recording the chattel mortgage and this amount remitted.

By sending the paper by messenger the charges could be paid when the paper was delivered and there would be surety that the paper would not miscarry or be lost. The messenger has explained that on the day he received the chattel mortgage (Monday) he was in the northern end of Hudson County, and that the next day (Tuesday) at about noontime when he was in Jersey City, he recorded the paper.

We contend that the conduct of the complainant in dealing with this paper was the conduct of a reasonably careful man and that reasonable dispatch was used under the circumstances.

The Vice Chancellor in his opinion lays stress on the fact that by messenger travelling on a trolley car the chattel mortgage could have been delivered to the Register of Deeds in one hour from the time of leaving the appellant's store (p. 112, l. 15). We submit that this is not the standard of action or conduct set up by the legislature in the statute. The appellant was not required by

statute to send his messenger by trolley. Had he sent the messenger by automobile he could have been at the Register's office in 15 minutes, by horse and wagon it would take about an hour and a half, and had the messenger walked, it would take about half a day.

Therefore, we contend that the time and the means of conveying the paper to the Register's office set out in the Vice Chancellor's opinion, while it may have been the standard that would govern him personally in similar dealings, was not the standard that the appellant was bound by, because it was not the standard adopted by the legislature. 10

An examination of the reported cases on this point will show that in every case where the court has set aside a chattel mortgage because it was not recorded "immediately" as required by the statute, the time between the execution and delivery of the chattel mortgage and its recording varied from five days to two months and no explanation of the delay has been given and moreover, during this interval, in some cases, the rights of creditors having no notice of the lien have attached. 20

In *Roe v. Meding*, 53 N. J. Eq., 350, the time between the execution and recording was two months and thirteen days, during that interval the rights of creditors based on the apparent ownership by the mortgagor of the chattels mortgaged, had intervened. This cannot, because of the lapse of time, be considered a precedent. 30

In *Dunham v. Cramer*, 63 N. J. Eq., 151, the time between the execution and recording of the chattel mortgage was over four weeks, the Court said:

"Nothing in the case in any way explains this delay in the recording of the mortgage. Its effect was to enable the mortgagor to appear to his creditors and those dealing with him to own the chattels mortgaged, without lien upon them." 40

Moreover, rights of creditors, relying on the apparent title in the mortgagor of the chattels mortgaged, intervened. This cannot be considered a precedent.

In *Hardcastle v. Stiles*, 69 N. J. L., 551, six days elapsed between the execution and recording of the chattel mortgage. This was an appeal to the Supreme Court from the District Court and it had been determined as a fact that:

10 “The mortgage was not recorded with reasonable dispatch under the circumstances of the case.”

This finding, because of the statute, could not be reviewed on appeal. The opinion does not set out the “circumstances of the case” and in their absence it is not a fair precedent.

20 In the case of *Brockhurst v. Cox*, 7 N. J. Eq., to 3, to which case the Vice Chancellor refers in his opinion, the time between the execution and recording of the chattel mortgage was fifteen days, and speaking of this delay the Court said:

 “No attempt at any explanation or reason for the delay is made.”

30 We submit therefore that in the present case the decree should be reversed because the time within which the appellant recorded the chattel mortgage was a day and a half (from Monday morning until Tuesday noon) and that recording within such length of time is an “immediate re-
 40 “cording” within the terms of the statute; an explanation of this delay has been given; during this time, between the delivering and recording of the chattel mortgage, the rights of no creditor intervened and no creditor was prejudiced by the delay. One of the creditors who attacked this mortgage had made his loan and taken his security five months before and the other two creditors one month after the appellant’s chattel mortgage was executed and recorded; and it may be fairly in-

ferred that *the legislative intent* was that a debtor should not *depreciate his assets* available to creditors by making a mortgage unless the same be "immediately recorded." In the case at bar the *debtor's assets were enhanced* by Gulden giving him the furniture—the mortgage taken being *to secure purchase money*. Had the debtor not given this mortgage there would not have been this large quantity of furniture on hand, to help meet the claims of creditors.

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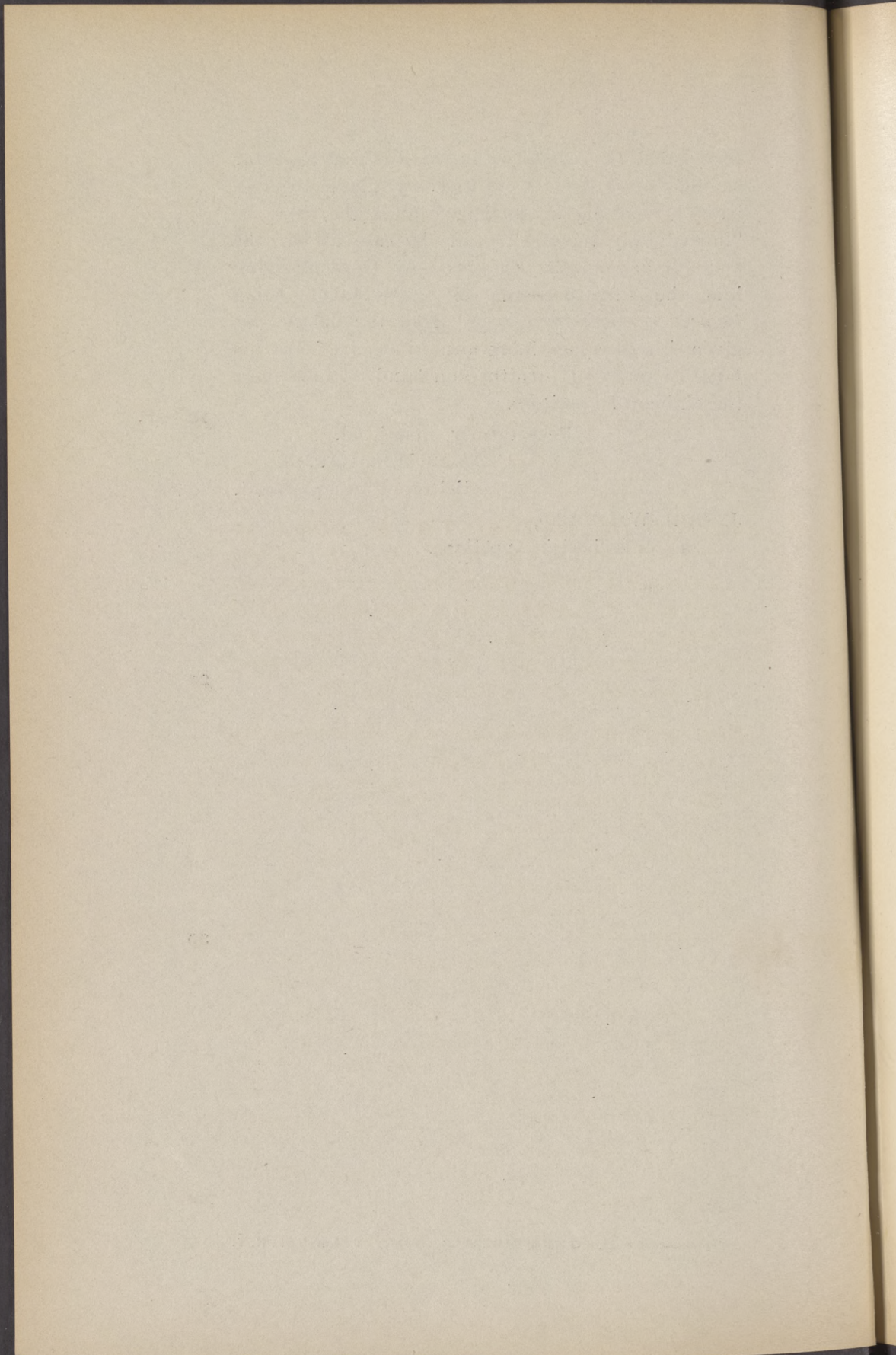
Respectfully submitted,
CHARLES WM. KAPPES,
Solicitor of Complainant.

J. EMIL WALSCHEID,
of Counsel with Appellant.

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New Jersey Court of Errors and Appeals.

WILLIAM GULDEN,

Complainant-Appellant,

vs.

AUGUST LUCAS, et als.,

Defendants-Respondents.

On Bill from
Decree in
Chancery.

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**BRIEF OF HUDSPETH, RYSDYK &
GARRISON, IN FAVOR OF RES-
PONDENTS EIMRICH R. WESSELS,
HUGH J. LARKINS, THE BERGOFF
BREWING COMPANY, EIMRICH R.
WESSELS AND DOUGAL HERR,
AUDITOR IN ATTACHMENT.**

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**Synopsis of Pleadings and Statements
of Facts.**

The complainant filed his bill of complaint against the defendants, August W. Lucas, Eimrich R. Wessels and Hugh J. Larkins individually and as co-partners and James J. Kelly, Sheriff of Hudson County, alleging that on November 26, 1909, the defendant, Lucas executed and delivered to the complainant a chattel mortgage bearing that date to secure the payment of the sum of \$853.23, the payment thereof to be made in monthly instalments of Twenty-five dollars each until the full amount should be paid; that this mortgage covered certain goods and chattels sold by the complainant to the defendant Lucas and contained a provision that upon non-payment of any of the instalments, or upon judgment being entered against defendant Lucas, the whole principal sum

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should immediately become due; that the mortgage was recorded on November 30th, 1909, having first been duly executed and having annexed thereto an affidavit stating the true consideration and balance due; than on June 30th, 1910, defendants Wessels & Larkins and Eimrich R. Wessels individually, recovered judgment against defendant Lucas in the Hudson County Circuit Court for \$270.78 and on the same day issued execution thereon and levied on the goods and chattels described in the chattel mortgage; that the Sheriff had given notice of sale under said execution for July 15th, 1910, at 2 P. M.; that on May 26th, 1910, an instalment of \$25 became due on the mortgage and is unpaid and the complainant elected, under the terms of the mortgage, that the whole sum to be secured by the mortgage become due immediately; that there is a balance of \$732.23 due on the mortgage which defendant Lucas has refused to pay; that defendants Lucas, Wessels and Larkins have refused to deliver possession of the chattels to the complainant and the bill prays among other things, that the goods and chattels may be sold and the complainant paid out of the proceeds of the sale, the amount found to be due on his mortgage with interests and costs and that the defendants be foreclosed of any equity of redemption of the mortgaged goods and that the defendant be enjoined from selling the chattels under said execution.

The answer of defendants Wessels and Larkins admits generally the allegations in the bill of complaint, but denies that the chattel mortgage was executed and acknowledged as required by law and says that the chattel mortgage did not have annexed thereto the satisfactory affidavit stating the true consideration and was not accompanied by an immediate delivery and followed by an actual continued change of possession of the goods mortgaged as required by the provisions of "An Act concerning Mortgages on

Chattels, Revision of 1902", and its amendments and supplements and is therefore void as against creditors of complainant (p. 8).

Wessels subsequently issued a writ of attachment upon assignment taken by the Bergoff Brewing Company of a claim of \$2235.63 against Lucas out of the Hudson County Circuit Court on July 19, 1910, directed to the Sheriff of Hudson County and the Sheriff, by virtue of said writ, levied upon the goods and chattels described in the mortgage (p. 54) . Dougal Herr was appointed Auditor in this attachment suit on August 18, 1910 (p. 54) and was admitted a party defendant in this cause and permitted to file an answer and crossbill (p. 54); the auditor's answer is similar to that of defendants Wessels and Larkins and prays that an account may be taken of the moneys due in the attachment suit and the amount so found to be due may be decreed to be a lien on the moneys deposited in this Court and that the goods and chattels may be sold subject to the lien and operation of the attachment and that the mortgage be decreed void.

Charles William Kappes for the complainant testified that the mortgage was executed November 26, 1909, and the affidavit on the same day between five and six P. M., Friday (pp. 29 and 30); the mortgage was taken immediately by Kappes, attorney of complainant, to complainant's office on Friday night. The next day Kappes endeavored to find complainant and saw him sometime after lunch about 1 or 2 o'clock (p. 32) and complainant approved of the terms of the mortgage; that was the last time Kappes saw the mortgage (p. 33). By trolley it takes about forty-five minutes to get from the office of Kappes to the Register's Office in Hudson County (p. 35).

Complainant's office is directly opposite Kappes'.

Louis Haase for complainant testified that he was an employee of complainant; that he negotia-

ted the sale of the goods to defendant, Lucas; that the consideration was to be paid in cash when they were furnished and that most of the goods were picked from the catalog as they did not have them in stock.

H. J. Heines for the complainant testified that he was the bookkeeper of the complainant and general office manager; that he had not any book of original entries with him which would show
 10 the date of deliveries of the various items which were delivered to Mr. Lucas.

August W. Lucas testified that he was the proprietor of the Hudson Hotel; that to the best of his knowledge the date of his lease of this Hotel is July 12, 1909, and that he went into possession of said premises September 1st, 1909; that in July, 1909, he moved certain furniture into said Hudson Hotel, which he had purchased from the complainant, Gulden.

20 Frederick E. Grod testified that he was in the employ of William Gulden in the summer of 1909. Being shown paper marked Exhibit P-1 (the chattel mortgage from Lucas to Gulden—p. 104) and being asked whether that paper ever came into his possession he replied that it had and upon being asked the day of the week that this paper came into his possession, replied as follows: "I am not sure whether it was Saturday or
 30 Monday". He also testified that he left this chattel mortgage at the Register's Office about 12 o'clock Tuesday morning. Also in response to the question—

"Q. when, with respect to when you got it, did you take it down? A. On a day or two following after I got it" (pp. 49-50).

Henry J. Hines, on direct examination by Mr. Walscheid, testified as follows:

40 "Q. Do you know who gave to Mr. Grod this mortgage? A. I did.

"Q. Do you know when you gave it to him, as to the day of the week? A. I couldn't

say whether it was Saturday or Monday morning. You see he is out on the road all day and he gets in Saturday nights.

“Q. Did you give him any instructions as to what he was going to do with it?”

“THE VICE CHANCELLOR: What are you going to do—contradict your own witness?”

MR. WALSCHEID: No, sir.

“A. Just to file it.” (ll. 26 to 40, p. 51).

The rest of the testimony in the case is principally concerned with the transactions leading up to the execution of three certain mortgages from Lucas to Berghoff Brewing Company and regarding the foreclosure and sale under these mortgages, and it would seem that it would not be necessary to recite this testimony at any great length in the present brief, but it would seem to be appropriate to point to the testimony of Charles Weller as shown on pages 67, beginning at line 27, and continuing to the bottom of page 70.

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The witness testified as follows on direct examination by Mr. Garrison:

“Q. Mr. Weller, how many years have you been connected with the office of Judge Hudspeth? A. About ten years.

“Q. And in June, 1910, did you have anything to do with three mortgages made by the Berghoff Brewing Company by August W. Lucas, one for \$1500, dated July 13, 1909, and two dated January 19, 1910, for \$700 and \$905, respectively? A. Yes, sir.

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“Q. What did you do with those mortgages? A. I foreclosed the three mortgages.”

Witness goes on to state that on July 2, 1910, he foreclosed the three above named mortgages.

In reply to the question—“By whom were those properties bought in”—answered—“By me.”

He testified that when he bought these in he was acting as attorney in fact, and that the \$700 mortgage was bought in for \$30; the \$905 mortgage for \$30 and the \$1500 mortgage for \$150.

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Questioned by Mr. Garrison:—

“Q. What did you do to foreclose those three mortgages, actually? A. At the sale?

“Q. Tell me everything you did? A. Oh, well; I made a demand on Mr. Lucas for the different amounts of the mortgage and he refused to pay. I then served him with notice of foreclosure returnable on July 2nd of the three mortgages and posted notices in three different places around 413 Lewis Street, Union Hill.

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“BY THE VICE CHANCELLOR:

“Q. Then what did you do? A. Then the date of the sale was on July 2nd and they were sold on that day.”

In reply to the question—“Did you have any advertisement of sale”, witness testified that he posted notices in three different places on the 27th of June and the sale took place on July 2nd.

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“Q. What occurred at the sale? A. Mr. Wessels appeared there and Mr. Garrison and I sold the goods mentioned in the mortgages and they were sold at these different prices.

THE VICE CHANCELLOR: It is conceded that at that time these goods were actually in the possession of the Receiver of this Court.

“MR. GARRISON: I will concede it if it is the fact.

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“MR. KAPPES: I can tell you when the Receiver was appointed.

“VICE CHANCELLOR: Is there not a copy of the order here?

“MR. WALSCHEID: Yes; I think there is. The Receiver was appointed on the 25th day of July, 1910, according to this copy of the Order.

“MR. GARRISON: There is no restraint though against this sale.

“MR. KAPPES: There was restraint of the sale.

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“VICE CHANCELLOR: Never mind; I am

not bothering about that; they were actually in custodia legis at that time.

"MR. GARRISON: I offer in evidence the notices that were posted.

"(Admitted without objection and marked Exhibit C G-3).

"Q. I show you three papers and ask you what those three papers are? A. These are three bills of sale which I signed as attorney of fact of the goods I sold on that day.

"MR. GARRISON: I offer these three bills of sale in evidence. 10

"(Admitted without objection and marked Exhibit C G-4)".

Garrison, V. C., in his opinion says:

"The only point to be decided in this suit at this time is whether or not the chattel mortgage which was given by the defendant, Lucas, to the complainant, Gulden, is valid as against the defendant, The Berghoff Brewing Company. The Berghoff Brewing Company was a creditor of Lucas, has obtained a levy and is legally in a position to attack the validity of the chattel mortgage in question." 20

The Vice Chancellor goes on to point out that the mortgage from Lucas to Gulden was approved by Gulden and that Kappes left the same with him on Saturday, the 27th of November, 1909, at about 12 o'clock noon, and that the same was recorded on Tuesday, November 30th, about 12 o'clock, noon. 30

The Vice Chancellor refers quite extensively to his own opinion in the case of *Brockhurst vs. Cox*, 71 N. J. Eq., 703, and points to the fact that it was there held that the provisions of the Chattel Mortgage Act required immediate possession by the mortgagee or immediate recording of the mortgage, and that immediate recording means as soon as may be by reasonable dispatch under the circumstances of the case, and that this case was affirmed by the Court of Errors and Appeals in 72 N. J. Eq., 950. 40

The Vice Chancellor concludes his opinion in the case at bar as follows:

10 "I feel constrained to hold that in no proper use of language can this be said to be an immediate recording under the circumstances of the case. If immediate recording is extended so as to include more time than is reasonably adequate, under the circumstances, the rule laid down is practically abrogated. I cannot find that the time consumed between the receipt of this mortgage by the mortgagee and its recording could reasonably have been utilized in getting the paper to the place of record. The result is that this mortgage must be held to be invalid as against the existing creditor."

POINT I.

20 **The mortgage of Lucas to Gulden is void as against the defendants because there was not an immediate delivery and change of possession of the goods and chattels mortgaged, and said mortgage was not recorded, as provided by the Fourth Section of an "Act concerning Chattel Mortgages" 1902.**

Section four reads as follows:

30 "4. *Record of mortgage and affidavit of mortgagee; necessity.* Every mortgage or conveyance intended to operate as a mortgage of goods and chattels hereafter made, which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, having annexed thereto an affidavit or affirmation made and subscribed by the holder of said mortgage, his agent, or attorney, stating the consideration of said mortgage and as nearly as possible the amount due and to grow due there-

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on, be recorded as directed in the succeeding section of this act; provided, nothing contained in this act shall be taken, construed or held to apply to any mortgage or personal property included in a mortgage of franchise and real estate heretofore or hereafter made by any railroad company, and which hath been or shall be recorded or registered as a mortgage or real estate in every county in which such railroad or any part of it is or shall be located, and it shall not be necessary to record as a chattel mortgage any such mortgage as is in this proviso described." 10

It will be noted that Section 4 of the above Act requires that in default of immediate delivery and possession of the things mortgaged, the said mortgage shall be recorded as provided for in the succeeding section of this Act, which reads as follows:

"5. *Record of mortgage and affidavit of mortgage; time and place.* The instruments mentioned in the preceding section, and not excepted in the proviso, shall be recorded in suitable books provided for that purpose in the clerk's office of the county where the property so mortgaged shall be at the time of the execution of such instrument; provided, in any county where the office of the register of deeds and mortgages exists, or hereafter may be created, such instrument shall be recorded in the office of such register; and the said clerks and registers shall enter at the foot of the record of each mortgage an instrument so recorded, the time when the same was received by him at his office to be recorded, and endorsed on each mortgage and instrument when recorded the time when the same was received at his office to be recorded and the book and page in which the same has been recorded, and shall thereupon deliver the same to the party entitled to it, or his order." 20 30

It will be noted that this last mentioned section (Section 5) provides for recording said chattel 40

mortgages at the time of the execution of the same.

In the case at bar, the chattel mortgage from August W. Lucas to William Gulden was dated November 26, 1909 and was recorded November 30, 1909. It would have been perfectly feasible to have recorded this mortgage the same day that it was made or the next day at the very latest. Instead of doing this, the said mortgage was not recorded until November 30th, 1909, four days after the same was executed.

In the case of *Brockhurst vs. Cox*, 71 N. J. Eq., 703, a certain mortgage which was dated May 2, 1905 and delivered May 3, 1905, was not recorded until May 18 of the same year. The mortgagee at the time of the execution of this mortgage resided at Red Bank, Monmouth County, New Jersey.

In his opinion, Vice Chancellor Garrison stated that the mortgagee could easily and readily have gotten this mortgage to the register's office in Jersey City on the fourth or fifth of May at the outside, and that as this was not done the mortgage would be held void, at least, as against the creditors existing at the time of the recording of the same.

It was pointed out by the Court that it was not necessary to go into the question of whether this mortgage would have been held void as to creditors whose claims accrued subsequent to the recording of the mortgage as the creditors in that case were such at the time of the giving of said mortgage.

This case was affirmed by the Court of Errors and Appeals in 72 N. J. Eq., 950.

In the case at bar claims of the creditors (respondents) of the mortgagor (complainant-appellant) all accrued previous to the making of the mortgage as will be seen by reference to testimony on page 60 of printed case, and they had obtained

a levy and were in a legal position to attack the chattel mortgage.

In the case of *Roe vs. Meding*, 53 N. J. Eq., 350, a certain mortgage was executed on May 9, 1893, and not recorded until July 1, 1893, and it was held that this mortgage was void as against creditors existing at the time of the record thereof.

On page 369 of this case, the Court makes the following statement:

“As before stated, if the mortgagee fails to record his mortgage immediately he cannot, according to the Fourth Section, regain his position as against creditors of the mortgagor by afterwards recording it, whether they became creditors before or after such recording.” 10

It is also stated in this case that immediate possession or immediate recording means as soon as may be by reasonable diligence and dispatch, under the circumstances of the case. 20

It is again strongly urged that in the case at bar, the mortgage was not recorded as soon as might be by reasonable diligence and dispatch, under the circumstances of that case, as there was no proof adduced showing any reason for the delay in recording the mortgage.

In *Dunham vs. Cramer*, 63 N. J. Eq., 151, it was said by the Court, in speaking of a chattel mortgage made by the defendant: 30

“This chattel mortgage of the defendant is also challenged because it was not recorded for over four weeks after it had been made and delivered.”

The mortgage is dated the 8th day of July, 1898, the affidavit of consideration and acknowledgment bear the same date.

Its effect was to enable the mortgagor to appear to his creditors and those dealing with him, to own the chattels mortgaged without lien upon them. This might readily operate as a fraud 40

upon the creditors, but irrespective of this possibility or of the actual fact as to this instance, the statute has been interpreted to declare a mortgage so reserved from the record for that cause, void.

10 There must be under the terms of the act, an immediate taking of possession of the chattels mortgaged, or there must be an immediate recording of the mortgage. Either course, when taken, is a warning to creditors who may thereafter deal with the mortgagor. If neither be observed, the chattel mortgage is void as to creditors.

(Citing *Roe vs. Meading*, 18 Dick. Ch. Rep., 368; 63 N. J. Eq., 268—above quoted from.)

20 In this case the claims of the creditors against whom the mortgage was held to be void were claims which had accrued between the time of executing and recording the said mortgage.

In *Williamson vs. N. J. Southern R.R. Co.*, 29 N. J. Eq., 311, where a railroad company executed a mortgage upon its property, both real and personal, it was held that this mortgage being defective, was void as against creditors whether their rights accrued prior or subsequent to the said mortgage

30 See also *Currie vs. Knight*, 34 N. J. Eq., 485.

40 On June 12, 1913, respondents served on the solicitor of appellant a notice in writing objecting to the printed state of the case by reason of the fact that it did not include the answer and crossbill of Dougal Herr, auditor in attachment. No amended or supplemental state of the case has been served on respondents and there is therefore annexed to this brief the order admitting the auditor and his answer and crossbill. Nor have the appellants served on respondents any copy of their brief up to to-day, July 4, 1913.

It is respectfully submitted that for the reasons above set forth the decree appealed from should be affirmed with costs to be adjudged to respondents.

HUDSPETH, RYSDYK & GARRISON,
Solicitors of Respondents.

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— June Term, 1913 —

**Order admitting Dougal Herr auditor
in attachment as party defendant.**

In Chancery of New Jersey.

10	Between <p style="text-align: center;">WILLIAM GULDEN, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">AUGUST W. LUCAS, et als. <i>Defendants.</i></p>	}	On Bill &c.
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20 It being represented to the Court that Dougal Herr, Auditor in Attachment in a suit pending in the Hudson County Circuit Court wherein Eimrich R. Wessels is plaintiff and August W. Lucas is defendant, is a proper and necessary party, and in the presence of J. Emil Walscheid of counsel and Charles W. Kappes, solicitors of plaintiff and of Hudspeth, Rysdyk & Garrison, solicitors of defendants, Eimrich R. Wessels, et als., and all parties consenting hereto in open court,

30 IT IS ORDERED, on this 19th July, 1912, that Dougal Herr, Auditor or aforesaid, be admitted as a party defendant in the above cause and that he forthwith file such answer and cross-bill to the bill of complaint or take such other action in reference thereto as he may be advised and that a copy of the same be served upon the solicitor of complainant and of the other defendants.

Respectfully advised,

LINDLEY M. GARRISON,
V. C.

Answer of defendant Dougal Herr, auditor, etc.

In Chancery of New Jersey.

Between

WILLIAM GULDEN,

Complainant,

and

AUGUST W. LUCAS, et als.

Defendants.

On Bill &c.

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The answer of the defendant, Dougal Herr, Auditor in Attachment in an action now pending in the Hudson County Circuit Court, wherein Eimrich R. Wessels is plaintiff and August W. Lucas, et als., are defendants unto so much and such parts of the bill of complaint as he is advised is material or necessary for him to make answer unto:

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This defendant answering, says:

1. That he has no knowledge as to any indebtedness between the complainant and the said defendant Lucas and admits that what purports to be a chattel mortgage was executed by Lucas to the complainant and says that said chattel mortgage is void as against the claim of this defendant as hereinafter set forth.

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2. That he admits that what purports to be a chattel mortgage was executed by said August W. Lucas and said William Gulden and was recorded in the office of the Register of Hudson County in Book 272 of Chattel Mortgages for said County, page 128, but denies that the same was executed and acknowledged as required by law and says that said chattel mortgage was not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods mortgaged as required by the provisions of "An Act Concerning Mortgages on

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Chattels, Revision of 1902" and several supplements and amendments thereto and is therefore void as against creditors of said August W. Lucas and as against the claim of this defendant.

3. That he has no knowledge as to the entry of the judgment of Wessels and Larkins against Lucas as alleged in the bill of complaint and prays that due proof may be made thereof, no knowledge as to the levy under said execution but
10 denies that the said chattel mortgage is a prior lien on the chattels therein mortgaged and says that said chattel mortgage is void.

4. That he has no knowledge as to whether said Lucas had possession of said goods and chattels nor as to the time they continued in his possession.

5. He has no knowledge as to what action the Sheriff of Hudson County took under said judgment.
20

6. That he has no knowledge as to the amount of principal due under said chattel mortgage and has no knowledge as to whether or not any request was made on said Lucas to pay the balance due on said chattel mortgage.

7. That he joins in the prayer of the bill that the goods and chattels may be sold and the proceeds deposited in this Court, the equities of all
30 parties to attach to the proceeds of such sale and as to all other matters and things this defendant prays the said bill of complaint be dismissed with costs to this defendant.

And this defendant, by way of cross-bill against the complainant, alleges and says:

1. That on or about November 26th, 1909, said August W. Lucas executed an alleged chattel mortgage to William Gulden, pretending to secure
40 the payment of the sum of Eight hundred fifty-three dollars and twenty-three cents (\$853.23) and covering certain goods and chattels more par-

ticularly set forth and described in said chattel mortgage which is hereby referred to for greater certainty and which was recorded in the office of the Register of Hudson County on November 30th, 1909, Book 273 of Chattel Mortgages, Page 128.

2. That such proceedings were taken in this cause that the said goods and chattels were sold by Albert Leuly, the Receiver, and the proceeds of such sale being upwards of Seven hundred (\$700) Dollars, were paid to the Clerk of this Court, pursuant to an order in this cause, the equities of all parties to attach to the proceeds of such sale. 10

3. That for a long time prior to November 26, 1909, said August W. Lucas had been indebted to the Bergoff Brewing Company in upwards of Three thousand (\$3000) Dollars and prior to that date said Bergoff Brewing Company assigned its said claim to Eimrich R. Wessels and Eimrich R. Wessels caused a Writ of Attachment to be issued out of the Hudson County Circuit Court in his favor and against the rights and credits, moneys and effects, lands and tenements of August W. Lucas in an action upon contract and said Writ was duly issued and a levy thereunder made by the Sheriff of Hudson County upon the goods and chattels mentioned in said chattel mortgage and in the bill of complaint, and said levy was made before the same were sold pursuant to an order in this cause and thereafter, in said attachment suit an order was made appointing this defendant Auditor, and this defendant charges that the said chattel mortgage is void as against the lien of said attachment suit and that the lien attaches to the moneys deposited in court and that all of the moneys deposited in this Court should be paid to this defendant. 20 30

4. That said chattel mortgage is void as against the creditors of said Lucas and as against this defendant as such Auditor; that said chattel 40

mortgage was not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels mortgaged, as required by the provisions of "An Act Concerning Mortgages on Chattels (Revision 1902)" and the several supplements and amendments thereto.

5. That this defendant prays an account may be taken of the moneys due to this defendant as
 10 such Auditor from the said August W. Lucas, the recovery of which is sought in said attachment suit and that it may be decreed that the amount so found to be due shall be a lien on the moneys deposited with the Clerk of this Court in this cause and that the said chattel motrgage is void as against the lien of the indebtedness found to be due in said attachment suit and sought to be recovered thereby and that the amount so
 20 ascertained to be due to this defendant may be paid to this defendant from the moneys deposited in Court together with interest and costs and for such other and further relief as to the Court shall seem proper and just.

And this defendant will ever pray, etc.

HUDSPETH, RYSZYK & GARRISON,
 Solicitors for and of Counsel
 with Defendant, Dougal Herr,
 Auditor in Attachment.

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Bill of Complaint.

(Filed, *July 14, 1910.*)

In Chancery of New Jersey.

TO THE HONORABLE MAHLON PITNEY, Chancellor
of the State of New Jersey.

HUMBLY COMPLAINING, shows unto your Honor,
your orator, William Gulden, of the Town of **10**
Union County of Hudson and State of New Jer-
sey, that on or about the twenty-sixth day
of November, in the year One Thousand Nine
Hundred and Nine, August W. Lucas, of the Town
of Union, in the County of Hudson and State of
New Jersey, became and was justly indebted un-
to your orator William Gulden in the sum of
Eight Hundred and Fifty Three and 23/100
(\$853.23) Dollars.

That to secure the payment of the said sum of **20**
Eight Hundred and Fifty Three and 23/100
(\$853.23) Dollars, the said August W. Lucas, by
deed of chattel mortgage bearing date on the
twenty-sixth day of November, in the year One
Thousand Nine Hundred and Nine bargained and
sold to said William Gulden, his executors, ad-
ministrators and assigns, the following goods and
chattels, to wit:

8, #1 a Dressers, 6, #9 1/2 Dressers, 6 Wash- **30**
stands, 1, # 1147 Mission Table, 6, 406 Rockers,
4 Mission Chairs, 1 Mission Arm Chair, 8, 6x9
Rugs, 1, 8/3x10/6 Rugs, 4 3/0 #200 Beds, 9 4/0
#200 Beds, 24, 30x36 Mission Tables, 108, #134
Mission Chairs, 6, 4/6 E. T. Springs, 102 yards
Fibre Carpet, 100 yds. Lining, 13 Dining Room
Pictures, 1 pec. Rubber Mat., 23 Brass Nosings,
23 Rubber Treads, 46 yds. Inlaid Linoleum, 86
yds. Ex. Super. Carpet, 84 yds. Union Carpet,
4 Mission Costumes, 1 Buffet, 12 631 Chairs, 24 **40**

Bill of Complaint.

Remts. Carpet, 32 Rugs Cleaned, Binding Rug, 8 White Poles hung, 2 $\frac{2}{3}$ yrd. Carpet, 2 Pictures, 1 Set Hudson Fulton Pictures, 16 Pictures, 30 yds. Granite Linoleum, 8 yds. Stair Linoleum, 149 $\frac{1}{2}$ yds. Lining, 30 yds. Tap. Stair Carpet, 10 $\frac{3}{4}$ Rubber Ends, 15 $\frac{3}{4}$ Rubber Pads, 28 yds. Velv. Carpet, 6 $\frac{1}{4}$ yds. 126 Inlaid Linoleum, 1 Carpet Sweeper, 34 Cottage Rods, 36 yds. Wool

10 Filling, 1 Relv. Chair 6 Old Beds refinished, 2 Pair Lace Curtains, 1 High Chair.

That said mortgage contained a proviso that it should be void if the said August W. Lucas should pay the sum of Eight Hundred and Fifty-three and $\frac{23}{100}$ Dollars in payments as follows: the sum of Twenty-five Dollars on the Twenty-sixth day of December, in the year One Thousand Nine Hundred and Nine and the sum of Twenty-five

20 Dollars on the Twenty-sixth day of each and every month thereafter until the first mentioned amount of Eight Hundred and Fifty-three and $\frac{23}{100}$ Dollars should be fully paid off and satisfied.

That the said mortgage contained an agreement between the parties thereto, that in case default should be made in the payment of the said sum or of any of the installments thereof, should the said August W. Lucas, at any

30 time before the day of payment therein provided for, permit or suffer any judgment to be entered up against him, then the whole sum of Eight Hundred and Fifty-three and $\frac{23}{100}$ Dollars should become instantly due and payable.

That the said chattel mortgage was on the Thirtieth day of November, Nineteen Hundred and Nine, duly recorded in the office of the Register of the County of Hudson in Book 273 of Chattel Mortgages, p. 128, the execution of the same

40 having been first duly acknowledged, and such acknowledgment certified thereon, as required by law.

Bill of Complaint.

That annexed to said Chattel Mortgage, is an affidavit made and subscribed by the agent of William Gulden, the mortgagee and holder of the said chattel mortgage stating the consideration of the same to be the sum of Eight Hundred Fifty-three Dollars and 23/100 (\$853.23) the true balance due on the price and value of the goods and chattels set forth in the schedule to said mortgage annexed, and that day sold and delivered by the said William Gulden to August W. Lucas for securing the payment of which sum said chattel mortgage was given. 10

That the said Chattel Mortgage to which your orator refers for certainty, is in his possession ready to be produced and proved.

That on the Thirtieth day of June, Nineteen Hundred and Ten, Einrich Wessels and Hugh J. Larkins, partners doing business under the name and style of Wessels and Larkins, and Einrich R. Wessels, individually, recovered a judgment against the said August W. Lucas, in the Hudson County Circuit Court, for the sum of Two Hundred and Seventy Dollars 78/100 (\$270.78). 20

That said judgment is uncanceled of record and is claimed to be a subsisting lien on said Chattels hereinabove described by virtue of a levy made on and under levy made under an execution, under and pursuant to a writ of fieri facias which was issued out of said Hudson County Circuit Court on the Thirtieth day of June, Nineteen Hundred and Ten; but your orator shows and insists that the said judgment was entered and the said writ issued and levy made and execution levied upon subsequent to the execution and recording of said mortgage, and the said mortgage is a prior lien on the chattels therein mortgaged. 30 40

Bill of Complaint.

That the goods and chattels hereinabove particularly mentioned at the time of the execution of said mortgage were in the possession of said August W. Lucas, in the premises known as the "Hudson Hotel", number 415 Lewis Street., in the Town of Union County of Hudson and State of New Jersey, and there continued in his possession until about the Thirtieth day of June, Nineteen Hundred and Ten.

That on or about said last named day James J. Kelly, the Sheriff of the County of Hudson, posted in several public places in Hudson County, notices that by virtue of the above stated writ of fieri facias and levy he would expose to sale at public vendue at 415 Lewis Street, Town of Union, N. J., on Friday, July 15, 1910, at 2 o'clock P. M., all the right title and interest of the said defendant August W. Lucas in and to the goods and chattels hereinabove described and all other goods and chattels of said defendant in the above described premises.

That thereupon the said Einrich Wessels and Hugh J. Larkin, partners as aforesaid, entered into and occupied the said "Hudson Hotel" and the possession of the said goods and chattel and remain and still are in possession of the same.

That on the Twenty-sixth day of May, Nineteen Hundred and Ten an installment of Twenty-five Dollars of the principal sum of said mortgage secured became due, and that same has not been paid, and your orator has elected and hereby elects, that the whole of the principal shall be due.

That the said August W. Lucas has paid your orator on account of the said principal sum, the sum of One Hundred and Twenty-one Dol-

Bill of Complaint.

-lars, and there now remains due on the same the sum of Seven Hundred and Thirty two and 23/100 (\$732.23), Dollars.

That your orator has requested the said August W. Lucas to pay him said balance of principal so due on said mortgage, with which request he has refused and neglected to comply.

That your orator has demanded possession of the said goods and chattels hereinabove described of the said August W. Lucas, Einrich Wessel and Hugh J. Larkins, with which request they have refused and neglected to reply. 10

That should the sale so advertised by James J. Kelly, the Sheriff of Hudson County, New Jersey, proceed, the said goods and chattels hereinabove particularly described will be widely scattered and get beyond the reach or control of your orator and your orator will suffer irreparable damage. 20

In consideration whereof, and inasmuch as your orator is remediless in the premises in the courts of law, and can have adequate relief in a court of equity, and to the end—

1. That the defendants and each of them may answer, but without oath, the same being hereby waived, according to the best of their respective knowledge, information and belief, all and singular the premises and each fact above stated. 30

2. That an account may be taken, under the direction of this court, of the amount due upon your orator's said mortgage.

3. That the defendant's or some of them, may be decreed to pay unto your orator the amount so found due, with interest thereon, and your orator's costs in this suit, by a short day, to be appointed by this court; and that in default thereof, they, and each of them, do stand debarred and foreclosed of all equity of redemption in said mortgaged goods and chattels. 40

Bill of Complaint.

4. That the said goods and chattels may be sold according to the order of this court, and out of the proceeds of sale, your orator may be paid the amount so found due upon his said mortgage, with interest thereon, and his cosst of this suit.

And that your orator may have such other and further relief as the nature of this case requires, and as may be agreeable to equity.

10

May it please your Honor, the premises considered, to grant to your orator not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said August W. Lucas and Eimrich Wessels and Hugh J. Larkins, individually and as co-partners, and to James J. Kelly, Sheriff of the County of Hudson, and State of New Jersey, restraining them and each of them, from

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committing any waste or destruction upon the mortgaged goods and chattels, and from selling the same at public vendue or otherwise, but also the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said August W. Lucas, Eimrich Wessels, Hugh J. Larkins, and James J. Kelly, Sheriff of the County of Hudson, commanding them, and each of them, by a certain day and under a certain penalty to be therein expressed,

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to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience. And your orator as in duty bound, will ever pray, etc.

40

CHARLES WM. KAPPES,
Solicitor of Complainant.

ALEX J. SCHEUR.
Of Counsel with Complainant.

Decree Pro-Confesso.

(Filed November 4, 1911).

In Chancery of New Jersey.

Between

WILLIAM GULDEN,

*Complainant,**and*

AUGUST LUCAS, et al.,

*Defendants.*On Bill, etc.
Decree Pro **10**
Confesso.

This cause being opened to the Court by Charles W. Kappes, Solicitor of Complainant and it appearing that process of subpoena for the appearance of August Lucas, defendant, has been returned served by the Sheriff of Monmouth County, personally on the said defendant and it further appearing that the said defendant August Lucas has not appeared and filed a plea, answer or demurrer to the bill of complaint filed herein, but that he has wholly failed and neglected so to do; **20**

It is on this fourth day of November, 1911 ordered, adjudged and decreed that the said bill of complaint be taken as confessed against the said August Lucas to the end that such decree shall be made against him as shall be equitable and just. **30**

MAHLON PITNEY.

C.

Answer of Wessels and Larkin.

Filed May 26, 1910.

In Chancery of New Jersey.

Between

WILLIAM GULDEN,

*Complainant,**and*

AUGUST W. LUCAS, et al.,

Defendants.

On Bill, etc.
 Answer of
 Defendants.
 Eimrich R.
 Wessels and
 Hugh J.
 Larkin.

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These defendants answering say:

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1. That they have no knowledge as to any indebtedness between William Gulden and August W. Lucas and therefore have no knowledge as to whether or not a chattel mortgage was given to secure such indebtedness; that they *admit* that what purports to be a chattel mortgage was executed by said August W. Lucas to said William Gulden but have no knowledge as to date of execution of the same or the goods and chattels contained in the same or the various provisions of such chattel mortgage as set forth on pages one and two of the bill of complaint.

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2. They *admit* that what purports to be chattel mortgage executed by August W. Lucas to William Gulden was recorded in the office of the Register of Hudson County in Book 273 of Chattel Mortgages for said County, p. 128, *but deny* that the same was executed and acknowledged as

Answers.

required by law, and have no knowledge as to the contents of the affidavit annexed to said chattel mortgage made and subscribed by the agent of William Gulden and further say that said chattel mortgage did not have annexed thereto an affidavit or affirmation made and subscribed by the holder of said chattel mortgage, his agent or attorney, stating the consideration to said mortgage and as nearly as possible the true amount due thereon, and that said chattel mortgage was not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods mortgaged, as required by the provisions of an Act Concerning Mortgages on Chattels, Revision of 1902, and the several supplements and amendments thereto, and is therefore void as against creditors of said complainant.

3. They *admit* that on June 30th, judgment was recovered by these defendants in the Hudson County Circuit Court against said August W. Lucas for the sum of Two Hundred Seventy Dollars and seventy-eight cents (\$270.78), and that said judgment is uncanceled of record and is a subsisting lien on the chattels mentioned in the bill of complaint, and that a writ of fieri facias was issued out of said Court on said judgment and a levy made thereunder, and *admit* that said judgment and writ and levy were made subsequent to the execution and recording of said mortgage, and *deny* that said mortgage is a prior lien on the chattels therein mortgaged and say that by virtue of the provisions of said Act Concerning Mortgages on Chattels Revision of 1902, and of the facts set forth in the foregoing paragraphs, of this answer, that said mortgage is void as against the said judgment of these defendants, and that the lien of said judgment and levy made under

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Answers.

said execution upon said chattels, is prior to the lien of said mortgage, if any.

4. That they have no knowledge as to whether August W. Lucas had possession of said goods and chattels, nor the time the same continued in his possession.

5. That they *admit* that the Sheriff of Hudson
10 County posted notices of sale under said judgment and writ, as set forth in the bill of complaint, and that they took possession of said goods and chattels or some of them.

6. That they have no knowledge as to the amount of principal due under said chattel mortgage or the date when the same was due or any election made by the complainant or of any payments made on said chattel mortgage or of any
20 request made upon said Lucas to pay the balance due on said chattel mortgage, and *deny* that any demand to possession was made for said goods and chattels upon these defendants, and *deny* that said goods and chattels would be scattered and get beyond the control of the complainant should the sale be held as advertised by said Sheriff.

7. These defendants join in the prayer of the complainant that the goods and chattels may be
30 sold and the proceeds deposited in this Court, and these defendants pray that it may be decreed that said mortgage made by said August W. Lucas to said William Gulden is void against the lien and operation of the judgment and execution issued thereon to these defendants, and that out of the proceeds of said sale there may be paid to these defendants the amount of said judgment with interest and costs and the costs of these
40 defendants in this suit, and as to other matters and things set forth in the said bill of complaint, these defendants may be dismissed with costs.

All of which matters and things these defendants are ready to aver, maintain and prove as this Honorable Court shall direct, and as to all other matters and things they humbly pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ROBERT S. HUDSPETH,
Solicitor for and of Counsel with
Defendants.

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Answer of Kelly.

Filed May 26, 1910.

In Chancery of New Jersey.

Between

WILLIAM GULDEN,

Complainant,

and

AUGUST W. LUCAS, et als.,

Defendants.

On Bill, etc. 20
Answer of
Defendant,
James J.
Kelly.

The answer of the defendant JAMES J. KELLY, unto so much and such parts of the bill of complaint as he is advised is necessary or proper for him to make answer unto. 30

This defendant answering says.

That he has no knowledge as to any of the matters and things set forth in the bill of complaint, and prays that the complainant may be required to make due proof thereof.

ROBERT S. HUDSPETH,
Solicitor of Defendant, James J. Kelly.

40

Order admitting Berghoff Brewing Company to answer.

Filed *April 19, 1912.*

In Chancery of New Jersey.

10	Between WILLIAM GULDEN, <i>Complainant,</i> <i>and</i> AUGUST W. LUCAS, et als., <i>Defendants.</i>	} On Bill, etc. Order.
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20 This matter being opened to the Court by Robert S. Hudspeth, Solicitor of Berghoff Brewing Company, and the solicitors of the complainant and of the defendants, James J. Kelly, Eimrich R. Wessels and Hugh J. Larkin consenting hereto, and the defendant August W. Lucas being without the State of New Jersey, and not having filed any answer in the above cause.

It is *on this* _____ day of May, Nineteen hundred and eleven, on motion of Robert S. Hudspeth, solicitor as aforesaid,

30 ORDERED that Berghoff Brewing Company be admitted as a party defendant in the above cause and it have twenty days from the date of this order to plead, answer, demur and file cross-bill in the above cause. Respectfully advised.

I consent to the making and entry of the foregoing order and acknowledge service of a copy thereof.

Solicitor of Complainant.

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Solicitor of Defendants
 Eimrich R. Wessels, Hugh J.
 Larkin and James J. Kelly.

Answer of Berghoff Brewing Company.

Filed April 20, 1912.

In Chancery of New Jersey.

Between

WILLIAM GULDEN,
*Complainant,**and*AUGUST W. LUCAS, et als.,
*Defendants.*On Bill, etc.
Answer of
Berghoff 10
Brewing
Company.

The answer of the defendant Berghoff Brewing Company unto so much and such parts of the bill of complaint as it is advised it is material or necessary to make answer unto. 20

This defendant answering says:

1. That it has no knowledge as to any indebtedness between the plaintiff and the defendant August W. Lucas and therefore no knowledge as to whether or not a chattel mortgage was given to secure such indebtedness. It *admits and denies* that what purports to be such chattel mortgage as set forth in the bill of complaint on pages 1 and 2 was executed and recorded. 30

2. It admits that what purports to be a chattel mortgage was executed and recorded as set forth in the bill of complaint but denies that the same was executed and acknowledged and recorded as required by law and further says that said chattel mortgage was not executed and acknowledged as required by law in that it did not have annexed thereto an affidavit or affirmation made and subscribed by holder of said chattel mortgage, his agent or attorney stating the consideration of 40

Answers.

said mortgage and as nearly as possible the true amount due thereon and that said chattel mortgage was not accompanied by an immediate delivery and followed by an action and continued change of possession of the goods mortgaged as required by the provisions of an act of "An Act Concerning Mortgages on Chattels, Revision of 1902" and the amended supplements and amendments thereto and it is therefore void against creditors of said defendant, August W. Lucas.

3. It admits the recovery of judgment by August W. Lucas as set forth in the bill of complaint and denies that said mortgage is a prior lien on the goods and chattels therein set forth.

4. It has no knowledge as to whether said August W. Lucas had possession of said goods and chattels nor the time the same continued in his possession.

5. It admits the Sheriff of Hudson County posted notices as set forth in the bill of complaint.

6. It has no knowledge as to the amount due on said chattel mortgage nor as to the date when the same was due nor as to the allegation made by the complainant nor as to the payment made thereon, nor as to any request made upon the defendant Lucas to pay the balance due on said chattel mortgage and denies that a demand for such possession was made therefor.

7. That it joins in the prayer of the complainant that the goods and chattels be sold and the proceeds be deposited in this court and that the equities of all parties attached to the proceeds of such sale with the same force and effect as they attached to said goods and chattels and as to other matters and things set forth in the bill of complaint this defendant prays it may be dismissed with costs.

All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct and as to all other matters and things that it be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

HUDSPETH, RYSDYK & GARRISON,
Solicitors for and of Counsel with
Defendant Berghoff Brewing Co.

16

Replication.

Filed *February 23, 1912.*

In Chancery of New Jersey.

Between

WILLIAM GULDEN,

Complainant,

and

AUGUST W. LUCAS, et als.,

Defendants.

20

On Bill
Replication.

The complainant William Gulden joins issue with the defendant, Berghoff Brewing Company, on its answer filed in this case. 30

CHARLES WILLIAM KAPPES,
Solicitor of Complainant.

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Answer of Wessels.

Filed May 26, 1912.

In Chancery of New Jersey.

Between

WILLIAM GULDEN,

Complainant,

and

AUGUST W. LUCAS, et als.,

*Defendants.*On Bill, etc.
Answer of
Defendant,
Eimrich R.
Wessels.

The answer of the defendant EIMRICH R. WESSELS, unto so much and such parts of the bill of complaint as he is advised it is material or necessary to make answer unto.

20 This defendant answering says:

1. That he has no knowledge as to any indebtedness between William Gulden and August W. Lucas and therefore has no knowledge as to whether or not a chattel mortgage was given to secure such indebtedness; that he *admits* that what purports to be a chattel mortgage was executed by said August W. Lucas to said William Gulden but has no knowledge as to date of execution of the same

30 or the goods and chattels contained in the same or the various provisions of such chattel mortgage as set forth on pages one and two of the bill of complaint.

2. He *admits* that what purports to be chattel mortgage executed by August W. Lucas to William Gulden was recorded in the office of the Register of Hudson County in Book 273 of Chattel Mortgages for said County, page 128, but *denies* that

40 the same was executed and acknowledged as required by law, and has no knowledge as to the con-

Answers.

tents of the affidavit annexed to said chattel mortgage made and subscribed by the agent of William Gulden, and further says that said chattel mortgage did not have annexed thereto an affidavit or affirmation made and subscribed by the holder of said chattel mortgage, his agent or attorney, stating the consideration to said mortgage, and as nearly as possible the true amount due thereon, and that said chattel mortgage was not accompanied by an immediate delivery and followed by actual and continued change of possession of the goods mortgaged, as required by the provisions of an Act Concerning Mortgages on Chattels, Revision of 1902, and the several supplements and amendments thereto, and is therefore void as against creditors of said defendant August W. Lucas.

3. He *admits* that on June 30th, judgment was recovered by this defendant in the Hudson County Circuit Court against said August W. Lucas for the sum of Two hundred seventy dollars and seventy-eight cents (\$270.78), and that said judgment is uncanceled of record and is a subsisting lien on the chattels mentioned in the bill of complaint, and that a writ of fieri facias was issued out of said court on said judgment and a levy made thereunder, and *admits* that said judgment and writ and levy were made subsequent to the execution and recording of said mortgage, and *denies* that said mortgage is a prior lien on the chattels therein mortgaged, and says that by virtue of the provisions of said Act Concerning Mortgages on Chattels, Revision of 1902, and of the facts set forth in the foregoing paragraphs of this answer, that said mortgage is void as against the said judgment of this defendant, and that the lien of said judgment and levy made under said execution upon said chattels, is prior to the lien of said mortgage, if any.

Answers.

4. That he has no knowledge as to whether August W. Lucas had possession of said goods and chattels, nor the time the same continued in his possession.

5. Then he *admits* that the Sheriff of Hudson County posted notices of sale under said judgment and writ, as set forth in the bill of complaint, and that he took possession of said goods
10 and chattels or some of them.

6. That he has no knowledge as to the amount of principal due under said chattel mortgage or the date when the same was due or any election made by the complainant or of any payments made on said chattel mortgage or of any request made upon said Lucas to pay the balance due on said chattel mortgage, and *denies* that any demand for possession was made for said goods and chattels
20 upon this defendant, and *denies* that said goods and chattels would be scattered and get beyond the control of the complainant should the sale be held as advertised by said Sheriff.

7. And this defendant further says that such proceedings have been taken in the above cause that an order was made in said cause dated July 25th, 1910, directing Albert Leuly, who had theretofore been appointed Receiver in said cause, to
30 sell the said goods and chattels mentioned in the bill of complaint, and that pursuant to the direction of said order, said Receiver did sell the same on or about August 25th, 1910, to Berghoff Brewing Company, a corporation, for the sum of Seven hundred and thirty-six (\$736.) dollars, and thereafter said Receiver made his report and was discharged, after paying to himself his allowance as such Receiver, and has deposited with the Clerk of this Court in the above cause, the balance realized from such sale; that this defendant issued
40 an attachment out of the Hudson County Circuit

Answers.

Court against the rights and credits, moneys and effects, lands and tenements of the defendant August W. Lucas, for the sum of Six thousand (\$6,000) dollars, which said writ was levied on the same goods and chattels as are mentioned in the bill of complaint in the above cause, and covered by complainant's said chattel mortgage, and thereafter a rule was made in said attachment dated, *August 18th, 1911*, ordering that notice required by statute, be published, and appointing an Auditor, and that by virtue of the premises, this defendant acquired a lien upon said goods and chattels which was prior and paramount to the lien and operation of the complainant's said chattel mortgage, and that the lien of this defendant attaches to the moneys deposited by said Receiver with the Clerk of this Court in the above cause. 10

8. This defendant joins in the prayer of the complainant that the goods and chattels may be sold and the proceeds deposited in Court and prays that it may be decreed that the said chattel mortgage made by August W. Lucas to said William Gulden is void as against the lien and operation of the judgment and execution thereon issued in favor of Eimrich R. Wessels and Hugh J. Larkins, and is also void as against the lien and operation of the writ of attachment issued by this defendant out of the Hudson County Circuit Court against the goods and chattels of August W. Lucas on or about July 19th, 1910, and that this Court may ascertain and determine the amount due to this defendant, and that the amount so found to be due, be decreed to be a lien upon the moneys deposited in Court in the above cause, and such amount so found to be due, be paid to this defendant with interest and costs, and as to the other matters and things set forth in the bill of complaint, this defendant may be dismissed with costs. 20 30 40

Answers.

All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct.

And this defendant by way of cross-bill against the complainant, alleges and says:

- 10 1. That on or about November 26th, 1909, August W. Lucas executed an alleged chattel mortgage to William Gulden, pretending to secure the payment of the sum of Eight hundred and fifty-three dollars and twenty-three cents (\$853.23), and covering certain goods and chattels more particularly set forth and described in said chattel mortgage, which is hereto referred to for greater certainty, which said alleged chattel mortgage was recorded in the office of the Register of Hudson County on or about November 30th 1909, in Book 273, page 128.
- 20 2. That thereafter William Gulden filed a bill of complaint against August W. Lucas, being the bill of complaint in the above cause, and such proceedings were taken therein that said goods and chattels were sold, and the proceeds of said sale being upwards of Seven hundred (\$700.) Dollars, were paid to the Clerk of this Court in the above cause, pursuant to an order made in the above cause.
- 30 3. That for a long time prior to November 26th, 1909, said August W. Lucas had been indebted to this defendant for upwards of Three thousand (\$3,000.), Dollars, and on or about July 19th, 1910, this defendant issued an attachment out of the Hudson County Circuit Court against the rights and credits, moneys and effects, lands and tenements of said August W. Lucas, said action being upon contract, and that levy was made thereunder, upon the said goods and chattels mentioned
- 40 in said chattel mortgage and in the bill of complaint, and said levy being made before the same

Answers.

were sold, pursuant to the order made in the above cause, and that announcement of this defendant's lien upon said goods and chattels was made at the said sale, and this defendant charges that said goods and chattels were sold subject to the lien of said attachment suit, and subject to such amount as may be found to be due this defendant in said attachment suit, and that the lien of said defendant attaches to the moneys realized from the sale of said goods and chattels, and deposited in Court in this cause. 10

4. That said chattel mortgage, executed by August W. Lucas to William Gulden, is void as against the lien of said attachment suit and of the indebtedness of said Lucas to this defendant; that said chattel mortgage was not acknowledged as required by law, and did not have annexed thereto an affidavit made and subscribed by the holder of said chattel mortgage, his agent or attorney, stating the consideration of said mortgage, and as nearly as possible the true amount due thereon, and that said chattel mortgage was not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the goods mortgaged, as required by the provisions of An Act Concerning Mortgages on Chattels, (Revision of 1902), and the several supplements and amendments thereto, and is therefore void as against creditors of said defendant August W. Lucas. 20 30

5. And this defendant prays that an account may be taken of the moneys due to this defendant from the said August W. Lucas the recovery of which was sought in said attachment suit, and that the amount so found to be due may be decreed to be a lien on the moneys deposited in Court in the above cause, and that it may be de- 40

Answers.

10 creed that said goods and chattels were sold subject to the lien and operation of the moneys sought to be recovered by said attachment suit, and that the said chattel mortgage made by August W. Lucas to William Gulden is void as against the lien of the indebtedness due to this defendant, sought to be recovered by said attachment and that the amount so ascertained to be due to this defendant from the defendant August W. Lucas, may be paid to this defendant from the moneys deposited in Court in the above cause, realized from the sale of said goods and chattels, together with interest and costs, and for such other and further relief in the premises as to this Court shall seem meet.

And this defendant will ever pray, etc.

20 HUDSPETH, RYSDYK & GARRISON,
Solicitors for and of Counsel with
Defendant Eimrich R. Wessels.

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40

Answer of Herr.(Filed, 1910. *July 16, 1912.*)**In Chancery of New Jersey.**

Between

WILLIAM GULDEN,

*Complainant,**and*

AUGUST W. LUCAS, et als,

Defendants.

On Bill, etc.

Answer of

Defendant

Dougal Herr,

Auditor

etc.

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The answer of the defendant, Dougal Herr, Auditor in Attachment in an action now pending in the Hudson County Circuit Court, wherein Eimrich R. Wessels is Plaintiff and August W. Lucas, et als, are Defendants unto so much and such parts of the bill of complaint as he is advised is material or necessary for him to make answer unto: 20

This defendant answering says:

1. That he has no knowledge as to any indebtedness between the complainant and the said defendant Lucas and admits that what purports to be a chattel mortgage is executed by Lucas to the complainant and says that said chattel mortgage is void as against the claim of this defendant as hereinafter set forth. 30

2. That he admits that what purports to be a chattel mortgage was executed by said August W. Lucas and said William Gulden and was recorded in the office of the Register of Hudson County in Book 272 of Chattel Mortgages for said County, Page 128 but denies that the same was executed and acknowledged as required by law and says that said chattel mortgage was not ac- 40

Answer of Herr.

companied by an immediate delivery and followed by an actual and continued change of possession of the goods mortgaged as required by the provisions of "an act concerning mortgages on chattels, Revision of 1902" and several supplements and amendments thereto and is therefore void as against creditors of said August W. Lucas and as

10

3. That he has no knowledge as to the entry of the judgment of Wessels and Larkins against Lucas as alleged in the bill of complaint and prays that due proof may be made thereof, no knowledge as to the levy under said execution but denies that the said chattel mortgage is a prior lien on the chattels therein mortgaged and says that said chattel mortgage is void.

20

4. That he has no knowledge as to whether said Lucas has possession of said goods and chattels nor as to the time they continued in his possession.

5. He has no knowledge as to what action the Sheriff of Hudson County took under said judgment.

30

6. That he has no knowledge as to the amount of principal due under said chattel mortgage and has no knowledge as to whether or not any request was made on said Lucas to pay the balance due on said chattel mortgage.

7. That he joins in the prayer of the bill that the goods and chattels may be sold and the proceeds deposited in this Court, the equities of all parties to attach to the proceeds of such sale and as to all other matters and things this defendant prays the said bill of complaint may be dismissed with costs to this defendant.

40

And this defendant by way of cross-bill against the complainant, alleges and says:

Answer of Herr.

1. That on or about November 25th, 1909, said August W. Lucas executed an alleged chattel mortgage to William Gulden pretending to secure the payment of the sum of Eight hundred fifty-three dollars and twenty-three cents (\$853.23) and covering certain goods and chattels more particularly set forth and described in said chattel mortgage which is hereby referred to for greater certainty and which was recorded in the office of the Register of Hudson County on November 30th 1909, Book 273 of Chattel Mortgages, Page 128. 10

2. That such proceedings were taken in this cause that the said goods and chattels were sold by Albert Leuly,—the Receiver and the proceeds of such sale being upwards of Seven (\$700) Dollars were paid to the Clerk in this Court pursuant to an order in this cause, the equities of all parties to attach to the proceeds of such sale. 20

3. That for a long time prior to November 26, 1909, said August W. Lucas had been indebted to the Berghoff Brewing Company in upwards of Three thousand (\$3000) Dollars and prior to that date said Berghoff Brewing Company assigned its said claim to Eimrich R. Wessels and Eimrich R. Wessels caused a Writ of Attachment to be issued out of the Hudson County Circuit Court in his favor and against the rights and credits, moneys and efforts, lands and tenements of August W. Lucas in an action upon contract and said Writ was duly issued and a levy thereunder made by the Sheriff of Hudson County upon the goods and chattels mentioned in said chattel mortgage and in the bill of complaint, and said levy was made before the same were sold pursuant to an order in this cause and thereafter, in said attachment suit an order was 30 40

Answer of Herr.

made appointing this defendant Auditor, and this defendant charges that the said chattel mortgage is void as against the lien of said attachment suit and that the lien attaches to the moneys deposited in court and that all of the moneys deposited in this Court should be paid to this defendant.

10 4. That said chattel mortgage is void as against the creditors of said Lucas and as against this defendant as such Auditor; that said chattel mortgage was not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels mortgaged, as required by the provisions of "An Act Concerning Mortgages on Chattels, (Revision 1902)" and the several supplements and amendments thereto.

20 5. That this defendant prays an account may be taken of the moneys due to this defendant as such Auditor from the said August W. Lucas, the recovery of which is sought in said attachment suit and that it may be decreed that the amount so found to be due shall be a lien on the moneys deposited with the Clerk of this Court in this cause and that the said chattel mortgage is void as against the lien of the indebtedness found to be due in said attachment suit and sought to be

30 recovered thereby and that the amount so ascertained to be due to this defendant may be paid to this defendant from the moneys deposited in Court together with interest and costs and for such other and further relief as to the Court shall seem proper and just.

And this defendant will ever pray, etc.

HUDSPETH, RYSDYK & GARRISON,

Solicitors for and of

40 Counsel with Defendant,

Dougal Herr, Auditor in

Attachment.

**Answer of Berghoff Brewing Company
to cross bill of Wessels.**

Filed April 3, 1912.

In Chancery of New Jersey.

Between WILLIAM GULDEN, <i>Complainant,</i> <i>and</i> AUGUST W. LUCAS, et als., <i>Defendants.</i>	On Bill, etc. Answer of Berghoff Brewing Co. 10 to Cross- Bill of De- fendant, Eimrich R. Wessels.
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The answer of defendant Berghoff Brewing Company unto so much and such parts of the crossbill filed by the defendant Eimrich R. Wessels to the complainant's bill of complaint as it is advised it is material or necessary to make answer unto. **20**

This defendant answering says:

1. It admits it has no knowledge as to the allegations in Paragraph 1 and 2.
3. It admits the allegations in Paragraph 3.
4. It admits the allegations in Paragraphs 4 and 5 and joins in the prayer for an accounting as set forth in Paragraph 5 of said crossbill and as to all other matters and things set forth in said crossbill this defendant prays it may be dismissed with its costs and charges in this behalf most wrongfully sustained. **30**

HUDSPETH, RYSDYK & GARRISON,
Solicitors for and of Counsel with
Defendant, Berghoff Brewing Co.

Minutes of Final Hearing.
In Chancery of New Jersey.

Between

WILLIAM GULDEN,
Complainant,

and

AUGUST W. LUCAS, et als.,
Defendants.

On Bill, etc.
Minutes of
Final Hearing. 10

APPEARANCES:

MR. KAPPES and MR. WALSCHEID, for the Complainant.

MR. GARRISON (of Hudspeth, Rysdyk & Garrison), for the Defendants. 20

Before HON. LINDLEY M. GARRISON, Vice-Chancellor.

Chancery Chambers, Jersey City, July 11, 1912.

MR. GARRISON: This case of *Gulden v. Lucas* was adjourned from Monday until to-day, this day being set for the trial. I desire to make application for a further adjournment, upon the ground that Dudley D. Flemming, connected with the Berghoff Brewing Company, one of the defendants, and a material witness for the defense, is now in Chicago and unable to be present at the trial this morning. 30

THE VICE CHANCELLOR: What would Dudley D. Flemming testify to if he was here?

MR. GARRISON: I will have to explain the circumstances, or something about the suit, in order to show how his testimony 40

Colloquy.

would be material. The bill was filed by the complainant to restrain a sale under an execution and levy of the defendants Wessels & Larkins, the complainant setting out that he has a chattel mortgage from the defendant Lucas for some seven or eight hundred dollars, which was recorded prior to the levy and sale under the execution of Russell and Lawrence. This mortgage was recorded some days after it was dated and acknowledged. The defendant,, the Berghoff Brewing Company, filed a crossbill, in which it sets up that it holds a chattel mortgage upon the same chattels for \$1500, which was executed and filed prior to the mortgage of the complainant, the Berghoff mortgage being dated July 13, 1909, and the complainant's mortgage in November. The defendants also hold two other chattel mortgages for \$700 and \$905, which were dated and recorded subsequent to the date and recording of the complainant's mortgage. They also have an attachment for about \$2000 which was levied upon the same goods and chattels for the deficiency under all of these chattel mortgages, the levy being made prior to the sale by the Receiver in this suit, and subsequent to the date of the filing of the complainant's mortgage. Mr. Flemming's testimony is material in that he could testify as to the amounts that have been paid on the defendant's three chattel mortgages at the time they were foreclosed; as to the amount's that are now due on them; as to the fact that all of the goods and chattels mentioned in the defendant's three chattel mortgages were in the pos-

Colloquy.

session of the defendant Lucas at the time of the execution and delivery of the defendant's three mortgages—that being one of the disputed points in the case. Further than that, the defendant's have moved three or four times to dismiss the bill for lack of prosecution, and such an order was once made, and it was only by consent that it— 10

THE VICE CHANCELLOR: One moment: What has that got to do with Mr. Dudley D. Flemming?

MR. GARRISON: Well, it has nothing to do with his testimony.

THE VICE CHANCELLOR: Well, speak to that; that is what I have asked you. Now, why is he not here?

MR. GARRISON: He is not here because he is in Chicago. This case was originally set down for Monday— 20

THE VICE CHANCELLOR: You knew on Monday it was going to be tried on Thursday. It only takes eighteen hours to get from Chicago, and he is a vitally interested party and witness—why is he not here?

MR. GARRISON: It was set down for Monday. Mr. Walscheid was then engaged, and he could not try it on Monday. 30

THE VICE CHANCELLOR: You haven't answered my question.

MR. GARRISON: He had an engagement, apparently before that time, which took him to Chicago, and he could not be here to-day.

THE VICE CHANCELLOR: But you consented to the adjournment until to-day? 40

Colloquy.

MR. GARRISON: Yes, sir; but I had not consulted Mr. Flemming, in Chicago, or wherever he was, at that time.

THE VICE CHANCELLOR: Did you try to get Mr. Flemming here? Did you have him here Monday?

10 MR. GARRISON: No, sir; we took our chances on Monday.

THE VICE CHANCELLOR: Then you took your chances on getting it adjourned to-day?

MR. GARRISON: No, because we had other witnesses on Monday.

THE VICE CHANCELLOR: Are your other witnesses here?

MR. GARRISON: Yes, sir.

20 THE VICE CHANCELLOR: Everybody else is here?

MR. GARRISON: Everybody else is here.

THE VICE CHANCELLOR: Then I won't adjourn it. I may possibly permit this testimony to be taken later if I find it material. Have you any objection to the hearing now because of Mr. Garrison's relationship to me, Mr. Walscheid.

30 MR. WALSCHEID: No, sir.

MR. KAPPES: No, sir.

THE CASE FOR THE COMPLAINANT.

Charles W. Kappes—Direct.

CHARLES W. KAPPES, Esq., sworn.

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. Kappes, where do you reside? A. 25 Pleasant Avenue, Town of Union, this county.

Q. Your profession is what? A. Lawyer.

Q. Do you know August W. Lucas? A. I do. 10

Q. And William Gulden? A. I do.

Q. I show you a paper purporting to be a chattel mortgage, and ask you whether you witnessed the signature of Mr. Lucas? A. I did.

Q. And he also signed the schedule? A. He did.

Q. And you took the affidavit of Henry J. Hines and the acknowledgment? A. I did.

MR. WALSCHEID: I offer the mortgage in evidence. 20

(The mortgage is admitted without objection, and marked Exhibit P-1).

Q. Can you tell me, Mr. Kappes, on what date that mortgage was executed? A. November 26th, 1909.

MR. GARRISON: I object to that. The mortgage is a written document and speaks for itself. 30

THE VICE CHANCELLOR: It speaks for itself as to the date it purports to be executed. It may have been executed on a totally different date.

MR. GARRISON: Well, until he shows that it was executed on some other date than that which is in the body of the mortgage, can he ask him that question?

THE VICE CHANCELLOR: He did not ask 40

Charles W. Kappes—Direct.

him "when the acknowledgment was taken",
he asked him "when it was executed."

MR. GARRISON: Oh, I withdraw the objection.

BY THE VICE CHANCELLOR:

Q. Was the acknowledgment dated on the day
on which it was taken? A. It was.

10

BY MR. WALSCHEID:

Q. And the affidavit on the same day? A. It
was.

Q. All on the 26th day of November, 1909? A.
Yes.

Q. Can you tell us at what hour of the day it
was that this mortgage was executed? A. Some
time between five and six o'clock in the after-
noon.

20

Q. And can you tell us what day of the week
this was? A. Friday.

Q. Do you know anything about how that mort-
gage happened to be executed? A. I was present
with Mr. Gulden and Mr. Lucas, the parties to the
mortgage.

Q. Was Mr. Gulden present when the mortgage
was finally executed? A. No, he had then left
our gathering.

30

Q. Will you tell us the history of the execu-
tion of that instrument, as you remember it, at
this time? A. Do you want me to go before the
time of the actual execution?

THE VICE CHANCELLOR: Oh, no; he
means simply what took place at the time
the papers were signed.

A. Mr. Gulden and I went to the Hudson Hotel,
the place in which this furniture was, and of
which Lucas was proprietor, or lessee, at the time,

40

Charles W. Kappes—Direct.

and we were in what he called the "sitting room." We were there for perhaps a half an hour. Mr. Gulden stated to Lucas that he had been a long time trying to get payment for these goods—

THE VICE CHANCELLOR: That is not what he is after. He merely wants you to describe what took place at the time the paper was signed. He has not asked 10 about the consideration, or anything of that sort; he has only asked what took place when the parties took a pen and wrote on the paper—what they did then?

A. At that time, when Lucas signed the mortgage, Mr. Gulden had already left; and when Lucas signed, or just prior to the signing, I endeavored to find out the best terms of payment that he could make, and wrote that into the body 20 of the mortgage, and said, "Of course Mr. Gulden said before he went away, this is conditional and is dependent upon corroboration by him."

Q. "Corroboration" by whom? A. By Mr. Gulden.

Q. As to what? A. "As to the terms, as now tacitly arranged between you and me. If he approves of the payments as indicated, then it will be all right; if he does not, we will have 30 to prepare a new paper." I then had him execute the mortgage and acknowledge it before me, and left with the paper.

Q. And there is some pen writing on the face of the mortgage, on the first page of the mortgage, the words, "The sum of Twenty five (\$25.00) dol- 40 lars on the twenty-sixth day of December, A. D., 1909, and the sum of Twenty-five (\$25.00) dollars on the twenty-sixth day of each and every month thereafter until the full amount of eight hundred and fifty-three dollars and twenty-three

Charles W. Kappes—Direct.

cents (\$853.23), is fully paid off and satisfied,"—
who wrote this pen writing? A. I did.

Q. And when was it written? A. Just previous to the execution of the document.

BY THE VICE CHANCELLOR:

10 Q. After Mr. Gulden left, you and Lucas discussed the terms of payment, and as the result of the discussion, you put that in there; then you say you told Lucas that whether or not that should be an effective instrument would have to depend on whether or not Gulden would approve of it—that is correct, is it not? A. That is correct.

BY MR. WALSCHEID:

20 Q. What did you then do with the instrument?

THE VICE CHANCELLOR: He took it away with him, he said.

Q. What next did you do with it? A. Then went over to the store of Mr. Gulden.

Q. And when did you go to the store of Mr. Gulden? A. Immediately after leaving Lucas.

Q. On Friday night? A. On Friday night.

Q. Did you find Mr. Gulden? A. No.

30 Q. What did you do next? A. I spoke to his bookkeeper and office-man, Mr. Hines, and had him make an affidavit—this affidavit attached to the mortgage.

Q. What did you do next? A. The next day I endeavored to see Mr. Gulden several times, and saw him some time after lunch, I don't know just what time it was.

40 Q. Sometime after what hour of the day? A. About, I would say, my best recollection now is that it was between one and two o'clock.

Charles W. Kappes—Direct.

Q. And what did you do with Mr. Gulden in reference to this paper then? A. I gave it to him and said to him that these were the best terms I could effect with Lucas, and he said, "Well, if that is the best we can do, I suppose we will have to take it." I then left it with him.

Q. Is that the last you saw of that paper prior to its record? A. That is the last I saw of it then. 10

Q. Now, had you had any dealings with Mr. Lucas prior to the execution of this mortgage by Mr. Gulden? A. Yes.

Q. In reference to the date which it reports to represent? A. I had, for a period of several weeks before the execution of it.

Q. Will you give us a history of your connection with Mr. Lucas, for Mr. Gulden, in that respect? A. I saw Mr. Lucas several times, I should say practically two weeks before the execution of the mortgage, regarding his payment for the goods which had been delivered to him by Mr. Gulden, and said that if payment were not made the goods would be removed. 20

Q. And did you speak to him about the terms upon which the goods had been purchased? A. Oh, yes.

Q. And what was your conversation as to the terms upon which the goods had been purchased? A. That Mr. Gulden had stated to me that it was to be a cash transaction. 30

Q. And what did Mr. Lucas say to that? A. And I said that as only about one-third of the purchase price had been paid, something definite regarding the payment of the balance would have to be made; and finally, a day or two before the execution of this paper, I saw Lucas, and said, "Mr. Gulden wants a chattel mortgage, at least; other- 40

Charles W. Kappes—Cross.

wise the goods cannot remain," and I won't be sure if that was two days before, but it was some short time before the final execution; and then an appointment was made when Mr. Gulden and I could see him and consider terms upon which the good might remain with him.

CROSS EXAMINATION BY MR. GARRISON:

10

Q. How long had you known Mr. Gulden prior to the execution of this mortgage? A. Practically all my life.

Q. And he resides how far from your office? A. Now?

Q. At the time of the execution of this mortgage? A. Oh, he was then within six hundred feet, I should say.

20

Q. And did you go to his residence that Friday evening to see him in reference to this mortgage? A. I did not.

Q. Did you make any endeavor to find him that Friday night?

THE VICE CHANCELLOR: After he made the effort at the store?

MR. GARRISON: Yes.

A. No. That was because Mr. Gulden, when he
30 left Lucas in my presence—

MR. GARRISON: I ask that that be stricken out as not responsive.

THE VICE CHANCELLOR: Yes.

Q. How long had you known Mr. Lucas before the execution of the mortgage? A. Several months.

Q. And how long does it take to go from your office to the office of the Register of Hudson County in Jersey City? A. It depends on the mode of travel.
40

Charles W. Kappes—Re-Direct.

Q. Well, the quickest ordinary mode of travel?

THE VICE CHANCELLOR: By trolley, do you mean?

MR. GARRISON: By trolley.

A. By trolley, an average of about forty-five minutes.

Q. Were you present when the terms were made between Lucas and Gulden in reference to the sale of these chattels? A. I was not. 10

Q. Were you present at any conversations between them in reference to the chattels, prior to the execution of this mortgage? A. Not between Lucas and Gulden.

Q. Do you keep office notes as to the services performed for your clients? A. More or less definitely, yes.

Q. Have you any office notes in reference to this transaction and the execution of this mortgage? A. Why, I don't know; I think so. 20

Q. Well, you knew you would be questioned today in reference to the execution of this mortgage, did you not? A. I expected so.

Q. Well, did you bring with you any record or memoranda as to the services performed by you in reference to this mortgage? A. No.

Q. The testimony that you have just given is simply your best recollection? A. My recollection is very keen and lively, because of the exceptional developments and the subsequent controversy. 30

RE-DIRECT EXAMINATION BY MR. WALSCHEID:

Q. What is the distance from Mr. Gulden's store or place of business to the Court house, the place of registry for these mortgages? A. His office is just opposite mine. 40

Louis Haas—Direct.

Q. Well, the distance? A. The distance is the same.

Q. Well, the distance from your office to the Court house is what? A. I should say three and a half miles.

10 Q. Why did you make no further effort to see Mr. Gulden on that Friday evening after you went over to his store? A. He said he had a pressing engagement which would take him away; that is why he did not remain to complete this negotiation; and I would have to see him sometime tomorrow.

20 Q. When you said that you were not present at any conference between Mr. Gulden and Mr. Lucas in reference to the terms of the sale of these chattels, were you present at any conference or meeting of Lucas with anybody else in reference to those terms? A. I think not, only between Mr. Gulden and his staff and myself.

LOUIS HAAS, sworn.

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. Haas, where do you live? A. I live in Weehawken at present.

30 Q. And your address in Weehawken? A. 38 Clifton Terrace.

Q. Your present business? A. Ice business.

Q. President of what Company? A. Consumers Hygiene Ice Company.

Q. In 1909, were you in the employ of William Gulden? A. I was.

Q. Did you know, or meet August W. Lucas? A. I did.

40 Q. Did you make any sale or contract of sale,

Louis Haas—Cross.

or have any negotiations for the sale of goods to be used in a hotel by him? A. I did; I went down to see Mr. Lucus in his cafe where he was on Bergenline Avenue and Liberty Street in Union Hill.

Q. That was before he was in the Hudson Hotel? A. He was not in the Hudson Hotel then, yet; he had had nothing to do with it. 10

Q. And did you negotiate the sale of these articles of furniture? A. I did, the biggest part of them.

Q. Will you tell us your conversations with Mr. Lucus in reference to those?

THE VICE CHANCELLOR: ' Why do you go into that?

MR. WALSCHEID: I desire to show that this was to be a cash sale. 20

THE VICE CHANCELLOR: Oh, well, ask him that. (To the witness.) What were the terms on which you sold him this furniture and stuff?

A. The consideration was to be paid cash when they were furnished.

CROSS EXAMINATION BY MR. GARRISON:

Q. Was anyone else present when these terms were made between you and Lucus? A. No, sir; I met Mr. Lucus personally, in his cafe, Liberty Street and Bergenline Avenue, on the Hill. 30

Q. Was there any writing passed between you in reference to this sale? A. No, sir; only I took the man's word.

Q. Just state exactly what the contract offered?

THE VICE CHANCELLOR: Now tell us the 40

Louis Haas—Cross.

conversation that Mr. Walscheid asked you about.

A. I understood that Mr.—

THE VICE CHANCELLOR: No, not a word about “understanding,”—what was the conversation, what did you say to him and what did he say to you?

10

A. I went down to see Mr. Lucus, and I said “Mr. Lucus, I understand you are going to open up the Hudson Hotel?” So he said “Yes”; and I said “If there is anything doing, you might as well give us a chance to furnish the hotel for you.” He said “All right”; and one thing brought on another, and he told me that he was to pay cash for the goods.

20

Q. Was that all your conversation? A. That is all the conversation we had that night; and we had a couple of glasses of beer together.

BY THE VICE CHANCELLOR:

Q. Then you did not sell him anything, did you? A. No; he came up to the store after that.

30

Q. Then that was not the time that you made the bargain with him. Mr. Garrison wants to know what happened at the time you made the bargain with him? A. Then he came into the store and bought the goods, and told me again he was going to pay cash for them.

Q. When was that? A. Oh, that was about a week after—that was about the middle or beginning of June, 1909.

Q. He picked out these various things? A. Yes.

40

Q. When were they to be delivered? A. They were to be delivered as soon as they could be furnished.

Henry J. Hines—Direct.

Q. And when did he say he would pay for them. A. As soon as they were furnished.

BY MR. GARRISON:

Q. And when was that conversation?

THE VICE CHANCELLOR: He answered that.

BY MR. WALSCHEID:

10

Q. And most of these goods were picked from a catalogue? A. Yes, we had to have them made, because he wanted certain kind of goods, and he had to have a lot of beds refinished just for his purpose, and mattresses had to be made, and we had to order the dresses and wash stands, chairs and tables, which we did not have in stock, we had to order them.

20

HENRY J. HINES, sworn.

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. You are in the employ of Mr. Gulden? A. Yes, sir.

Q. And where do you reside? A. 323 Harrison Place, Town of Union, New Jersey.

Q. Were you in Mr. Gulden's employ in 1909? A. Yes, sir. 30

Q. In what capacity? A. As bookkeeper and general office man.

Q. Have you your book of original entries here? A. Yes, sir; (referring to a book now produced).

Q. And that book was kept by you? A. Yes, sir.

Q. Does that book show the date of deliveries of the various items which were delivered to Mr. Lucas? A. No, sir; it does not show the dates of 40

Henry J. Hines—Direct.

the deliveries of every item, but it shows the date when the entire order was complete.

Q. On what date, according to that book, was this entire order complete? A. On September 4th, 1909.

Q. And can you tell us when the deliveries commenced? A. The first delivery was made on July
10 26th, 1909.

Q. Now, was that first delivery made by you, or was it made by some wholesale house to whom you had given the order? A. The goods were delivered to our store, and from there conveyed right on the same truck that delivered them to our store over to the hotel. That was an item of beds.

Q. Have you a complete record there of the
20 deliveries as made by Mr. Gulden, and the dates? A. No, I have not.

Q. Did you make up this list of deliveries? A. Yes, sir.

Q. And is that list of deliveries correct as to date? A. Yes, sir.

Q. The list of deliveries as shown here, shows a list of items and then the date under it? A. Yes, sir.

30 Q. Then another list of items, and another date under it? A. Yes, sir.

Q. And so on? A. Yes, sir.

Q. The date under each list of items refers to the date of delivery of the items immediately above it? A. Yes, sir; but that date refers to when the goods were delivered to our store. Now, there were some of these goods which were delivered right from the truck—that is, the
40 truckman that delivered the goods to our place was told to go around the corner and deliver those

Henry J. Hines—Direct.

goods, instead of taking them of the truck and putting them on the sidewalk.

Q. The hotel being within one hundred feet of your place of business? A. Yes, sir.

BY THE VICE CHANCELLOR:

Q. Now, how about the others—when were they delivered—the ones that the same truck did not deliver? A. There were goods delivered from our store which were picked out at different intervals by Mr. Lucus, and of course we just had our original order, and as we could supply the goods we delivered them to him. 16

Q. You have not answered the question—what record have you of deliveries that were made from your store to Lucus, other than the ones where the same truck that brought them to your store took around to Lucus' hotel? A. We have no regular dates; we have a list of all the goods right here. 20

Q. Then you cannot, from any of your books, tell when each article of this bill was delivered, can you? A. No, sir.

BY MR. WALSCHEID:

Q. Can you not tell from your books of original entry here the date of the delivery of the goods which actually came out of your store? A. I couldn't say—not by this book. 30

Q. But by what book? A. By this sheet that I have made out.

Q. What did you make that out from? A. I took that out from our original book, that is, our order book.

BY THE VICE CHANCELLOR:

Q. But your order book does not show the date of the delivery? A. No, sir. 40

Henry J. Hines—Direct.

Q. What Mr. Walscheid asked you in this: Have you any book which will show the date of delivery of the different articles to Lucas? A. No, sir.

10 THE VICE CHANCELLOR: He hasn't got any such book, Mr. Walscheid. (To the witness.) I understand that as to the things he got out of your store, you ascribe the date of the delivery as to the date of the order, don't you?

THE WITNESS: Yes, sir.

BY MR. WALSCHEID:

Q. And these dates upon this list—do they show the dates of the first delivery? A. Yes, sir.

20 Q. And all dates subsequent to that are either dates of delivery, or dates of the original orders? A. They are the dates of the times the goods were delivered to us from the factories.

Q. So that they were delivered either on that date, or some subsequent date, Mr. Lucas?

MR. GARRISON: I object to leading questions.

30 THE VICE CHANCELLOR: I overrule that objection; it is simply summing up exactly what the man said.

A. Yes, sir.

BY THE VICE CHANCELLOR:

Q. Mr. Hines, this first date is on July 26th, 1909—as I understand, that is how you indicate that as the day you got the articles into your store? A. Yes, sir.

40 Q. Now, then, are you sure that no article that Lucas ordered from Gulden was delivered from

Henry J. Hines—Cross.

your store to him, Lucus, before the 26th of July, 1909? A. Yes, sir.

MR. WALSCHEID: I offer the list in evidence.

CROSS EXAMINATION BY MR. GARRISON:

Q. Did you personally make any of these deliveries? A. No, sir. 10

THE VICE CHANCELLOR: Is there any objection to the list going in?

MR. GARRISON: Yes; I do not see how that list could go in at all; it has not been shown that he personally made any of the deliveries, or that it has been made from any original entry books whatsoever.

THE VICE CHANCELLOR: I am inclined to sustain that objection. He says that list is made up as of the dates they got into the store. Now, that is all he personally knows about it. He did not deliver the goods out of the store. It may be marked with this witness's initials for identification; and, upon producing somebody who does know, this list can go into evidence. 20

30

August W. Lucus—Direct.

AUGUST W. LUCUS, sworn.

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. Lucus, you are one of the defendants in this case? A. I am.

Q. You are the proprietor of the Hudson Hotel? A. I was.

10 Q. In the Town of Union? A. Yes.

Q. Do you remember the date upon which you became proprietor of that place? A. You mean when—

Q. The date of your lease? A. I believe, to the best of my knowledge, it was July 12th, 1909? A. 1909.

Q. And how long after 1909 did you go into actual possession of the place? A. September 1st, 1909.

20 Q. On September 1st, 1909, you were ready to open up your place, weren't you? A. Yes, sir.

BY THE VICE CHANCELLOR:

Q. When did you actually get into possession—when did you get in the place? A. I began to move the things into it, and all that kind of thing, about the latter part of July.

30

BY MR. WALSCHEID:

Q. When you took your lease on the 12th of July, you then immediately went into possession of the building, didn't you?

MR. GARRISON: I object to his leading the witness.

BY THE VICE CHANCELLOR:

40 Q. What did you do when you got your lease?

August W. Lucas—Direct.

Did they give you the key? A. The house was not completed, sir; the house was under construction then.

BY MR. WALSCHEID:

Q. And you took charge of the construction? A. I couldn't live there, but I was around every day.

Q. And the place was ready for occupancy about when? A. For myself to move in? 10

Q. Yes. A. About the middle of August.

Q. And when was it ready for occupancy as a hotel? A. About September 1st.

BY THE VICE CHANCELLOR:

Q. There was no furniture in it at the time you leased it? A. No, sir; the house was not constructed.

(Question repeated). 20

A. No, sir.

Q. When did you first move any furniture, of any kind, sort or description, into it? A. On or about the latter part of July.

Q. 1909? A. 1909.

BY MR. WALSCHEID:

Q. And where did you get that furniture from? A. That was sent in a wagon by some factory— in some factory wagon; I believe first it went to Gulden and then came to my place. 30

Q. Some of the stuff you had bought from Gulden? A. Yes.

Q. And the first stuff you bought from Gulden, then, came to you in the latter part of July? A. Yes.

Q. Can you fix the dates? A. I couldn't fix the exact dates. 40

August W. Lucus—Direct.

BY THE VICE CHANCELLOR:

Q. The latter part of July? A. The latter part of July.

Q. And by "latter" you mean what? A. I mean shortly before the 1st of August.

BY MR. WALSCHEID:

10 Q. Do you remember what the items were that first came in, generally speaking—the nature of them? A. A couple of rooms were in such a condition that I could store those.

Q. What were they? A. They were beds.

BY THE VICE CHANCELLOR:

Q. Beds and bedding? A. No, no bedding, just beds.

20 BY MR. WALSCHEID:

Q. And were they beds of any peculiar construction? A. Brass beds—metal beds.

Q. Well, any further peculiarity, as to the number of pieces? A. That I don't remember just now.

THE VICE CHANCELLOR: Why do I have to bother with all this?

30 MR. WALSCHEID: I want to identify them.

THE VICE CHANCELLOR: Well, that identifies them—metallic beds were the first things he got into the house.

Q. When you purchased, or agreed to purchase from Mr. Gulden these goods, did you make your arrangements at one time for the purchase, or at different times?

40 THE VICE CHANCELLOR: Did you buy them all at once, or at different occasions?

August W. Lucus—Cross.

A. On different occasions. The principal part I ordered about the middle of July, in that neighborhood; and as the hotel was going on and being finished I bought other things which I was in need of, putting them in these different rooms and places.

Q. Now, what were terms upon which these goods were supposed to be sold to you by Mr. Gulden? A. They were supposed to be cash. 10

Q. When you signed this mortgage, Exhibit P. 1—you have seen it, haven't you? A. I haven't seen it.

(The mortgage Exhibit P. 1 is shown the witness).

Q. When you signed this mortgage, which is marked Exhibit P. 1, all the goods which are therein enumerated had then been delivered to you? 20

MR. GARRISON: I object to that as leading.

(Objection sustained).

Q. When you signed this mortgage, which is marked Exhibit P. 1, had all the goods which are enumerated in the schedule of that mortgage been delivered to you? A. They had. 30

CROSS EXAMINATION BY MR. GARRISON:

Q. The cafe was opened in the latter part of June, or the first part of July, was it not, 1909? A. No, sir.

Q. You received beer and liquors from Wessels or the Berghoff Brewing Company? A. The first part of August, yes.

Q. The latter part of July? A. That was at Liberty and Bergenline Avenue cafe. 40

August W. Lucus—Cross.

Q. These negotiations with Gulden for the furniture were in June? A. They were in July.

THE VICE CHANCELLOR: This man says the middle of July.

10 MR. WALSCHEID: I desire to offer that list in evidence at this time as a list of the goods which were delivered, showing the first date of delivery, and that the goods were delivered subsequent to that; and as being a complete list, that is, as being the same list of goods as is found in the chattel mortgage, subject to any correction of any error that Mr. Garrison may find in it.

20 MR. GARRISON: I consent that it go in as a duplicate list of the chattels mentioned in the chattel mortgage, upon verification, but not as a list of the dates upon which the goods were delivered.

30 THE VICE CHANCELLOR: No one has testified to that. He says (that is the book-keeper) that those are the dates on which those goods were received in Gulden's store from the persons that Gulden bought them from; he does not pretend to say that that shows the dates of the deliveries to Lucus.

40 MR. GARRISON: Well, as showing the goods as covered by the chattel mortgage; I will admit that; and I will admit also that on that paper the young man put the dates when the goods got into Gulden's store; but I will not admit it as showing the dates that the stuff got into Lucus's hotel, because that has not been proven.

Frederick E. Grod—Direct.

FREDERICK E. GROD, sworn.

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Where do you live? A. 611 Main Street, North Bergen.

Q. In whose employ are you? A. Mr. William Gulden's.

Q. Were you in his employ in the summer of 1909? A. Yes, sir. 10

Q. I show you a paper marked Exhibit P. 1, and ask you whether that paper ever came into your possession? A. Yes, sir.

Q. Can you tell us when it came into your possession? A. I cannot tell you the exact date, no, sir.

Q. Can you tell us the day of the week upon which it came into your possession? 20

MR. GARRISON: I object; I do not see how this is relevant at all.

THE VICE CHANCELLOR: I overrule the objection. It may be very relevant.

A. I am not sure whether it was Saturday or Monday.

Q. You are not sure whether it was Saturday or Monday? A. No, sir. 30

BY THE VICE CHANCELLOR:

Q. What did you do with the paper when you got it? A. I took it down to the Court House, after some time had elapsed.

BY MR. WALSCHEID:

Q. Did you take it down on the day upon which you received it?

MR. GARRISON: I object to this; that is 40

Frederick E. Grod—Direct.

a very material point, and I do not want the witness to be led.

THE VICE CHANCELLOR: How would you suggest that the answer to that question should be elicited from the witness?

MR. GARRISON: Ask him when he took it down.

10 BY THE VICE CHANCELLOR:

Q. When, with respect to when you got it, did you take it down? A. On Tuesday.

Q. When, with respect to when you got it, did you take it down? A. On a day or two following after I got it.

BY MR. WALSCHEID:

Q. And why did you not take it down sooner?

20 A. Well, on Monday I may have been in the northern part of the County, that is, in the northern part of North Hudson and West Hoboken, and it was a very busy day for me, and I waited until the following day, Tuesday, when I would be down to Jersey City, to take it into the Court House.

BY THE VICE CHANCELLOR:

30 Q. Did you take it in yourself, personally? A. Yes, sir.

Q. Where did you leave it? A. At the Register's Office.

Q. About what time of day did you leave it there? A. I should judge about twelve o'clock; that is generally the time I get around on that day.

Q. That was Tuesday? A. Yes, sir.

40 BY MR. WALSCHEID:

Q. When it was given to you, were any in-

Henry J. Hines—Direct.

structions given to you as to taking it for record? A. No, sir.

MR. GARRISON: I object. That cannot be material.

THE VICE CHANCELLOR: He says "No, sir."

MR. GARRISON: I withdraw the objection. 10

MR. WALSCHEID: I withdraw the question.

THE VICE CHANCELLOR: I will deny both motions, the motion to withdraw the question and the motion to withdraw the answer. Let the question and answer both stand.

No cross examination. 20

HENRY J. HINES, recalled.

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Do you know who gave to Mr. Grod this mortgage? A. I did.

Q. Do you know when you gave it to him, as to the day of the week? A. I couldn't say whether it was Saturday or Monday morning. 30
You see, he is out on the road all day, and he gets in Saturday nights.

Q. Did you give him any instructions as to what he was going to do with it?

THE VICE CHANCELLOR: What are you going to do—contradict your own witness?

MR. WALSCHEID: No, sir.

A. Just to file it. 40

Henry J. Hines—Direct.

Q. Mr. Hines, can you tell us what the total amount of the bill for these goods was, that Mr. Lucus purchased from Mr. Gulden?

THE VICE CHANCELLOR: Yes, or no—can you, or can you not?

A. Not the exact amount.

10 Q. Can you by refreshing your memory from this statement (showing the witness a paper)?

A. Yes, sir—\$1453.23.

Q. That was the total bill? A. Yes, sir.

Q. Now, can you tell us what payments were made on account of that bill, and the dates? A. There was a payment on August 6th, 1909, of \$500; a payment on October 2nd of \$100; December 28th, \$25; January, 29th, 1910, \$25; March 4th, \$25; April 12th, \$25; May 28th, \$25.

20 Q. And all those \$25 payments were made on account of this chattel mortgage? A. Yes, sir.

Q. So that at the time when the mortgage was made \$600 had been paid on account? A. Yes, sir.

No cross examination

The Complainant Rests.

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James O'Neill—Direct.

THE CASE FOR THE DEFENDANTS.

JAMES O'NEILL, sworn.

DIRECT EXAMINATION BY MR. GARRISON:

Q. Where do you live? A. 500 Third Street, Hoboken.

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MR. GARRISON: I want to prove by this witness, and offer the records in an attachment suit in the Hudson County Circuit Court of *Eimrich R. Wessels v. August W. Lucas*; and all the papers filed in that suit in the County Clerk's Office; and also all the papers filed in the suit of *Eimrich R. Wessels and Hugh J. Larkins, partners, v. August W. Lucas*, in the Hudson County Circuit Court.

20

MR. WALSCHEID: No objection.

THE VICE CHANCELLOR: The papers in both of those suits may be placed in evidence, and certified copies may be used for the originals, if it is necessary for us to have any copies. In the case of *Eimrich R. Wessels and Hugh J. Larkins v. August W. Lucas* the summons is tested on the 27th of June, 1910. It is a suit, according to the bill of particulars, upon a note for \$100, dated April 6, 1910, at one month after date, signed by Lucas; the next is a check for \$15. dated April 25, 1910; the third is a check for \$83., dated April , 1910, each signed by Lucas, payable to Wessels & Larkins. The Sheriff's return of service on Lucas is on the 28th of June, 1910.

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In the other suit the writ of attachment

James O'Neill—Direct.

is tested on the 19th of July, 1910, by Wessels against Lucus; and attached thereto is a copy by the sheriff dated the 20th of July, 1910. The affidavit of indebtedness seems to be for \$2,230.63. Then, on the 18th of August, 1910, there is a rule appointing Dougal Herr, Auditor. Is that Auditor a party to this suit?

10

MR. GARRISON: No.

THE VICE CHANCELLOR: What right has anybody got to recover the money, except the Auditor, Mr. Garrison? No one else has a right to recover that money but the Auditor, has he?

MR. GARRISON: No, I guess not. I had gone on the theory that the moneys belonged to the Berghoff Brewing Company.

20

THE VICE CHANCELLOR: How did they get it? It belongs to Wessels.

MR. GARRISON: I mean to Wessels.

THE VICE CHANCELLOR: It don't belong to Wessels until the Auditor collects it and hands it over to him. Anybody that paid Wessels would do so at their peril. Here is an Auditor appointed by the Court whose business it was to collect that money.

30

MR. GARRISON: I move now to amend the answer and cross bill, for the purpose of making Dougal Herr, Auditor in Attachment, a party to this suit.

MR. WALSCHEID: No objection.

THE VICE CHANCELLOR: Such amendment may be made. It will have to be actually made. It is a purely technical detail, but of course it will have to be

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James H. Cullen—Direct.

done that way. Do you also want to obtain from the Sheriff and put in proof, that execution in the suit of *Wessels & Larkins v. Lucas*?

MR. GARRISON: Yes, sir.

MR. WALSCHEID: There is no objection. I would like to state what the claim in attachment was founded on—are you going to prove that? 10

MR. GARRISON: Yes, I am going to prove that.

No cross examination

JAMES H. CULLEN, sworn.

MR. GARRISON: It is admitted that this witness is from the Register's Office, and has the books with him, and produces the books, and the following entries from the books are offered in evidence, not objected to, and admitted: 20

Book 272 of Chattel Mortgages, page 555, shows a chattel mortgage, *August W. Lucas v. Berghoff Brewing Company*, dated January 19, 1910, for the sum of \$905, covering certain goods and chattels and leasehold interest in the schedule annexed to the mortgage, and situated in the Hudson Hotel, conditioned upon the payment to the party of the second part, his successors or assigns, of the sum of Nine hundred and five dollars, as evidenced by twenty six promissory notes, made by the said part of the first part to the order of the party of the second part, twenty five of said notes being each for \$35.00, and one 30 40

James H. Cullen—Direct.

of said notes being for \$30.00, all bearing even date herewith, the first of said notes being payable on or before November 12, 1914, and the remainder each payable monthly thereafter until the full amount of all of said notes are paid. And that, in case default shall be made in the payment of the said sum above mentioned, or any part thereof, or any of said notes, or in case said goods, chattels, etc., shall be levied on, etc., or the property removed or attempted to be removed, then an authorized entry into possession and sale by the party of the second part. The mortgage is dated the 19th day of January, 1910, at five o'clock, P. M., in the presence of Robert S. Hudspeth. It schedules all the furniture in each of the thirty one rooms of the said Hudson Hotel, consisting of 1 brass bedstead including mattress, pillows, blankets, 1 dresser, 1 washstand, 1 rocker, 1 chair, 1 large rug, 24 tables, 96 chairs and 1 sideboard being in the dining room of said hotel; 1 desk, 1 safe, being in the office of said hotel; and all other household furniture and effects, and all contained and being in said hotel, situate at 413 and 417 Lewis Street, Union Hill, New Jersey.

The affidavit is as follows:

"Eimrich R. Wessels, agent for the mortgagee in the foregoing mortgage named, being duly sworn on his oath, says, that the true consideration of said mortgage is as follows, namely, the just and full sum of Nine hundred and five dollars, being moneys loaned and advanced by said mortgagee to said mortgagor for the purpose

James H. Cullen—Direct.

of his hotel business, No. 413-17 Lewis Street, Union Hill, New Jersey, the sum of nine hundred and five dollars having been heretofore advanced, and the sum of eight hundred dollars this day advanced by said Berghoff Brewing Company to said Lucas. And deponent further says that there is due on said mortgage the sum of nine hundred and five dollars beside lawful interest thereon from the date hereof." Taken before R. S. Hudspeth, Master in Chancery of N. J., on the 19th of January, 1910; acknowledged before Robert S. Hudspeth on the same date, and recorded on the next day at 3 o'clock and 8 minutes, P. M. 10

Also another chattel mortgage, in the same Liber of Chattel mortgages, page 558, by August W. Lucas to Berghoff Brewing Company, dated January 19, 1910, to secure the sum of Seven hundred dollars, covering all the goods and chattels mentioned in the schedule, in the hotel premises known as No. 413-417 Lewis Street, Union Hill, N. J. ("Hudson Hotel") upon condition that if the said party of the first part shall and do well and truly pay the said party of the second part, its successors and assigns, the just and full sum of seven hundred dollars, as evidenced by twenty promissory notes made by the said party of the first part to the order of the said party of the second part, the first being made payable on March 12, 1913, and each for the sum of \$35.00, and payable monthly, then these presents shall be void. With the same default clause as the other mortgage. The schedule is "All the 20
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James H. Cullen—Direct.

10 furniture in each of the thirty-one rooms of the said Hudson Hotel, consisting of 1 brass bedstead, complete, including mattress, pillows, blankets, etc., 1 dresser; 1 washstand, complete; 1 rocker; 1 chair; 1 large rug; 24 tables, 96 chairs and 1 side-board being in the dining room of said hotel; 1 desk and 1 safe being in the office of said hotel; all contained and being in the said hotel situate at No. 413-417 Lewis Street, Union Hill, N. J.”

20 The affidavit is executed January 19, 1910, and is as follows: “Eimrich R. Wessels, agent for the Mortgagee in the foregoing mortgage named, being duly sworn on his oath says, that the true consideration of the said mortgage is as follows, viz., the just and full sum of seven hundred dollars, being moneys loaned and advanced by said mortgagee to said mortgagor for the purposes of his said hotel business, No. 413-417 Lewis Street, Union Hill, N. J., the said seven hundred dollars having been heretofore actually advanced by the Berghoff Brewing Company to the said Lucas; and deponent further says that there is due on the said mortgage the sum of seven hundred dollars, besides lawful interest thereon from the day of 1909.”

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Acknowledged before R. S. Hudspeth on the 19th day of January, 1910. Received in the Register's Office January 20th, at 3:08 P. M., 1910.

40 I also offer a mortgage made by August W. Lucas to Berghoff Brewing Company, dated July 13th, 1909. Received in the Office of the Register of Hudson County

Eimrich R. Wessels—Direct.

on the 20th day of July, 1909, at 11:54 o'clock in the forenoon; recorded in Liber 271, page 41.

(Admitted without objection and marked Exhibit C. G-1.)

THE VICE CHANCELLOR: I have sent for a calendar, and I find that in November, 1909, the 26th came on Friday.

10

EIMRICH R. WESSELS, sworn.

DIRECT EXAMINATION BY MR. GARRISON:

Q. Where do you live? A. 97 Barrow Street, Jersey City.

Q. You are the same Wessels mentioned in the attachment suit and in the suit of Wessels & Larkins v. Lucas in this case? A. I am.

20

Q. You have been the agent of the Berghoff Brewing Company for how many years? A. Seven years.

Q. And are such agent at the present time? A. Yes, sir.

Q. Did you have charge of the transactions between the Berghoff Brewing Company and August W. Lucas in the summer of 1909? A. No.

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BY THE VICE CHANCELLOR:

Q. At any time? A. Yes. An application for the loan was made to me personally, or through my agent, and on the 4th of July I made a trip to California and was gone all through the month of July; I got back the beginning of August.

BY MR. GARRISON:

Q. And in the Summer of 1909, and at the present time, you are the agent of the Berghoff

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Eimrich R. Wessels—Direct.

Brewing Company in Jersey City, for Hudson County? A. I am.

Q. Do you know how much is due at the present time on the mortgage of fifteen hundred dollars made by August W. Lucas to the Berghoff Brewing Company, dated July 13, 1909? A. Only from the records that have been sent to me from
10 the Berghoff Brewing Company.

Q. How much is due at the present time? A. \$2875, and interest.

BY THE VICE CHANCELLOR:

Q. On that \$1500 mortgage? A. Oh, \$1270.

Q. With any interest? A. Yes.

Q. From when? A. From the date of the issuing of the mortgage.

20 BY MR. GARRISON:

Q. I show you a package of promissory notes made by August W. Lucas to the Berghoff Brewing Company, and ask you whether they include the unpaid notes mentioned in this mortgage of \$1500? A. I cannot say; I did not handle the notes, so I cannot say that.

30 MR. WALSCHEID: I am willing to allow Mr. Garrison to offer the notes in any shape he wants to, subject to correction.

THE VICE CHANCELLOR: Mr. Garrison now offers in evidence the notes which were not paid and which were secured by the first mortgage. Mr. Walscheid states that he has no objection.

MR. WALSCHEID: Well, I don't know whether they are the first mortgage, or whether they cover all three of the mortgages.

40 THE VICE CHANCELLOR: Strike out all that I said, then.

Eimrich R. Wessels—Direct.

MR. GARRISON: These notes are dated July 13, 1909, and January 19, 1910, and do cover all three mortgages.

Q. What amount was due on this \$1500 mortgage on the day on which it was foreclosed?

THE VICE CHANCELLOR: There was no testimony that it ever was foreclosed.

MR. KAPPES: I object to it.

10

Q. Do you know whether or not there was any default made on this \$1500 mortgage? A. Only from the information that I received from Fort Wayne.

BY THE VICE CHANCELLOR:

Q. What is Fort Wayne? A. The headquarters of the Berghoff Brewing Company.

20

BY MR. GARRISON:

Q. Do you know whether or not this \$1500 mortgage was foreclosed?

THE VICE CHANCELLOR: Have you any personal knowledge of it?

A. Through the office of Hudspeth & Lane.

Q. That is all you know? A. That is all.

THE VICE CHANCELLOR: He only knows it through your office, Mr. Garrison, or through the office of Hudspeth & Lane.

30

MR. GARRISON: I now offer in evidence all of the notes dated July 13, 1909, which were secured by the mortgage of that date.

(The notes are not objected to, and are admitted, and are marked in one package Exhibit C. G-2.)

Q. Do you know how much was due on the \$1500 mortgage on June 26th, 1910?

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Eimrich R. Wessels—Direct.

THE VICE CHANCELLOR: Yes, or no.

A. If you ask me "Yes" or "No," I will say no, I don't. I know from the records that I got from Fort Wayne. I did not do the bookkeeping out there.

Q. Do you know whether or not the \$1500 mortgage was foreclosed for non-payment?

10

THE VICE CHANCELLOR: He says all he knows is what his attorneys, Hudspeth & Lane, reported to him. That is what he has said two or three times.

A. Yes, sir. I am not familiar with the legal terms. The mortgage was foreclosed through your office, they told me. Now, you ask me for personal knowledge—I don't know.

20

THE VICE CHANCELLOR: Then, I suppose, Mr. Garrison, that somebody from your office would be the best person to testify to that. This gentleman did not do it, and anything he would say would be the rank-est kind of hearsay.

Q. Do you know how much is due on the mortgage of \$700 made by August W. Lucas to the Berghoff Brewing Company and dated January 19, 1910? A. No more than I did on the others—

30

only from the information I got from Fort Wayne, the statements that they sent me and the correspondence that I got from them.

THE VICE CHANCELLOR: Haven't you got the notes there, Mr. Garrison?

MR. GARRISON: I offer the notes.

MR. WALSCHEID: I have no objection.

THE VICE CHANCELLOR: Mr. Garrison now offers the notes dated January 19, 1910, and which the mortgage of that date

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Eimrich R. Wessels—Direct.

was given to secure; and also the notes for which the \$905 mortgage was given to secure on January 19, 1910.

(Admitted without objection and marked as one package Exhibit C. G-3.)

Q. Have you a statement which shows the amount that was due on the three mortgages on January 26, 1910? A. I have; you will find it 10 right there on the ledger.

Q. Refer to that statement, will you, and state what was due on each of those three mortgages on January 20, 1910? A. On the total amount there was \$2875; it is not subdivided into different mortgages.

Q. I asked you how much was due on each of the three mortgages?

THE VICE CHANCELLOR: He says he can- 20 not tell you.

A. Well, there was \$230 paid on the \$1500 mortgage.

Q. How much has been paid on the other mortgage? A. Nothing. The notes run consecutively, and the notes under the other mortgage would not have been due.

Q. Were you present at the sale under the foreclosure of these three mortgages? A. I was. 30

Q. Did you bid on that property? A. I did.

BY THE VICE CHANCELLOR:

Q. You bought it in for the Berghoff Company for seven hundred and some odd dollars, at the Receiver's sale? A. I don't remember the figures.

BY MR. GARRISON:

Q. Were you present when Charles H. Weller, as attorney in fact for the Berghoff Brewing Com- 40

Eimrich R. Wessels—Cross.

pany, foreclosed these three mortgages? A. I was.

Q. Did you bid at that sale? A. I did.

BY THE VICE CHANCELLOR:

Q. How much did you bid? A. I don't remember.

10 Q. Did you get the property? A. I did.

Q. Was it the same property that you are now fighting over here? A. It was everything that was under the attachment; I don't remember just what it was—or under the mortgage, these mortgage papers, whatever they called for; I am not familiar with the details.

Q. Who bought at that sale? A. You mean who did the bidding?

20 Q. Who actually got the property knocked down to them? A. Wessels & Larkins.

Q. How much was it? A. The amount I don't remember.

Q. Well, give me some idea? A. I haven't the slightest idea.

BY MR. WALSCHEID:

Q. Seven hundred and some odd dollars? A. No, it was only a nominal bid. I think Mr. Weller made the bid, if I am not mistaken.

30

BY THE VICE CHANCELLOR:

Q. When was that sale that you went to and did this bidding at? A. I don't know.

Q. Did you go to the sale which Mr. Leuly had? A. Yes.

Q. Was this other sale before or after the Leuly sale? A. Before that.

40 CROSS EXAMINATION BY MR. WALSCHEID:

Q. Mr. Wessels, were you present when the money was paid under the first mortgage?

Eimrich R. Wessels—Cross.

THE VICE CHANCELLOR: Paid from whom to whom?

MR. WALSCHEID: Paid to Lucas.

A. No, I was not; I was in California.

Q. Were you present when any money was paid mortgages were drawn.

Q. What moneys? A. When the last two to Lucas? A. Yes. 10

Q. The January 19th mortgages? A. Yes, sir.

Q. And how much money did you see paid to him then? A. I don't remember. One mortgage was for nine hundred and the other—

Q. (Interrupting.) But it was not the amount set forth in those two mortgages, you mean—that he did not get that amount of money at that time? A. That I won't be positive of, either. That may have been to cover a defaulted note included in the full amount of the mortgage. 20

BY THE VICE CHANCELLOR:

Q. One mortgage is for \$700 and the other is for \$905? A. Yes.

Q. How much of that amount of money did you see passed over to Lucas at that time? A. \$700—I know of \$700.

BY MR. WALSCHEID: 30

Q. In one lump sum? A. Yes.

Q. You saw that paid? A. Yes.

BY THE VICE CHANCELLOR:

Q. What about the \$905? A. That I don't remember about. \$700 was advanced by the Berg-hoff Brewing Company, and he had their check

BY MR. WALSCHEID:

Q. Does that statement show the \$700 item? 40
A. No, it does not.

Eimrich R. Wessels—Cross.

THE VICE CHANCELLOR: Let me look at the statement.

(Statement handed the Court.)

THE WITNES: They sent that on from the Brewery, and Mr. Flemming would be in a position to give the exact data there that I cannot give. I have to take the exact figures that they sent on to me from
 10 Fort Wayne.

Q. Mr. Wessels, you made some notes of your own in connection with this matter, did you not?

A. Yes, sir.

Q. And you have those notes before you, have you? A. Yes.

Q. Will you look at them and see upon what day you purchased this property? A. I have no
 20 record of it.

Q. That is your writing, is it not, "My record shows, August 25, 1910, \$700 paid for mortgaged property?"

THE VICE CHANCELLOR: Is that what you paid Leuly?

A. No, sir; we paid Leuly \$704, I think.

Q. Well, you have "\$700" there? A. Well, that may be that was a memorandum I took from
 30 the—

THE VICE CHANCELLOR: (Interrupting.) Well, what date was the Leuly sale?

MR. GARRISON: It was in August. I think the date I have here; it was August 25—\$736.

THE VICE CHANCELLOR: Is not that the same date?

THE WITNESS: Yes, sir.
 40

Charles Weller—Direct.

Q. Do you remember what day you went into possession of this property originally?

MR. GARRISON: I object to that as not proper cross examination.

THE VICE CHANCELLOR: I sustain the objection, unless you want to show that they got it under that first sale.

MR. WALSCHEID: No, I am going to show that they did not get it under the first sale. 10

THE VICE CHANCELLOR: He has not said they got any possession under that first sale. No, I won't let you do it.

(There is admitted by consent assignment from Berghoff Brewing Company to Eimerich R. Wessels, dated January 16, 1910.)

BY MR. GARRISON: 20

Q. Since July 16th, 1910, have you received any moneys from August W. Lucas? A. I have not.

CHARLES WELLER, sworn.

DIRECT EXAMINATION BY MR. GARRISON:

Q. Mr. Weller, how many years have you been connected with the office of Judge Hudspeth? 30

A. About ten years.

Q. And in June, 1910, did you have anything to do with three mortgages made to the Berghoff Brewing Company by August W. Lucas, one for \$1500, dated July 13, 1909, and two dated January 19th, 1910, for \$700 and \$905, respectively? A. Yes, sir.

Q. What did you do with those mortgages? A. I foreclosed the three mortgages.

Q. At the time you foreclosed them did you 40

Charles Weller—Direct.

make any memorandum on three envelopes? A. Yes, sir.

Q. Without referring to those envelopes, can you give the date when you foreclosed those mortgages? A. No, sir.

Q. Referring to those envelopes (handing the witness three envelopes) will you state what you did with reference to those three mortgages? A. Yes, sir; I foreclosed the \$700 mortgage on July 2nd, 1910, and it was bought in for \$30; the same day the \$905 mortgage was bought in for \$30; and on the same day the \$1500 was bought in for \$150.

Q. By whom were those properties bought in? A. By me.

BY THE VICE CHANCELLOR:

20 Q. Do you mean at the sale? A. Yes.

Q. Acting as bailiff? A. Acting as attorney in fact; yes, sir.

Q. And those were the amounts that were paid for the goods? A. Yes, sir.

BY MR. GARRISON:

Q. What did you do to foreclose those three mortgages, actually? A. At the sale?

30 Q. Tell me everything you did? A. Oh, well, I made a demand on Mr. Lucas for the different amounts of the mortgages, and he refused to pay. I then served him with notice of foreclosure, returnable on July 2nd, of the three mortgages, and posted notices in three different places around 413 Lewis Street, Union Hill.

BY THE VICE CHANCELLOR:

40 Q. Then what did you do? A. Then the date of the sale was on July 2nd, and they were sold on that day.

Charles Weller—Direct.

Q. Did you have any advertisement of sale?

A. Nothing in the paper; no, sir.

Q. I did not say anything about advertisement in a newspaper, I say did you have any advertisement of the sale? A. Posted notices.

BY MR. GARRISON:

Q. What are these papers I now hand you?

A. Those are the notices I posted in three different places. 10

Q. How many days before the sale did you post those notices? A. I posted the notices on the 27th of June, and the sale took place on July 2nd.

Q. And what occurred at the sale? A. Mr. Wessels appeared there, and Mr. Garrison, and I sold the goods mentioned in the mortgages, and they were sold at these different prices.

THE VICE CHANCELLOR: Is it conceded 20
that at that time these goods were actually
in the possession of the Receiver of this
Court?

MR. GARRISON: I will concede it if it is
the fact.

MR. KAPPES: I can tell you when the Re-
ceiver was appointed.

THE VICE CHANCELLOR: Is there not a
copy of the order here? 30

MR. WALSCHEID: Yes, I think there is.
The Receiver was appointed on the 25th
day of July, 1910, according to this copy
of the order.

MR. GARRISON: There was no restraint,
though, against this sale.

MR. KAPPES: There was restraint of the
sale.

THE VICE CHANCELLOR: Never mind; I
am not bothering about that. They were 40
actually in custodia legis at that time.

Charles Weller—Cross.

MR. GARRISON: I offer in evidence the notices that were posted.

(Admitted without objection, and marked Exhibit C. G-3.)

Q. I show you three papers and ask you what those three papers are? A. These are three bills of sale, which I signed, as attorney in fact, of
10 the goods I sold on that day.

MR. GARRISON: I offer these three bills of sale in evidence.

(Admitted without objection, and marked Exhibit C. G-4.)

CROSS EXAMINATION BY MR. WALSCHEID:

Q. Where did you post these notices of sale?

20 A. I gave one to Mr. Lucas—I gave him one, and I think I posted one on each corner of the street, and one in the middle of the block; I am not positive about that, but I think I did.

BY THE VICE CHANCELLOR:

Q. Well, are you positive that you posted three?

A. Yes, sir.

BY MR. WALSCHEID:

30 Q. You gave nobody else any notice of the sale? A. Only Mr. Lucas.

Q. And you also ran another sale about the same time, didn't you? A. I don't remember of any there.

Q. And you obtained this judgment upon which Sheriff Kelley levied an attempt to sell, also, for the Berghoff Brewery? A. I don't remember anything about that. This is the only sale I ever had—these three.

Albert H. Russell—Direct—Cross.

ALBERT H. RUSSELL, sworn.

DIRECT EXAMINATION BY MR. GARRISON:

Q. In July, 1909, what was your connection with the Berghoff Brewing Company? A. I was at that time Mr. Wessel's manager; I was manager for Mr. Wessels.

Q. And did you have anything to do, on or about July 13th, 1909, with a transaction between the Berghoff Brewing Company and August W. Lucas in reference to a chattel mortgage for \$1,500? 10

THE VICE CHANCELLOR: Yes, or no.

A. Yes, sir.

Q. What did you do? A. I went to Mr. Hudspeth's office with Mr. Lucas, and saw Mr. Hudspeth give him \$1500. 20

Q. And did you see Lucas execute the mortgage then? A. Yes, sir.

CROSS EXAMINATION BY MR. WALSCHEID:

Q. In one sum, was that paid there? A. Yes, sir; in one sum, on the 13th day of July, 1909.

Q. You saw it paid how? A. By check.

BY THE VICE CHANCELLOR: 30

Q. Judge Hudspeth's check, do you mean? A. Well, I couldn't say, but I think it was a Brewery check, from the Brewery.

BY MR. WALSCHEID:

Q. Did you read the check? A. No; I saw the amount.

Q. Are you sure it was \$1500? A. I am positive of that.

Q. You are not sure of that? A. Oh, yes, I am. 40

Albert H. Russell—Cross.

Q. Don't you know that all that Mr. Lucas received on that first day was the sum of \$700—\$750? A. Oh, he got \$1500 at that time.

Q. On the day of the mortgage don't you know that all that he received was the sum of \$750 in check? A. No, sir; I saw a check for \$1500.

10 Q. And that the balance was to be paid some time thereafter? A. I don't think I am wrong on that.

Q. Well, did you see the chattel mortgage drawn—were you there when the chattel mortgage was drawn? A. Yes, sir; I was there.

20 Q. Don't you know that the chattel mortgage itself speaks of the balance "to be paid thereafter,"—to be paid on August 1st, 1909 (showing the witness the chattel mortgage at the place indicated in Mr. Hudspeth's writing)? A. I am positive that "\$1500" is what I saw.

Q. You are positive that you saw a check, is not that it? A. A check.

Q. But you are not positive as to the amount? A. Really I am.

Q. You think you are? A. I think I am, yes, sir; it was \$1,500.

30 MR. WALSCHEID: The affidavit contains a clause interlined underneath in Mr. Hudspeth's writing "\$1500 having been advanced, and the balance to be advanced on or before August 1st, 1909."

THE VICE CHANCELLOR: I haven't anything to do with that. What about it? You are cross-examining this witness, not arguing the case.

40 Q. You signed that affidavit (showing the witness affidavit)? A. Yes, sir.

Q. That is your signature? A. Yes, sir.

Albert H. Russell—Cross.

Q. What does the language mean which in interlined there, that there is a balance to be paid on or before August 1st, 1909? That is your affidavit.

THE VICE CHANCELLOR: Does not that affidavit say the \$1500 has been advanced to Mr. Lucas, and the balance is to be advanced on August 1st, 1909? 10

A. That is what it says there; yes, sir.

THE VICE CHANCELLOR: All right; now, what does that mean? What did you mean when you used that language in the affidavit? If you were to get a mortgage for \$1500 for advancing \$1500, what balance were you to advance on the first of August?

A. \$750, according to that. 20

THE VICE CHANCELLOR: Where does that say so? Where does that say that \$750 is to be advanced to anybody at any time, under any circumstances? Of course you don't know, do you?

A. Well, now, there is where I read that "\$1,500" (indicating).

THE VICE CHANCELLOR: But you don't know what that means? 30

A. No, I don't actually know what that means.

Q. Do you know what this latter portion means, where you say "besides lawful interest thereon from the 13th day of July, 1909, on said sum of \$1500, and interest on balance from date of actual advancement"? Do you know what that means? A. No, I couldn't tell you what that means.

Q. Were those interlineations that I have just read to you put in there because at that time the 40

Robert S. Hudspeth—Direct.

actual sum of \$1500 was not paid? A. Well, I couldn't say whether it was so, or not, but I should think it was so.

Q. You think now that is so? A. I think that was so, yes.

BY THE VICE CHANCELLOR:

10 Q. You mean you think the \$1500 was not advanced all at once? A. Yes, sir; I think is was.

THE VICE CHANCELLOR: (To Mr. Walcheid.) Doesn't that record show there were two checks for \$750?

MR. WALSCHEID: There was one check for \$750, the first time, and some time later on a second check for \$750 was paid, yes.

20 (The assignment from the Berghoff Brewing Company to Eimerich R. Wessels is marked Exhibit C. G-9.)

ROBERT S. HUDSPETH, Esq., sworn.

DIRECT EXAMINATION BY MR. GARRISON:

Q. Judge Hudspeth, are you a member of the Bar of this State, and were you counsel for the Berghoff Brewing Company in July, 1909? A.
30 Yes.

Q. What did you have to do with the chattel mortgage for \$1500 between August W. Lucas and the Berghoff Brewing Company, which has been offered in evidence in this suit? A. Why, it was something unusual for me to take hold of a brewery mortgage matter, but they insisted that I should give it my attention, and we were to get a mortgage on certain furniture in that place; and I wanted an inventory; there was some
40 little delay about it, and Mr. Lucas was very

Robert S. Hudspeth—Direct.

insistent on getting his money, and my recollection now is that I got a check for fifteen hundred dollars through the last witness, and I gave Mr. Lucas a portion of it on one day, on his insistent demand. He had payments to make, as I recall, and a day or so afterwards I gave him the balance. I could now recall not from recollection just how long. That is my impression.

Q. Was the full amount of \$1500 paid before July 13th, 1909? A. What date is the mortgage? 10

Q. It is dated July 13th, 1909. A. I could not say from memory. The checks will show that.

Q. From whom did you receive the schedule in that mortgage? A. My recollection is that there were two numbers to this place, one was where the saloon or bar was, and the other was where the hotel was, and I was somewhat confused, and suggested to Mr. Lucas and a representative of the Berghoff Brewery that I wanted a schedule. 20
The bar fixtures, I do not think, were to be covered. They were in one number, and the hotel, where the bedroom furniture was, was in another number. That is my recollection. And I think I got Mr. Messmer, who was connected with the Berghoff Brewery, and I think, and I think he went up with Mr. Lucas, and some other representative of the Brewery (I think a man named Flemming) and they went away and came back 30
again, and that inventory, or whatever it is, was produced. Now, I did not prepare that inventory, but whoever produced it, produced it as evidence of the goods and chattels in each room in that place as then existing.

THE VICE CHANCELLOR: In July of 1909?

THE WITNESS: That is my recollection at the present time.

Robert S. Hudspeth—Cross.

Q. What did you have to do with the mortgage of \$700 between the same parties, dated January 19th, 1910, which is offered in evidence? A. I think that was the second transaction. I think Mr. Wessels brought that in.

BY THE VICE CHANCELLOR:

10 Q. What did you have to do with it? A. Why, I took the affidavit, I guess.

Q. Well, did you see the money advanced? A. That I cannot remember. I don't know whether that money was paid by me, by our check (or the check of ourselves, or our firm), or by Mr. Wessels by a Brewery check.

20 Q. Now, what about the \$905 mortgage of the same date, January 19th, 1910? A. My present impression is that everyone of these matters were closed up in my office.

30 Q. I know, but do you know anything about it? A. No; I cannot say positively. I remember particularly that I was unusually busy at the time that first mortgage was drawn up, and I can see by the affidavit there that I have hurriedly interlined something which is rather incoherent. My impression is that I held up for a day or so some of that money in order to be sure of my security. That is my impression.

CROSS EXAMINATION BY MR. WALSCHEID:

Q. Judge, did you draw this affidavit that is before you? Ain't your own handwriting in it? A. No.

40 Q. Listen to this language "The sum of \$1500 being money loaned and advanced by the said mortgagees to the said mortgagor for the purposes of his said hotel business,"—now, you know, don't you, that on the 13th day of July of that

Robert S. Hudspeth—Cross.

year this hotel was just about being fitted up? A. Now, if you ask for my impression, my impression is that I was led to understand that the place was all fitted up, and Mr. Lucas was urgent; in view of the fact that he had got credit, he wanted to get money to pay for this furniture. All the furniture was there. That is my impression.

THE VICE CHANCELLOR: It was your impression? 10

A. Yes. And, now, if you want my impression, I want to give there now the reason for that "\$1,500" being there in that Delphic form: It was that I had the fifteen hundred dollars, but I wanted to be sure, before Mr. Lucas got the whole fifteen hundred dollars, that our security was all right; and I evidently gave him seven hundred and fifty and some odd dollars, because I remember he was very persistent, very, very insistent, and personally demanded this money. He had to pay something, and I had to let him have the seven hundred and fifty, or whatever it is. 20

Q. Is it not your recollection that that mortgage was made for the purpose of raising the money wherewith to pay for the furniture in this hotel? A. No, he had bills to pay, and he had to pay something to this man. I said to him— 30

Q. What man, the furniture man? A. The furniture man. I said, "How did you get this furniture up there, if it is new?" "Well, I got tick for it, I got credit for it; it is in there; it is turned over to me." Well, I wanted to be sure that it was turned over to him.

Q. Well, that is your recollection? A. Well, you asked me for my impression.

THE VICE CHANCELLOR: Yes, you asked him for his impression. 40

Robert S. Hudspeth—Cross.

Q. Don't you remember this, Judge, that all that Lucas had at that time when he came to you was a lease of these premises and the liquor license? A. If I give you my impression now as to what I thought then, I would say that I thought everything was there, and that we were getting security as per that schedule; otherwise I would not have let him have the money. What
 10 good was the schedule to me unless the stuff was there?

Q. If you were getting security as per this schedule, why didn't you get a schedule which actually included all the items which were in this hotel? A. I sent for them, Mr. Walscheid, and the gentlemen that represented the Brewery and represented Mr. Wessels were satisfied with them, and I was satisfied with them.

20 THE VICE CHANCELLOR: You do not mean Mr. Wessels?

THE WITNESS: That represented Mr. Wessels—this gentleman that brought me the fifteen hundred dollar check.

Q. You say you paid one portion on the day the mortgage was made, and another portion some-time after—is it not the fact that when you paid the second portion on the \$1500 it was at the
 30 time when Mr. Lucas was forced to pay rent—do you remember anything about that? A. No, I don't remember any such thing. I remember Mr. Lucas coming into my office and giving the people the mischief because he could not get the balance of the money, and that if he could not get it he did not know what he was going to do; but by that time I had given instructions to give him the balance of it. It was only a day or so after
 40 the first payment.

Robert S. Hudspeth—Cross.

Q. Have you the checks by which those payments were made? A. I think I have. I think those checks were made from my own account, and I deposited the Brewery check. That is my impression.

THE VICE CHANCELLOR: Well, is there any denial that the \$1500 was paid?

MR. WALSCHEID: There is no denial of 10 that, but our understanding is that the \$750 was paid after the 26th, and after our mortgage was on; so that when this mortgage was given it was merely a mortgage for \$750.

THE VICE CHANCELLOR: Well, your mortgage was not given until the 26th of November. Oh, I see your idea—it is that the \$750 mortgage was not given until 20 after November, 1909?

MR. WALSCHEID: That is my idea. I may be mistaken about that.

THE VICE CHANCELLOR: Nobody has suggested that.

THE WITNESS: There is no question, Mr. Walscheid, that the two payments were made within a few days of each other—no question about it at all.

30

40

Eimrich R. Wessels—Direct.

EIMRICH R. WESSELS, recalled.

DIRECT EXAMINATION BY MR. GARRISON:

Q. Mr. Wessels, did you see any money paid at the time of the execution of the mortgage for \$700 referred to in this case? A. Yes, sir.

10 Q. From whom to whom? And how much? A. From me to Judge Hudspeth; or the money was passed in Judge Hudspeth's office.

THE VICE CHANCELLOR: He has told all about that; the thing he did not know about was the \$905.

20 Q. In reference to the mortgage for \$905, I call your attention to the affidavit annexed to the mortgage, made by you, stating that the consideration of that mortgage was as follows: "The just and full sum of Nine hundred and five dollars, being money loaned and advanced by said mortgagee to the said mortgagor for the purposes of said hotel business, 413-417 Lewis Street, Union Hill, New Jersey, the sum of nine hundred and five dollars having been heretofore advanced, and the sum of eight hundred dollars this day advanced by the said Berghoff Brewing Company to the said Lucas"—does that refresh your memory as to the amount of cash that actually passed to Lucas on that day? A. Nothing beyond the affidavit. If I made that affidavit, it is right.

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Q. Was that affidavit true when you made it? A. Yes.

THE VICE CHANCELLOR: It does not mean anything, that is the trouble; because we don't know what he is talking about when he says "\$905 in addition to the \$800."

40 THE WITNESS: That don't read "eight hundred" and "nine hundred and five", it

Eimrich R. Wessels—Direct.

reads "eight hundred dollars" and "one hundred and five dollars."

The question as put by Mr. Garrison was repeated to the witness at the direction of the Court.

THE VICE CHANCELLOR: You realize, don't you, that Mr. Garrison did not read one word about "one hundred and five dol- 10
lars", after having heard it read over to you?

THE WITNESS: Yes.

THE VICE CHANCELLOR: Now, what you think is that that affidavit ought to have read "one hundred and five dollars having heretofore been advanced, and eight hundred dollars this day advanced",—that is the way you think the affidavit should have 20
read, to have made sense?

THE WITNESS: Yes, sir.

THE VICE CHANCELLOR: I agree with you, that that is the way it ought to have read to have made sense.

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Carlyle Garrison—Direct—Cross.

CARLYLE GARRISON, ESQ., SWORN.

DIRECT EXAMINATION BY MR. HUDSPETH:

Q. Mr. Garrison, are you connected with Mr. Hudspeth, who had charge of this Berghoff and Lucas matter? A. Yes.

10 Q. Were you present at the sale under the foreclosure of the three chattel mortgages mentioned by Mr. Weller? A. I was.

Q. Did you make an announcement at that sale, or at those sales? A. No, but I made an announcement at the time the Receiver, Albert Leuly, sold the chattels in this present suit.

Q. What was that? A. I announced "Take notice; that the subscriber, Eimrich R. Wessels—

20 Q. (Interrupting). Well, you read what was on this piece of paper (referring to a paper now in the hands of the witness)? A. Yes.

The paper referred to by the witness is offered in evidence, admitted without objection, and is marked Exhibit C, G, 10.

CROSS EXAMINATION BY MR. WALSCHEID:

30 Q. Was that sum for which the attachment was issued the total amount due? A. It was the amount due after allowing the amounts bid at the foreclosure of the three chattel mortgages. It may have included some other small items, but the bulk of it was the deficiency due under the three chattel mortgages that were foreclosed.

Q. You mean, I suppose, that it may have included items outside of the chattel mortgage proposition? A. Yes, but very few, if anything.

Robert S. Hudspeth—Direct.

ROBERT S. HUDSPETH, ESQ., recalled.

DIRECT EXAMINATION BY MR. GARRISON:

Q. Judge Hudspeth, I want to refer you to the affidavit of Eimrich R. Wessels, attached to the mortgage for \$905, and ask you if you can explain that statement as to the amount of moneys advanced? A. As I recall it, at the time that affidavit was made Mr. Wessels, on behalf of the Brewery, had advanced Mr. Lucas \$105, and on this particular day \$800 more, making the \$905. As I recall, there was a small amount advanced previous to the \$800, and I think it was one hundred and some odd dollars. 10

Q. Did the latter two mortgages, of \$700 and \$905 refer in any way to the same chattels mortgaged by the \$1500 mortgage, or were they three separate transactions? A. I understand they were all separate transactions: That is my recollection. 20

No cross examination.

The defendant rests.

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August W. Lucas—Direct.

COMPLAINANT'S REBUTTAL EVIDENCE.

AUGUST W. LUCAS, recalled:

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. At the time when you made this first mortgage, what property did you have at the Hudson
10 Hotel? A. None at all, sir.

Q. You had your lease hold interest? A. I had my lease and license.

Q. And when you applied for the mortgage, with whom did you deal for the mortgage of \$1500? A. A representative of the Brewery, sitting over there (indicating); I forget the gentleman's last name.

BY THE VICE CHANCELLOR:

20 Q. Russell? A. No, not Russell; the other gentleman.

Q. Mesmer? A. Mesmer.

BY MR. WALSCHEID:

Q. What did you tell him that you had and that you intended to mortgage? A. The license and the lease, the ten years lease of the property.

30 Q. And how did the list of furniture which appears on this mortgage get into the mortgage? A. Judge Hudspeth asked me, in his office, how I was going to furnish the place. The gentleman there, Mr. Mesmer, was with me at the time being; he knowed the conditions of the hotel, and he knowed that the note was not completed yet. I told him that that was the way the house was to be furnished, with beds, dressers, rocking chairs, chairs and carpets and rug on the floor of each room.

40 Q. That is, that that was the way you intended to furnish it? A. Yes.

August W. Lucas—Direct.

Q. Did you tell him anything about your contract for purchase, or where you were going to get the goods from? A. I think, if my memory is right, I told him that I had bought the stuff of Mr. Gulden, and the first \$750 which I got I wanted some to pay Mr. Gulden with, which I paid Mr. Gulden \$500 of the \$750.

Q. You told him you wanted that money to pay Mr. Gulden? A. Yes, sir. 10

Q. This hotel covers a frontal space of about sixty feet, does it, or seventy five feet? A. Sixty feet, with a fifteen foot driveway on the side.

Q. But the hotel itself is sixty feet wide? A. Yes.

Q. And the sleeping rooms run throughout the whole breadth of that sixty feet, do they not? A. Yes, sir. 20

Q. And the bar is where?

THE VICE CHANCELLOR: How is this relevant?

MR. WALSCHEID: Just in contradiction of what Mr. Hudspeth gave as his impression, that the bar was in one building and that the hotel sleeping rooms were in another building.

THE VICE CHANCELLOR: I consider that is an immaterial matter. Judge Hudspeth did not pretend to know anything about it; he gave us his impression. 30

Q. Now, how much money did you receive, all together, from the Berghoff Brewing Company? A. I received the \$750 on July 13th, 1909, in a check which I deposited.

THE VICE CHANCELLOR: He did not ask you that. When did you get the next money and how much was it? 40

August W. Lucas—Direct.

A. About a week or ten days afterwards I received the other \$750 from Judge Hudspeth.

THE VICE CHANCELLOR: Yes; now come down to the January 19th, 1910 transaction, what did you get then?

A. On January 19th I received a check again for seven hundred dollars. The next I received—
 10 I was indebted or back on the first notes of the first mortgage—and I received eight hundred dollars and three notes of thirty five dollars apiece, which made one hundred and five dollars, which the Brewery was to send me back again them notes.

THE VICE CHANCELLOR: On the first mortgage?

A. On the first mortgage; but the notes I didn't
 20 receive back, but I signed the mortgage for that \$105.

THE VICE CHANCELLOR: Then what you actually got in cash was \$750, \$750, \$700 and \$800?

A. Yes, sir.

Q. Now, did you ever, after you received those amounts and while you were in possession of that
 30 property, let the Berghoff Brewery or Wessels into possession of your premises under an agreement of any kind?

MR. GARRISON: I object to that. I do not see how that is material.

THE VICE CHANCELLOR: How is it?

MR. WALSCHEID: I am going to show by this witness that what really happened was that when they threatened to foreclose this
 40 proposition they came to him, made a settlement with him, agreed to pay him \$500,

August W. Lucas—Direct.

take care of all these claims, including the Gulden claim, and I think they paid him some money and still owe him the balance; and that they took possession of the property from him under that agreement of settlement. That is his contention of the situation.

THE VICE CHANCELLOR: What about that, Mr. Garrison, if they offer to prove all that? Your only position is that you were a creditor of this man, and that this chattel mortgage is void as to you because you are a creditor. If you made a settlement with him, and are not a creditor, I suppose that settles it. 10

MR. GARRISON: As against a judgment creditor I do not see how that would have any effect at all. 20

THE VICE CHANCELLOR: Well, as to your being a judgment creditor, it was only for two hundred and some odd dollars. I shall admit it.

A. Yes.

Q. Tell us what your arrangement was? Tell us, first, when it was that you made the arrangement? A. In the first part of June. Now, the date I cannot say. 30

Q. The first part of June of what year? A. 1910.

Q. With whom did you make the arrangement?
A. With Mr. Wessels.

Q. Tell us what took place between you? A. I had struggled and could not make ends meet, up in the hotel, and I was despondent, and came down to Mr. Wessels, down to his place here on Newark Avenue, I believe, and said "For God's sake, Mr. Wessels, help take this place off my 40

August W. Lucas—Direct.

hands; I can't stand it any longer," and he says "What, I can't do anything. I have got trouble of my own here; I have got so much to do myself I can't bother with it." "Well", I says, "get somebody to take this place off my hands, or you take it off; I will let you have it; you give me \$500 and assume the indebtedness, and I am willing to walk out and give you the license and the lease and everything with it." So he says "Wait until this afternoon; I will come up and see you." That afternoon he came up to the hotel. From there we went to the Town Clerk and had the license transferred. He paid me \$225, and he says, "I will give you the \$275 when we get it all straightened out."

Q Did you then go out of possession of the property? A. I turned it over to them; yes.

BY THE VICE CHANCELLOR:

Q. What "them"? A. To Mr. Wessels.

Q. Whom did you transfer the license? A. Mr. Wessels.

BY MR. WALSCHEID:

Q. You don't know the date of that transfer? A. I couldn't give dates; I couldn't recall it.

Q. What did Mr. Wessels agree as to the assumption of these other indebtednesses, of the other claims?

MR. GARRISON: I object; he is leading the witness; let him state the conversation.

THE VICE CHANCELLOR: (To the witness). Haven't you stated all the conversation you had with Wessels?

A. No, sir; not yet.

THE VICE CHANCELLOR: State all you

August W. Lucas—Direct.

had. You were told to state it all, and I supposed you had.

A. The indebtedness to Mr. Gulden was also to be assumed by Mr. Wessels; and the little checks and notes I had was to be called square; and how that judgment ever got against me I don't know anything about. Of course I was never served with any summons in the matter. **10**

BY THE VICE CHANCELLOR:

Q. You mean, the things that he was to assume were the Gulden indebtedness— A. The Gulden indebtedness, and give me a release of the hotel.

Q. I did not ask you anything more than that. Then, the things that you understood that he was to assume was the Gulden indebtedness, and the indebtedness to Wessels & Larkins? A. Yes, sir.

Q. He was not to assume the indebtedness that you owed the Brewery, this two or three thousand dollars you owed them, was he? A. Yes. **20**

Q. Your idea was, then, that in a business in which you had gone bankrupt he was going to pay you five hundred dollars in clean cash, and was to assume two or three thousand dollars that you owed the Brewery, and five or six hundred dollars you owed Gulden, and two or three hundred dollars you owed him? A. Yes. **30**

Q. You seriously expect me to believe that? A. Yes.

BY MR. WALSCHEID:

Q. And did he put somebody in possession of the premises at that time? A. Yes, he—

THE VICE CHANCELLOR: Answer the question.

A. Not that day, but a few days afterwards. **40**

August W. Lucas—Direct.

Q. And who did he put in possession of the premises? A. Mr. Larkins.

Q. And has Mr. Larkins been in possession ever since? A. To my knowledge and belief, yes.

Q. Now, are you sure as to the month in which this change of possession took place? A. The month of June, I believe.

10 Q. Did you ever receive any money, or any remuneration whatsoever, of any kind, from Mr. Larkins? A. No, sir.

Q. Where did you go to transfer the license? A. To the Town Clerk's office.

Q. To the Town Clerk's office?

THE VICE CHANCELLOR: Yes, he just said that a while ago, that he went to the Town Clerk's office; and also that he got \$225.

20 BY THE VICE CHANCELLOR:

Q. Did you get that money in your own pocket? Did that go to you? A. Yes, sir.

Q. It did not go to the Clerk? A. No, sir.

BY MR. WALSCHEID:

Q. You were present at the foreclosure sales?

A. I believe I was present when this gentleman here, Mr. Garrison, foreclosed the three mortgages, there in the office, while we stood in the office there at the office desk; or a gentleman that looks very much like him; I think it was 30 Mr. Garrison.

Q. In reference to that proceeding when you say this gentleman was present and the three mortgages were foreclosed—was that before or after the time when you made this deal with Wessels? A. No, it was after; it was after the transaction with Mr. Wessels.

40

August W. Lucas—Cross.

BY THE VICE CHANCELLOR:

Q. Long after, wasn't it? A. You mean the foreclosure was after the transaction with Mr. Wessels?

Q. Yes. A. Yes, sir.

Q. And while Mr. Larkins was in possession for Mr. Wessels? A. Yes, sir—no, there is a correction, your Honor. 10

Q. Go ahead. A. Mr. Larkins came in that day when the sales had taken place, in the office; there was Mr. Wessels and another gentleman, and this gentleman here (indicating); they stood there and gave out a public auction; and Mr. Wessels bid \$25; and he says "Go and bid, Mr. Lucas," and I says "I have got no money to buy anything with."

Q. What actually took place was this, wasn't it: 20
They had these chattel mortgage sales, and then Mr. Wessels went up with you to the Town Clerk and got the license transferred—wasn't that the way of it? A. No, the license was transferred before.

Q. How long before? A. About a week before.

Q. And it was after the chattel mortgage sale that they put Larkin in? A. Yes, after the chattel mortgage sale they put Larkin in. 30

MR. WALSCHEID: That is all. I would like to produce, or I guess we may agree to send to your Honor that license.

MR. GARRISON: It is consented that that may be put in evidence.

CROSS EXAMINATION BY MR. GARRISON:

Q. Mr. Lucas, did you have more than one conversation with Mr. Wessels in reference to this 40

August W. Lucas—Cross.

agreement which you have just testified to? A. Yes, sir.

Q. How many? A. Two.

Q. Where was the first? A. Both at his place on Newark Avenue.

Q. And when was the first? A. The first was in the morning, and the second was in the evening, about eight or nine o'clock.

10 Q. On the same day? A. On the same day.

Q. How long before the foreclosure of the chattel mortgages? A. Well, the chattel mortgages was foreclosed after the transfer of the license; now how many days I cannot tell.

Q. About how many days after these two conversations? A. I should judge five or six days.

Q. In the morning you made the proposition to him, and in the afternoon or evening he told you whether or not he would accept it, that is the fact, is it not? A. In the morning I made the proposition to him. Now, I can't say exactly whether it was the same day or the following day that he came up and had the license transferred. I believe probably it was the same or the next day.

20

BY THE VICE CHANCELLOR:

Q. What year was it? A. 1910.

30 BY MR. GARRISON:

Q. After you made this proposition to him, didn't he tell you he would have to consult his counsel before he could give you any answer? A. In the morning, yes.

Q. And didn't he come back that afternoon or evening of the next day, and tell you that he would not accept any such proposition? A. No, sir; he came back at two o'clock the next day, and from there we went directly, at three o'clock, to the Town Clerk's office to have the license transferred.

40

August W. Lucas—Cross.

Q. And you got two hundred and twenty-five dollars yourself for transferring that license? A. Yes, sir. That was the period of time this license had to run yet.

THE VICE CHANCELLOR: He did not ask you that, he asked you whether you got the money?

A. Yes, sir. 16

Q. And those are the only two conversations you had with Wessels in regard to this agreement you have testified to? A. No, sir; I had a good many others since.

Q. The only two you had prior to the foreclosure of the chattel mortgages? A. The time when he paid me this two hundred and twenty five dollars I said to him "Mr. Wessels, when do I get the rest" and he got very angry at me; so the thing rested for a day or two— 20

MR. GARRISON: I ask that all this be stricken out.

THE VICE CHANCELLOR: Yes, every bit of it is stricken out.

(Last question repeated). A. I have had more

BY THE VICE CHANCELLOR:

Q. Before the foreclosure of the chattel mortgages? A. Yes, sir. 30

Q. At what place did you have any other conversation with Wessels in reference to this agreement, before the chattel mortgage was foreclosed? A. At his office.

Q. Were all the conversations at his office? A. Not all of them; no, sir.

Q. Were all of them, before the foreclosure of the chattel mortgages, at his office? A. He said in regards— 40

August W. Lucas—Cross.

(Question repeated) A. I had—

Q. Were they all at his office, or at some other place? A. Two at his place, and the other up at the hotel.

Q. Who was present at the conversations at his office? A. Oh, the bookkeeper; he had a little bookkeeper there; I forget the gentleman's
10 name, I don't remember.

Q. Who else? A. That is all I remember.

Q. Who was present up at your place? A. After the license was transferred we went back in the room, under the stairway; he paid me out the two hundred and twenty five dollars.

Q. Who was present? A. No one else but him and I.

BY MR. GARRISON:

20 Q. Now, with reference to the negotiation you have testified to with Messmer, prior to the execution of the mortgage for \$1500, how many times did you talk that over with Messmer prior to the execution of the mortgage? A. I believe Mr. Messmer had been up to my place three or four times up to Liberty Street and Bergenline Avenue, where I had a cafe.

30 Q. Did you talk to him also three or four times in reference to that chattel mortgage? A. I may; I couldn't exactly say.

Q. Were all of those conversations between you and him in reference to the chattel mortgage at your place? A. Part at my place, and then we walked to the hotel, which was just under erection.

40 Q. And at those various conversations who was present, if anyone, beside you and Messmer? A. There was, at one time, another gentleman there, I forget his name, I don't know him. That was

August W. Lucas—Re-Direct.

another time. Him and I was always having conversations.

RE-DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Mr. Lucas, in the Town of Union the liquor license fee at that time was how much a year?

A. Three hundred dollars.

Q. And at what time of the year was it granted? A. The 1st of May. 10

Q. The 1st of May of each year? A. Yes, sir.

Q. And after you went out of possession of this place, who has since been in possession of it?

THE VICE CHANCELLOR: He said Larkins, a while ago.

Q. Well, Larkins has been in actual possession, but who has been doing business there—there is a firm engaged in it, is there not? A. Wessels & Larkins, to the best of my knowledge. 20

COMPLAINANT RESTS.

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Eimrich R. Wessels—Direct.

DEFENDANT'S REBUTTAL EVIDENCE.

EIMRICH R. WESSELS, recalled.

DIRECT EXAMINATION BY MR. GARRISON:

10 Q. Mr. Wessels, did you, in the early part of June, have a conversation with Mr. Lucas, in your office, in which he made a proposition to you whereby you, or the Brewery, was to assume the indebtedness to Gulden, and the indebtedness to the Brewery, and some indebtedness to you personally, or to Wessels & Larkins against Lucas, and to give Lucas \$500, or any agreement to that effect? A. No, sir.

Q. Was there any discussion between you and Lucas of such an agreement? A. Yes, sir.

20 Q. What was said? A. Mr. Lucas came to my store. There was a judgment entered against Mr. Lucas by some glass house in Hoboken. The Sheriff's office had allowed the goods to go on there, but the judgment was entered, and he was really in possession. He came to me and said "Well, I am up against it, and I will have to give up; if you give me \$500 I will walk out." I said "Lucas, I can't do that; I will have to see Mr. Hudspeth first." After seeing Mr. Hudspeth I
30 told him I couldn't do it, that it would place me in a position, that I would be standing in the way of judgment creditors or other creditors that might have a lien on those goods.

Q. When did this first conversation take place between you and Lucas, in which he made this proposition to you, and what time of day was it? A. To the best of my recollection, sometime during office hours, in my office.

40 Q. Of the same day? A. I couldn't say; I can't fix the time, but it would be some time between nine and five o'clock.

Eimrich R. Wessels—Direct.

Q. Did you then see Judge Hudspeth? A. I saw him in the day time.

Q. When and where was it you told Lucas that you would not do it? A. I wouldn't be positive whether it was in his place, or whether it was after he called at my office.

Q. Did Larkins take possession before or after the chattel mortgage was foreclosed? A. After **10**
the chattel mortgage.

BY THE VICE CHANCELLOR:

Q. What about this transaction over the license—did you buy the license from him, or what? A. I did.

Q. What was the conversation that led up to your buying the license? A. Mr. Lucas told me he could not continue any further, and I realized that the license—although we had had a power **20**
of attorney on the previous license, we hadn't any power of attorney on the license from the 1st of May; he had taken out the license without consulting us—and I realized that if we were to take possession of the place under foreclosure, that we would have to get the license. I agreed to give Mr. Lucas two hundred and twenty five dollars or two hundred and fifty dollars for the license—whether it was two hundred and fifty I agreed **30**
to give him, or two hundred and twenty five I can't just say, but I gave \$250; my impression now is, as it comes to me, that I gave twenty five dollars for the transfer of the license; I really jollied him along, or attempted to get the license through pleasant means and methods because of the transfer. He finally agreed to have the license transferred if I gave him \$225.

BY MR. GARRISON:

Q. And did you give him \$225? A. I did. **40**

Eimrich R. Wessels—Cross.

Q. Was that for him personally, or for the—

THE VICE CHANCELLOR: He says he gave him \$25 in addition to the license fees.

A. That was to him personally for the transfer of the license.

10 CROSS EXAMINATION BY MR. WALSCHEID:

Q. Didn't it also include an agreement on his part to step out? A. It did not.

Q. What do you mean by "jollyng him along"?

A. Because he wanted to get \$500 and wanted me to take the merchandise that was in there.

Q. And you were "jollyng him along" from the moment he came to you? A. He wanted to be employed as Manager—

20 Q. Just answer the question.

(Last question repeated). A. If you will qualify that I will give you a direct answer.

BY THE VICE CHANCELLOR:

Q. That was your own expression, "jolly him along",—how long did you "jolly him along"? A. Why, three or four days, I don't just remember.

BY MR. WALSCHEID:

30 Q. From the moment he came to you with this proposition? A. Yes.

Q. And from that moment on? A. Not regarding the five hundred dollars.

Q. Never mind—you were "jollyng him along"?

A. I was not regarding the five hundred dollars.

Q. He wanted five hundred dollars, and you were "jollyng him along" from the moment he came to you, and he wanted to be employed by you as Manager? A. Yes.

40 Q. And you immediately employed him as manager? A. I employed his son as manager.

Eimrich R. Wessels—Cross.

Q. You immediately employed his son as manager, and his son was manager immediately after he came to you with this five hundred dollar proposition? A. No, sir.

Q. His son was manager the next day? A. He was not; he was not the manager until I came into possession.

BY THE VICE CHANCELLOR:

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Q. When did you get in possession? A. I don't remember the date.

Q. Well, after what event? A. After the foreclosure of the mortgage.

BY MR. WALSCHEID:

Q. Well, in relation to the transfer of the mortgage, when did you get the transfer of the license,—before or after? A. Before.

20

Q. How long before? A. Three or four days; I don't remember.

Q. You have your books here, haven't you? A. Yes.

Q. Do your books show the date upon which you paid the \$250 or the \$225? A. I think they do. (The witness now refers to an account produced by him.) June 30th, 1910.

Q. June 30th you paid the \$250? A. Yes, sir; you see it is marked "License."

30

Q. And on that day did you also pay his son any money for acting as Manager? A. I did not.

Q. Did you pay him any money for acting as Manager? A. I did not.

Q. Is it possible, Mr. Wessels, that your "jolly-ing Mr. Lucas along" and agreeing to put his son in as Manager, and agreeing to pay him the money that you finally did pay him, led him to believe that you were taking over his place under

40

Eimrich R. Wessels—Cross.

an agreement to purchase? A. No, sir; I flatly, positively refused to do that, after consulting with Mr. Hudspeth, the first day he came to see me.

Q. What impression were you trying to create in his mind when you were "jollyng him along"?

A. He thought there would be some other place—I had a place down at 12 Stone Street that we were about to take under foreclosure—that is, the Brewery had—and he was anxious to get in that place.

Q. And you promised him that place? A. I didn't promise it to him; I said, "When we get this matter fixed it is time to talk of something else, but I will do the best I can for you."

Q. When did you first know of Mr. Gulden's mortgage?

MR. GARRISON: I do not think that that is proper re-direct examination.

MR. WALSCHEID: It is right on the question of this agreement and conversation.

THE VICE CHANCELLOR: I will not permit it now, on the ground that it is not cross examination. Mr. Walscheid can make him his own witness.

Question withdrawn.

Q. What did Mr. Lucas say to you in relation to the Gulden mortgage, in these conversations about your assuming the obligations of the place and taking it over?

MR. GARRISON: That is improper cross-examination; there is no testimony of this witness, at this time, in reference to any conversation with Lucas in regard to the Gulden mortgage.

THE VICE CHANCELLOR: I overrule that objection.

Eimrich R. Wessels—Cross.

A. He did not say anything.

THE VICE CHANCELLOR: You are asked to state the whole conversation. Did he say anything?

A. Mr. Lucas didn't mention Mr. Gulden at all then, but he did mention Mr. Gulden when he got the second mortgage of us; he said that our mortgage was a first mortgage. **10**

MR. WALSCHEID: I object, and ask that that be stricken out.

THE VICE CHANCELLOR: Yes, that must be stricken out; he did not ask that.

MR. WALSCHEID: That is all.

BOTH SIDES CLOSE.

20**30****40**

Memorandum.

GARRISON, V. C. (At close of proofs): I am not going to review the facts in this case, further than to state the only question which I now see in the case. It seems to be uncontradicted that prior to November 26th, 1909, Lucas was indebted to the Berghoff Brewing Company in a sum exceeding all the money involved in this suit, which is something between seven and eight hundred dollars. The evidence in this case shows that on that date, November 26th, 1909, about five o'clock in the afternoon, Mr. Kappes, the lawyer for Mr. Gulden, with Mr. Lucas, concluded the execution of a chattel mortgage, which is the one in question. There seems to be no trouble whatever with the consideration, and I do not see, from a brief reading of the affidavit, that there is any trouble whatever with the affidavit. The mortgage was recorded, as shown on the record, at 12:29 P. M. on the 30th of November. Mr. Kappes testifies that when this matter was concluded, on Friday afternoon the 26th of November, his client had left, stating that he had an important engagement which would take him the rest of the evening, and that at that time, Kappes (acting for Gulden) and Lucas had not agreed on the terms of payment. They subsequently tentatively agreed upon this (that is to say, Lucas said what he would do) and Kappes put that in the mortgage, and then the mortgage was completely executed and acknowledged. It was taken to Gulden by Kappes sometime on Saturday about lunch time, sometime between twelve and one, and Gulden approved of the mortgage, and Kappes left it with Gulden.

The proofs then show that sometime on Monday or Saturday (the proofs are not clear as to that), one of Gulden's agents gave it to another of Gulden's agents, with instructions to have it recorded, and this person who had the mortgage carried it

Memorandum.

about with him throughout Monday, and finally took it to the Register's Office at 12:29 o'clock P. M. on Tuesday the 30th.

Since the Berghoff Brewing Company, prior to this time, was a creditor, and since subsequent to that time a levy has been obtained upon all these goods under attachment, they are in a position to attack this mortgage if it is legally attackable. They claim that it was legally attackable (that is, the Brewing Company does) because of the lapse of time between the acknowledgment and delivery of the mortgage and its record. In the case of *Brockhurst v. Cox* I had occasion to consider this question, and in 71 Eq., at page 706, I summarized what I understood to be the law on this subject. The Court of Appeals affirmed that opinion without writing any opinion. 10

Mr. Walscheid asks me to postpone the final decision of this case until he shall have had opportunity to bring to my attention whatever the courts have held about this question of the time when the record must occur. I am willing to do this, provided he acts with reasonable despatch in getting me the cases while this case is fresh in my mind. I will give Mr. Walscheid until to-day week. Mr. Walscheid, within one week from to-day will serve on Mr. Garrison all authorities that he wishes to use on this point, and Mr. Garrison will reply within a week, and Mr. Walscheid will see that I get all the briefs immediately, replying to anything that Mr. Garrison may cite, if necessary. They may be shipped to me at Seabright, New Jersey. I would like to have a copy of this memorandum mailed to me sometimes within two weeks. 20 3c

Exhibit P-1.

KNOW ALL MEN BY THESE PRESENTS :

That I, AUGUST W. LUCAS, of the Town of Union, in the County of Hudson, and State of New Jersey, party of the first part, for securing the payment of the money herein mentioned, and in consideration of the sum of One Dollar to me duly paid by WILLIAM GULDEN, of the Town of
 10 Union, County of Hudson and State of New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell, unto the said party of the second part, his executors, administrators and assigns, all the goods and chattels mentioned in the schedule here-
 20 unto annexed and now in the premises known as Hudson Hotel, Lewis Street, in the Town of Union, County of Hudson and State of New Jersey.

To HAVE AND TO HOLD, all and singular the said goods and chattels above bargained and sold or intended so to be, unto the said party of the second part, his executors, administrators and assigns, forever. AND I, the said party of the first part, for myself, my heirs, executors and adminis-
 30 trators, all and singular the said goods and chattels above bargained and sold, unto the said party of the second part, his executors, administrators and assigns, against me, the said party of the first part, and against all and every person or persons whomsoever shall and will warrant and forever defend.

UPON CONDITION, that if I, the said party of the first part, shall and do well and truly pay unto the said party of the second part, his executors, administrators and assigns, the just and full sum
 40 of Eight Hundred and Fifty-three Dollars and Twenty-three cents (\$853.23) in payments as fol-

Exhibits.

lows: the sum of Twenty-five (\$25.00) Dollars on the Twenty-sixth day of December, A. D. 1909, and the sum of Twenty-five (\$25.00) Dollars on the twenty-sixth day of each and every month thereafter, until the full amount of Eight Hundred and Fifty-three and 23/100 (\$853.23) Dollars is fully paid off and satisfied.

Then these presents shall be void. AND I, the
 10 said party of the first part, for myself, my heirs, executors, administrators and assigns, do covenant and agree to and with the said party of the second part, his executors, administrators and assigns, that in case default shall be made in the payment of the said sum or any of the installments above mentioned, or in case the said party of the first part shall, at any time before the day of payment herein provided for, remove the said goods and chattels, or any of them, or permit or suffer any
 20 attachment or other process against property to be issued against me or permit or suffer any judgment to be entered up against me, then the said sum of money herein mentioned shall become instantly due and payable, and then it shall and may be lawful for, and I, the said party of the first part, do hereby authorize and empower the said party of the second part, his executors, administrators and assigns, with the aid and assistance of any
 30 person or persons, to enter my or said dwelling-house, store and other premises, and such other place or places whatsoever in which the said goods and chattels, or any of them, are or may be placed and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto me, the
 40 said party of the first part, my heirs, executors, administrators or assigns.

Exhibits.

IN WITNESS WHEREOF, I, the said party of the first part, has hereunto set my hand and seal the Twenty-sixth day of November, in the year of our Lord One Thousand Nine Hundred and Nine.

A. W. LUCAS. (L.S.)

Sealed and Delivered in
the Presence of

10

CHARLES WM. KAPPES.

SCHEDULE.

The following is a schedule of the goods and chattels referred to in the foregoing Mortgage and is hereby made a part thereof, to wit:

20

8 \$1 a Dressers,
6 #9 $\frac{1}{2}$ Dressers,
6 Washstands,
1 #1147 Mission Table,
6 406 Rockers,
4 Mission Chairs,
1 Mission Arm Chair,
8 6x9 Rugs,
1 8/3x10/6 Rugs,
4 3/0 #200 Beds,
9 4/0 #200 Beds,
10 4.6 \$200 Beds,
24 30x36 Mission Tables,
108 #134 Mission Chairs,
6 4/6 E. T. Springs,
102 yds. Fibre Carpet,
100 yds. Lining,
13 Dining Room Pictures,
1 Sec. Rubber Mat,
23 Brass Nosings,
23 Rubber Treads,
46 yds. Inlaid Linoleum,
86 yds. Ex. Super Carpet,
84 yds. Union Carpet,
4 Mission Costumers,
1 Buffet,
12 631 Chairs,
24 Remts. Carpet,

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Exhibits.

32 Rugs, cleaned,	
Binding Rug,	
8 White Poles, hung,	
2 2/3 yds. Carpet,	
2 Pictures,	
1 Set Hudson-Fulton Pictures,	
16 Pictures,	
30 yds. Granite Linoleum,	
8 yds. Stair Linoleum,	
149 1/2 yds. Fibre Matting,	10
53 yds. Lining,	
30 yds. Tap. Stair Carpet,	
10 3/4 Rubber Ends,	
15 3/4 Rubber Pads,	
28 yds. Velv. Carpet,	
6 1/4 yds. 126 Inlaid Linoleum,	
1 Carpet Sweeper,	
34 Cottage Rods,	
36 yds. Wood Filling,	
1 Relv. Chair,	
6 Old Beds, refinished,	20
2 Pair Lace Curtains,	
1 High Chair.	

A. W. LUCAS.

STATE OF NEW JERSEY, }
 County of Hudson. } ss.:

HENRY J. HEINS, agent of William Gulden, the mortgagee in the foregoing mortgage named, being duly sworn, on his oath says that the true consideration of said mortgage is as follows, viz: 30

The sum of Eight Hundred and Fifty-three Dollars and Twenty-three Cents (\$823.23), the true balance due on the price and value of the goods and chattels set forth in the schedule hereto annexed and this day sold and delivered by the said William Gulden to the said August W. Lucas for securing payment for which this chattel mortgage is given. 40

And deponent further says that there is due on

Exhibits.

said mortgage the sum of Eight Hundred and Fifty-three Dollars and Twenty-three Cents besides lawful interest thereon from the twenty-sixth day of November.

HENRY J. HEINS.

Sworn and subscribed this 26th }
 day of Nov., A. D. 1909, before }
 10 me, at Town of Union, N. J. }
 Charles Wm. Kappes,
 Atty.-at-Law of N. J.

STATE OF NEW JERSEY, }
 County of Hudson } SS.:

BE IT REMEMBERED, That on this twenty-sixth
 day of November, in the year of our Lord One
 20 Thousand Nine Hundred and Nine, before me, the
 subscriber, Charles Wm. Kappes, an Attorney-at-
 Law of the State of New Jersey, personally ap-
 peared August W. Lucas, who, I am satisfied, is
 the mortgagor mentioned in the within Instru-
 ment to whom I first made known the contents
 thereof, and thereupon he acknowledged that he
 signed, sealed and delivered the same as his volun-
 tary act and deed, for the uses and purposes
 30 therein expressed.

CHARLES WM. KAPPES,
 Attorney-at-Law of the State of New Jersey.

Exhibits.

[Endorsed.]

Nov. 30, 12:29 P. M., 1909.
2897.

MORTGAGE ON GOODS AND CHATTELS.

AUGUST W. LUCAS

to

WILLIAM GULDEN.

10

Dated Nov. 26, 1909.

Received in the Register's Office of the County of Hudson, N. J., on the 30th day of November, A. D. 1909, at 12:29 o'clock, in the afternoon, and recorded in Book 273 of Chattel Mortgages for said County on page 128.

JAMES C. CLARK,
Register. 20

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Opinion.

(Filed Jan. 25, 1913.)

In Chancery of New Jersey.

Between

WILLIAM GULDEN,

*Complainant,**and*

AUGUST W. LUCAS, et als.,

Defendants.

Opinion.

Decided January 24th, 1913. Heard on pleadings and proofs.

CHAS. W. KAPPES and EMIL WALSCHEID, Esqs.,
for Complainant.

HUDSPETH, RYSDYK & GARRISON, for Defendants.
GARRISON, V. C.:

The only point to be decided in this suit at this time is whether or not a chattel mortgage given by the defendant, Lucas, to the complainant, Gulden, is valid as against the defendant The Berghoff Brewing Company. The Berghoff Brewing Company was a creditor of Lucas, has obtained a levy and is legally in a position to attack the validity of the chattel mortgage in question. Prior to November 26, 1909, Lucas was indebted to the Berghoff Brewing Company in a sum exceeding all the money involved in this suit. On the 26th of November, 1909, in the afternoon of that day, Mr. Kappes (who was the lawyer for Mr. Gulden) and Mr. Gulden and Mr. Lucas met for the purpose of having Lucas make a chattel mortgage to Gulden for money due from Lucas to Gulden. Mr. Kappes testifies, and he is not contradicted,

Opinion.

either by other oral testimony or by written evidence, that Mr. Gulden left before the chattel mortgage was executed; that at the time that Gulden left everything had been agreed upon excepting the matter of repayment. After Gulden left, Kappes and Lucas agreed tentatively upon the matter just mentioned and the chattel mortgage was fully executed, acknowledged and in shape for record. Mr. Kappes, however, says that he had no right at that time to accept this mortgage on behalf of his principal, Mr. Gulden, and would not have such right until Mr. Gulden had been informed of the tentative agreement as to the terms of repayment (or payment, whichever phrase is the correct one). On Saturday, the 27th of November, 1909, Mr. Kappes, about the middle of the day (sometime, he says, between twelve and one), saw Mr. Gulden, and Gulden approved of the mortgage as drawn, and Kappes left it with Gulden. On Tuesday, the 30th of November, 1909, at twenty-nine minutes after twelve o'clock, noon, the mortgage was recorded.

The sole question is whether or not, under the statute and the decisions construing the same, this mortgage was recorded in time to save it from attack as against the existing creditor.

I had occasion in the case of *Brockhurst v. Cox*, 71 Eq., 703 (affirmed 72 Eq., 950), to consider the existing law in this respect; and since the Court of Errors adopted the opinion filed in that suit, the rule is as stated therein. It was there held that the provisions of the Chattel Mortgage Act require an immediate possession by the mortgagee, or an immediate recording of the mortgage, and that "immediate recording" means as soon as may be by reasonable dispatch under the circumstances of the case.

Opinion.

The circumstances of the case to be here considered are that this mortgage, at the very latest, was complete and ready for record and in the possession of the mortgagee at some time between twelve and one o'clock on Saturday, the 27th day of November, 1909, conceding, in his behalf, that it was not to be considered to be operative and ready for record from five o'clock in the afternoon of Friday, the 26th, when his attorney received it in its completed, executed condition. The mortgagee's place of business, where the mortgage was delivered to him, was not more than one hour by trolley from the Office of the Register of Hudson County, where the mortgage should properly be recorded. By messenger, it could reach said office in one hour; by mail, it could reach the office in the afternoon of any business day on which it was mailed in the morning; or, if mailed in the afternoon, would be delivered the next morning on any business day. If it had been immediately sent by a messenger it would have reached the office on the afternoon of the 27th. If it had been mailed on Saturday, the 27th, it would have been delivered in the morning of Monday, the 29th; and if mailed on the morning of the 29th would have reached the office some time during business hours of that day. As above stated, it did not reach the office until after noon on the 30th.

I feel constrained to hold that, in no proper use of language, can this be said to be an "immediate recording" under the circumstances of the case. If "immediate recording" is extended so as to include more time than is reasonably adequate under the circumstances, the rule laid down is practically abrogated. I cannot find that the time consumed between the receipt of this mortgage by the mortgagee and its recording could reasonably have been utilized in getting the paper to the place of record. The result is that this mortgage must be held to be invalid as against the existing creditor.

Filed Decree.

Filed October 21, 1912.

In Chancery of New Jersey.

Between

WILLIAM GULDEN,

*Complainant.**and*

AUGUST W. LUCAS, et als,

Defendants.

On Bill, etc.

Final Decree. 10

This cause coming on regularly to be heard on pleadings and oral proof and in the presence of Charles William Kappes, Solicitor for and J. Emil Walscheid of Counsel with Complainant, and of Hudspeth, Rysdyk and Garrison, Solicitors for Defendants, Eimrich R. Wessels and Hugh J. Larkins, partners, etc., and Dougal Herr, Auditor in Attachment and others, and the Court having heard and considered the evidence and the argument of counsel and being of the opinion that the complainant is not entitled to the relief prayed for in his bill of complaint, and that the defendants, Eimrich R. Wessels and Hugh J. Larkins, partners, etc., and Dougal Herr, as auditor are entitled to the relief prayed for in the respective crossbill filed by them. 20 30

IT IS on this twenty-first day of October, nineteen hundred and twelve,

ORDERED, ADJUDGED and DECREED by Honorable Edwin R. Walker, Chancellor of the State of New Jersey that the complainant's bill of complaint be and the same hereby is dismissed with costs. 40

Filed Decree.

AND IT IS FURTHER ORDERED, ADJUDGED and DECREED, that the chattle mortgage made to the complainant by the defendant August W. Lucas, dated November 26th, 1909, and recorded November 30th, 1909, in the office of the Register of Hudson County in Book 273, Page 128, is void as against the claims of Eimrich R. Wessels and Hugh J. Larkins, partners, etc., and
 10 Dougal Herr, auditor in attachment, creditors of said August W. Lucas.

AND IT IS FURTHER ORDERED, ADJUDGED and DECREED, that there is due to said Eimrich R. Wessels and Hugh J. Larkins, partners, the sum of Two hundred, seventy dollars and sixty-eight cents (\$270.68), damages and Thirty-five dollars (\$35), costs making a total of Three hundred, five dollars and sixty-eight cents
 20 (\$305.68), with interest from June 30th, 1910, upon their judgment in the Hudson County Circuit Court entered against defendant Lucas and that there is due said Dougal Herr, auditor in attachment, in an action in the attachment suit in the Hudson County Circuit Court of said Eimrich R. Wessels against said August W. Lucas, the sum of Two thousand (\$2,000.) Dollars,

AND IT IS FURTHER ORDERED, ADJUDGED, and DECREED, that the Clerk of this Court do forthwith pay from the moneys heretofore deposited with him in the above cause, to the said Eimrich R. Wessels and Hugh J. Larkins, partners, or their Solicitors, the said sum of Three hundred, five dollars and sixty-eight cents (\$305.68), with interest from June 30th, 1910, besides their costs to be taxed and the balance of the moneys remaining in his hands to the said Dougal Herr, auditor as aforesaid.
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AND IT IS FURTHER ORDERED, ADJUDGED, and DE-

CREED, that a counsel fee of Seventy-five Dollars, be and the same hereby is allowed the Defendants, Eimrich R. Wessels and Hugh J. Larkins, partners as aforesaid, and a counsel fee of and that the same be included in the taxed costs and that the complainant pay the taxed costs and that execution issue therefor according to the rules and practice of this Court.

Respectfully advised,

E. R. WALKER, 10
C.

LINDLEY M. GARRISON,
V. C.

Petition of Appeal.

(Filed) *June 3, 1913.*

TO THE HONORABLE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES: 20

The petition of William Gulden, appellant in this cause respectfully shows that your petitioner found himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 21st day of October, one thousand nine hundred and twelve, wherein William Gulden was complainant and August W. Lucas, Eimrich Wessels, Hugo J. Larkins, James J. Kelly, Sheriff of the County of Hudson and The Berghoff Brewing Company, were defendants; in this respect; 30

That the said final decree denied to the complainant the relief prayed for in his bill of complaint and granted to the defendant, Eimrich R. Wessels the relief prayed for in his cross bill in that it adjudged and decreed that a certain chattel mortgage bearing date November 26, 1909, 40

Petition of Appeal.

and made by August W. Lucas to the said complainant to secure the payment of eight hundred and fifty-three dollars and twenty-three cents (\$853.23) and conveying certain goods and chattels therein described was void as to the defendant Eimrich R. Wessels and other existing judgment creditors; and said final decree so directed that an account be taken of the moneys due to the
 10 said Eimrich R. Wessels from the defendant August W. Lucas and further that the amount so found to be due be a lien on the moneys deposited with the Clerk of the Court of Chancery, which moneys were derived from the sale of the goods and chattels described and conveyed in said chattel mortgage.

Your petitioner humbly appeals from all of the said decrees of the said Chancellor which decrees
 20 as aforesaid, on the ground that the same is erroneous in that the Chancellor erred as follows:

In the conclusion that the said complainant was not entitled to the relief prayed for.

In the conclusion that the defendant Eimrich R. Wessels was entitled to the relief prayed for in his cross bill filed in said cause.

In the conclusion that the said chattel mortgage dated November 26th, 1909, and made by the
 30 said August W. Lucas to the said William Gulden to secure the payment of eight hundred and fifty-three dollars and twenty-three cents and conveying certain goods and chattels therein described was not recorded as required by the provision of an act of the Legislature entitled, "An Act concerning mortgages on chattels (Revision of 1902)", approved April 3, 1902.

In the conclusion that the said chattel mortgage dated November 26th, 1909, made by August W.
 40 Lucas to William Gulden to secure the payment of

Petition of Appeal.

eight hundred and fifty-three dollars and twenty-three cents conveying certain goods and chattels therein described was not recorded in time to save it from attack as against existing creditors of the said August W. Lucas.

In conclusion that the said chattel mortgage dated November 26th, 1909, and made by August W. Lucas to William Gulden to secure the payment of the sum of eight hundred and fifty-three dollars and twenty-three cents and conveying goods and chattels therein described was not recorded immediately or as soon as could be by reasonable dispatch under the circumstances of the case. 10

Your petitioner, therefore, prays that the said decree of the Chancellor in the particulars aforesaid, may be reversed, set aside and for nothing holden, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet. 20

CHARLES WILLIAM KAPPES,
Solicitor of Petitioner.

J. EMIL WALSCHEID,
Of Counsel with Petitioner.

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Notice of Appeal.(Filed *October 31, 1912.*)**In Chancery of New Jersey.**

Between

WILLIAM GULDEN,

*Complainant,**and*

AUGUST W. LUCAS, et al.,

*Defendants.*Notice of
Appeal.

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The complainant hereby appeals from the final decree and every part thereof made in this Court in the above stated cause on the 21st day of October, one thousand nine hundred and twelve, to the Court of Errors and Appeals in the last resort in all causes.

CHARLES WILLIAM KAPPES,
Solicitor of Complainant.

I conceive that there is good cause for appeal in the above stated cause.

J. EMIL WALSCHEID,
Of Counsel with Complainant.

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Answer.**New Jersey Court of Errors and Appeals.**

 WILLIAM GULDEN,

Complainant-Appellant,
v.

AUGUST W. LUCAS, et als.,

Defendants-Respondents.

 On Appeal
 from Decree
 in Chancery.

10

The Answer of the above named respondents to the petition of appeal of the above named appellant.

These respondents, not acknowledging all or any of the matters which in said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit, that a decree was made and entered in the Court of Chancery, in the cause for that purpose mentioned in said petition as therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is agreeable to equity and pray that the same may be affirmed with costs to be adjudged to these respondents.

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HUDSPETH, RYSDYK & GARRISON,

 Solicitors for and of Counsel
 with Respondents (except
 Lucas).

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