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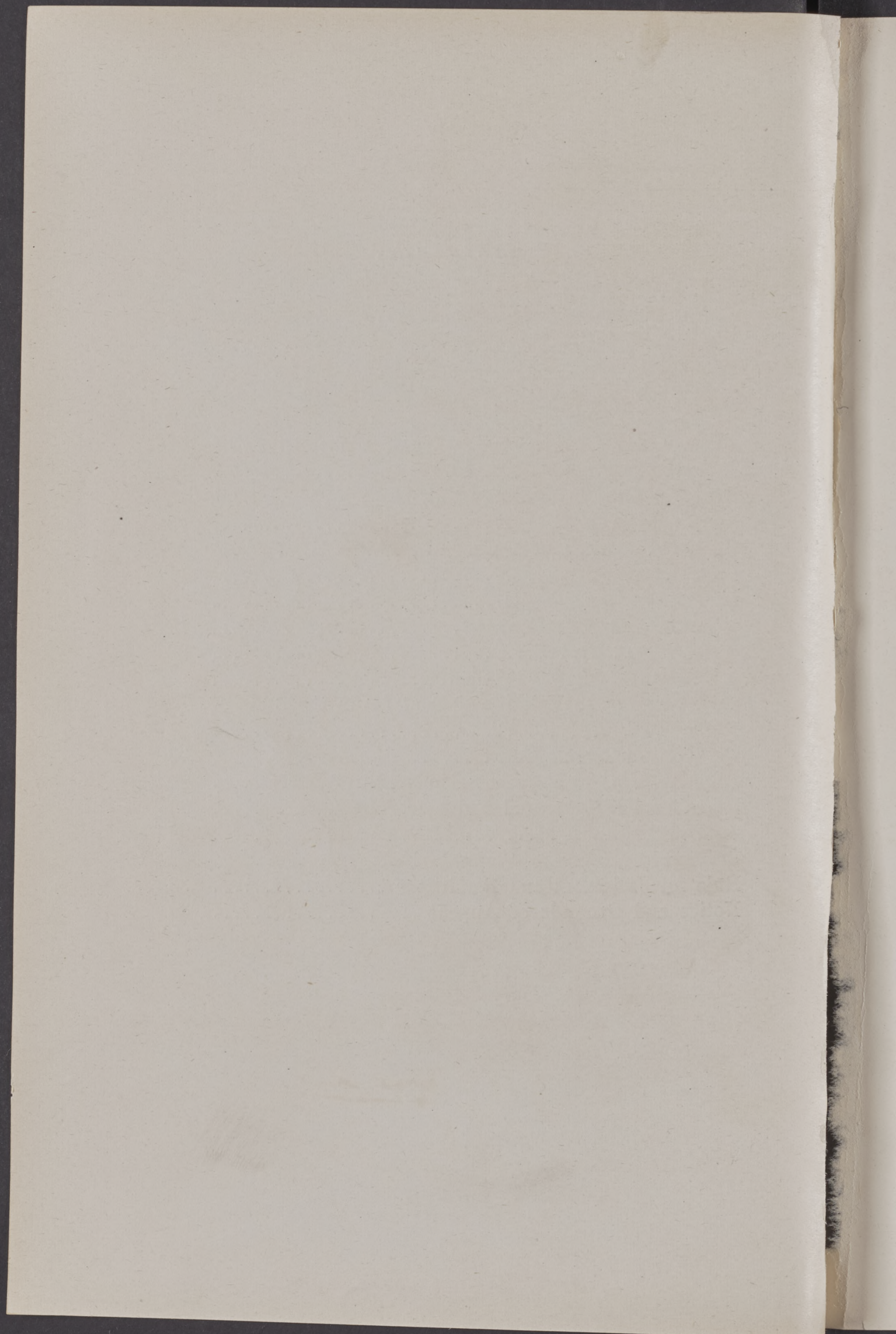

NOTICE OF APPEAL AND GROUNDS.

Filed April 10, 1922.

CIRCUIT COURT OF MIDDLESEX COUNTY.

THAYER MERCANTILE CO., INC., a corporation, *Plaintiff,* *vs.* FIRST NATIONAL BANK OF MILLTOWN, a corporation, and ELMER E. WYCKOFF, Sheriff of Middlesex County, *Defendants.*	*Action at Law.* *Notice of Appeal and Grounds.*

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To Fred W. De Voe, attorney for defendant, First National Bank of Milltown; and Frederick F. Richardson, attorney for defendant, Elmer E. Wyckoff, Sheriff of Middlesex County:

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TAKE NOTICE that the plaintiff appeals to the New Jersey Supreme Court, from the whole of the judgment entered in the above-stated cause, on the following grounds:

1. Because the Court erroneously ruled, on the facts stipulated, that under the Uniform Conditional Sales Act, P. L. 1919, p. 461, reservation of property in the plaintiff was void as to the defendant, the First National Bank of Milltown.

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2. Because the Court erroneously ruled, that the defendant, The First National Bank of Milltown, was not estopped from invoking said Uniform Conditional Sales Act, P. L. 1919, under the facts in this case.

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3. Because on the facts stipulated, the Court should have given judgment for plaintiff, instead of judgment for defendants.

Dated April 6, 1922.

HARRY GREEN,
Attorney for Plaintiff-Appellant.

Service acknowledged, April 7, 1922.

WRIT OF REPLEVIN.

Filed January 21, 1921.

THE STATE OF NEW JERSEY to the ~~William P. Harding, one of~~ the Sheriff ~~coroners~~ of Middlesex County,

(SEAL) GREETING:

We command you that if the Thayer Mercantile Co., Inc., shall make you secure, you cause to be taken and delivered to it One Oldsmobile Sedan, Motor No. X-85178, Model 45, and equipment, which the First National Bank of Milltown, a corporation, Elmer E. Wyckoff, Sheriff, took and unjustly detains; and that you summon the said First National Bank of Milltown, a corporation, and Elmer E. Wyckoff, Sheriff of Middlesex County, to answer the annexed complaint of the Thayer Mercantile Co., Inc., a corporation, in an action at law in the Circuit Court of Middlesex County. And that you notify them that unless they file their answers to said complaint with the Clerk of the Circuit Court of Middlesex County, at New Brunswick, within TWENTY DAYS after service upon them of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against them.

WITNESS, Frank J. Lloyd ~~James J. Bergen~~, Judge of the Circuit Court of Middlesex County, at New Brunswick, this twentieth day of January, 1921.

Bernard ~~B.~~ M. GANNON,
Clerk.

HARRY GREEN,
Attorney.

COMPLAINT.

Filed January 21, 1921.

The plaintiff, a corporation of the State of New York, and having its principal office in the City, County and State of New York, says:

1. On December 20, 1920, one Jerome B. Chaffee made and delivered six notes for $93.50 each, aggregating $561.00, with interest, to plaintiff. 10

2. To secure the payment of said notes, on the same day, the said Jerome B. Chaffee made and delivered to plaintiff a conditional sale agreement for one Oldsmobile Sedan, Motor No. X-85178, Model 45, and equipment.

3. On December 22, 1920, the plaintiff filed said conditional sale agreement in the Register's Office of New York County, State of New York, pursuant to the Laws of the State of New York. 20

4. Said agreement, among other things, provided that the car should be kept at Lotos Garage, 56 St., New York City.

5. On or about December 23, 1920, the defendant, First National Bank of Milltown, caused a writ of attachment to be issued out of this court against John Doe and Richard Roe, said names being fictitious, and by virtue of said writ, the defendant, Elmer E. Wyckoff, Sheriff of Middlesex County, took and detains said car and equipment, by reason of which interest he is made a party defendant hereto. 30

6. Under the terms of the said conditional sale agreement, the title to the said Oldsmobile Sedan, and equipment remained in the plaintiff, and it was provided that if the said Jerome B. Chaffee suffered the said car and equipment to be attached or removed from the place designated without written consent of plaintiff, the right to immediate possession of the said Oldsmobile Sedan, and equipment, would accrue to the plaintiff, and plain- 40

tiff could retake possession of said car and equipment free from all claims whatsoever.

7. Prior to the institution of this suit, plaintiff demanded possession of the Oldsmobile Sedan, Motor No. X-85178, Model 45, and equipment, from the defendants, but said defendants refused to deliver possession of said
10 car and equipment to plaintiff.

8. On or about January 8, 1921, the said Jerome B. Chaffee released said car and equipment to the plaintiff.

Plaintiff demands possession of said Oldsmobile Sedan, Motor No. X-85178, Model 45, and equipment, or in case it cannot be returned to plaintiff, the sum of $750.00 for its value, and $500.00 for its detention.

HARRY GREEN,
Attorney of Plaintiff.

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ANSWER AND COUNTER-CLAIM OF DEFENDANT, FIRST NATIONAL BANK OF MILLTOWN.

Filed February 21, 1921.

The defendant, the First National Bank of Milltown, N. J., a corporation organized under the banking laws of the United States of America, with its principal offices at Main Street, Milltown, N. J., says that: 10

1. The defendant, the First National Bank of Milltown, N. J., lacks sufficient knowledge and information to form a belief, as to the allegations in paragraph one of the complaint.

2. The defendant, the First National Bank of Milltown, N. J., lacks sufficient knowledge and information to form a belief, as to the allegations in paragraph two of the complaint.

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3. The defendant, the First National Bank of Milltown, N. J., lacks sufficient knowledge and information to form a belief, as to the allegations in paragraph three of this complaint.

4. The defendant, the First National Bank of Milltown, N. J., lacks sufficient knowledge and information to form a belief, as to the allegations in paragraph four of the complaint.

5. The defendant, the First National Bank of Milltown, N. J., admits the allegations in paragraph five of the complaint, but says that the said writ of attachment was issued on December 24, 1920. 30

6. The defendant, the First National Bank of Milltown, N. J., lacks sufficient knowledge and information to form a belief, as to the allegations in paragraph six of the complaint.

7. The defendant, the First National Bank of Milltown, N. J., admits the allegations in paragraph seven of the complaint.

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8. The defendant, the First National Bank of Milltown, N. J., lacks sufficient knowledge and information to form a belief, as to the allegations in paragraph eight of the complaint.

9. The defendant, the First National Bank of Milltown, N. J., denies that it has wrongfully detained said car and equipment.

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The said defendant, the First National Bank of Milltown, N. J., by way of counter-claim, says that:

1. On December 24, 1920, a writ of attachment was regularly issued out of this court, at the suit of this defendant *vs.* John Doe and Richard Roe (said names "John Doe" and "Richard Roe" being fictitious), whereby the said car and equipment were attached by the defendant herein, Elmer E. Wyckoff, Sheriff of the County of Middlesex.

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2. On January 14, 1921, an order was entered in said attachment proceedings, amending the pleadings theretofore filed in said cause, by striking out the name "John Doe" and substituting therefor the name "Jerome B. Chaffee" as one of the defendants in said cause.

3. On January 15, 1921, a special appearance was entered in the said attachment proceeding by the said Jerome B. Chaffee.

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4. The Conditional Sale Agreement, as described in paragraph two of the complaint has not been filed in the Clerk's Office of the County of Middlesex, according to the statutes in such case made and provided.

5. The plaintiff was not the owner of the said car and equipment, at the time the writ of attachment was issued, but that the owner thereof was the said Jerome B. Chaffee.

6. The defendant, the First National Bank of Milltown, N. J., demands possession of the said car and

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equipment and Five Hundred Dollars ($500.00) as damages.

FRED W. DE VOE,
Attorney of the Defendant, the First National Bank of Milltown, N. J.

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ANSWER AND COUNTER-CLAIM OF DEFENDANT, ELMER E. WYCKOFF, SHERIFF.

Filed February 19, 1921.

Elmer E. Wyckoff, Sheriff of Middlesex County, and having his office in the City of New Brunswick, N. J., one of the defendants in the above-entitled action, by way of answer and counter-claim says:

1. He has no knowledge sufficient whereof to form a belief as to the allegations of paragraph one. 20

2. He has no knowledge sufficient whereof to form a belief as to the allegations of paragraph two.

3. He has no knowledge sufficient whereof to form a belief as to the allegations of paragraph three.

4. He has no knowledge sufficient whereof to form a belief as to the allegations of paragraph four.

5. He admits the allegations of paragraph five, except that he denies that he now detains said car and equipment. 30

6. He has no knowledge sufficient whereof to form a belief as to the allegations of paragraph six.

7. He admits the allegations of paragraph seven.

8. He has no knowledge sufficient whereof to form a belief as to the allegations of paragraph eight.

First Defense.

1. By virtue of a writ of attachment regularly issued out of this court at the suit of the First National Bank 40

of Milltown, a corporation, *vs.* John Doe and Richard Roe, said names "John Doe" and "Richard Roe" being fictitious, the said Elmer E. Wyckoff, Sheriff of Middlesex County, did attach and take in his possession under said writ the Oldsmobile Sedan car and equipment herein complained about.

10 2. On January , 1921, an order was entered amending said attachment proceedings by striking out the name "John Doe" and substituting therefor Jerome B. Chaffee, one of the defendants in said cause.

3. On January , 1921, a special appearance was entered in said attachment proceedings by said Jerome B. Chaffee.

4. The plaintiff in replevin was not the owner of said car and equipment at the time the writ of attachment was issued but that the owner thereof was the said Jerome B.
20 Chaffee.

SECOND DEFENSE.

1. The defendant claims said goods and chattels were lawfully in his custody and possession by virtue of the writ of attachment hereinbefore referred to and that upon the plaintiff herein suing out a writ of replevin said car and equipment were delivered to the plaintiff in replevin in accordance with said writ and that the defendant here-
30 in at no time illegally or wrongfully detained said car and equipment but on the contrary alleges that the acts herein complained of were performed by him in furtherance of his official duties as Sheriff of said County.

By way of counter-claim:

1. The allegations of the foregoing answer are hereby incorporated in and constitute this counter-claim to the same extent as though specifically set forth in detail herein.

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2. The defendant demands possession of said goods and chattels together with damages in the amount of five hundred ($500.00) dollars.

FREDERICK F. RICHARDSON,
Attorney for Elmer E. Wyckoff, Sheriff of Middlesex County, one of the Defendants.

Dated:

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REPLY TO ANSWER OF DEFENDANT, FIRST NATIONAL BANK OF MILLTOWN.

Filed February 28, 1921.

The plaintiff, in reply to the answer of the defendant, First National Bank of Milltown, N. J., a corporation, 10 filed herein, says that:

1. This defendant did wrongfully detain said car and equipment, and therefore denies paragraph nine of the answer.

2. Answering paragraphs one, two and three of the counter-claim, it denies that said plaintiff has knowledge or information thereof sufficient to form a belief.

3. Answering paragraph four of the counter-claim, the plaintiff admits that it did not file the said conditional sale agreement in the County Clerk's Office of Middle- 20 sex County, but denies that such agreement had to be filed in said office.

4. Answering paragraph five of the counter-claim, the plaintiff denies the allegations thereof, and avers title to said car and equipment remained in the plaintiff until all the agreements of the said Jerome B. Chaffee were fulfilled.

5. Answering paragraph six of the counter-claim, the plaintiff denies that this defendant is entitled to posses- 30 sion of said car and equipment and damages.

6. The said Jerome B. Chaffee did not fulfill any of the agreements of said conditional sale agreement.

HARRY GREEN,
Attorney for Plaintiff.

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REPLY TO ANSWER OF DEFENDANT, ELMER E. WYCKOFF, SHERIFF.

Filed February 28, 1921.

The plaintiff, in reply to the answer of the defendant, Elmer E. Wyckoff, Sheriff of Middlesex County, filed herein, says that: 10

1. It has no knowledge or information sufficient to form a belief of the allegations contained in paragraphs one, two and three of the first defense.

2. It denies paragraph four of the first defense, and avers that title to said car and equipment remained in the plaintiff until all the agreements of the said Jerome B. Chaffee were fulfilled.

3. It denies the allegations contained in paragraph one of the second defense.

4. The foregoing allegations constitute the answer to paragraph one of the counter-claim. 20

5. It denies that this defendant is entitled to possession of said car and equipment and damages.

6. The said Jerome B. Chaffee did not fulfill any of the agreements of said conditional sale agreement.

HARRY GREEN,
Attorney for Plaintiff.

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STIPULATION AS TO FACTS.

It is stipulated and agreed by and between Harry Green, attorney for plaintiff, Fred W. De Voe, attorney for defendant, First National Bank of Milltown, and Frederick F. Richardson, attorney for defendant, Elmer E. Wyckoff, Sheriff of Middlesex County, that the following are the facts of this cause:

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1. On December 20th, 1920, one Jerome B. Chaffee, of 203 West 111th street, New York City, made and delivered six (6) notes for ninety-three dollars and fifty cents ($93.50) each, aggregating five hundred and sixty-one dollars ($561.00) to plaintiff, which represented the unpaid balance of one (1) Oldsmobile sedan, motor number X85178, model 45, and equipment, purchased by the said Jerome B. Chaffee from plaintiff, the purchase price thereof being ten hundred and eleven dollars ($1,011.00), four hundred and fifty dollars $(450.00) being paid at the time of the delivery of said car and equipment, which notes are unpaid.

20

2. To secure the payment of the said unpaid balance and notes representing same, the said Jerome B. Chaffee executed a conditional sale agreement on said car and equipment, wherein and whereby plaintiff retained title until all agreements of the purchaser had been fulfilled, which agreement is annexed hereto and made a part hereof.

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3. Said conditional sale agreement was filed in the register's office of New York County on December 22nd, 1920, the office serial number thereof being 77036.

5. The said Jerome B. Chaffee did not obtain the written consent of the plaintiff to remove the car from the place of keeping designated in the agreement, and did not notify the plaintiff that he was removing the car from said place or from the State of New York.

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6. The plaintiff herein received notice of the fact that the said car and equipment had been removed by the buyer into a filing district in this state, to wit: Middlesex County; and said plaintiff had said notice on December 28, 1920, as evidenced by the letter attached hereto and made a part hereof, bearing date December 28, 1920, and written by the attorney of plaintiff to the attorney of defendant, First National Bank of Milltown, N. J. 10

7. On January 5, 1921, the attorney of plaintiff again wrote to the attorney of defendant, First National Bank of Milltown, N. J., as per letter annexed hereto and made a part hereof.

8. On January 6, 1921, the attorney of defendant, First National Bank of Milltown, N. J., wrote to the attorney of plaintiff, as per letter annexed hereto and made a part hereof.

9. On January 7, 1921, attorney of plaintiff wrote to the attorney of defendant, First National Bank of Milltown, N. J., a copy of which letter is annexed hereto and made a part hereof. 20

10. On January 8, 1921, the attorney of defendant, First National Bank of Milltown, wrote to the attorney of plaintiff, as per copy annexed hereto and made a part hereof.

11. The said plaintiff did not file said conditional sale agreement in the Clerk's Office of Middlesex County, N. J., within ten days after the plaintiff had notice that the car and equipment had been removed to a filing district of this state, to wit: Middlesex County. 30

12. On December 24th, 1920, a writ of attachment was issued out of this court, at the suit of the defendant, the First National Bank of Milltown, New Jersey, against John Doe and Richard Roe (said names "John Doe" and "Richard Roe" being fictitious), whereby the said car and equipment were attached by the defendant herein, Elmer E. Wyckoff, Sheriff of the County of Middlesex. 40

13. On January 8th, 1921, the said Jerome B. Chaffee released said car and equipment to plaintiff, a copy of which release is annexed hereto and made a part hereof.

14. On January 14, 1921, an order was entered in said attachment proceedings, amending the pleadings theretofore filed in said cause, by striking out the name "John 10 Doe" and substituting therefor the name "Jerome B. Chaffee," as one of the defendants in said cause.

15. On January 15, 1921, a special appearance was entered in the said attachment proceeding by the said Jerome B. Chaffee.

16. On January 18, 1921, plaintiff demanded possession of the automobile and equipment from the defendants, but said defendants refused to deliver possession of said car and equipment to plaintiff.

17. On January 21st, 1921, this replevin action was in-20 stituted for possession of said car and equipment and a bond for fifteen hundred dollars ($1,500.00) was executed and delivered to William P. Harding, one of the coroners of Middlesex County.

Under these facts the question at issue is: Is the provision in the conditional sale contract reserving property in the plaintiff void as to defendants, under the Uniform Conditional Sales Act of New Jersey, Pamphlet Laws 1919, by reason of the fact that the aforementioned con-30 ditional sale contract was not filed in the office of the County Clerk of Middlesex County?

HARRY GREEN,
Attorney for Plaintiff.

FRED W. DE VOE,
Attorney for Defendant,
First National Bank of Milltown.

FREDERICK F. RICHARDSON,
Attorney for Defendant,
Elmer E. Wyckoff,
40 *Sheriff of Middlesex County.*

Conditional Sale Contract.

CONDITIONAL SALE AGREEMENT

(In Duplicate)

THAYER MERCANTILE CO., INC., Date Dec. 20/20
1755 Broadway, New York City. I hereby purchase from you under the terms and conditions and at the prices herein as noted below.

Oldsmobile Sedan. Motor No. X85178 Body ....
Model 45

	Price
One Oldsmobile Sedan Auto as is, with equipment as is	1011.00
It is understood and agreed that the seller in procuring insurance acts as agent for purchaser and does not agree to obtain any specific amount of insurance but merely undertakes to obtain as much as company will write and makes no presentation, or agreement as to rates to be charged for the premium. Ins. covers mtg. only.	
Insurance for 12 mos. on Car.............	
Total of above items (constituting the Purchase Price)	1011.00

SCHEDULE OF PAYMENTS

DELIVERY PAYMENT to be made upon delivery of said car and equipment..............	450.00
UNPAID BALANCE, to be paid hereafter, beginning one month from date of Delivery Payment, in 6 monthly instalments on the 20 day of each month, until the total amount of Purchase Price above shown, with legal interest is paid, as evidenced by following notes.	561.00

1st Note 93.50 plus $ interest

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2nd Note 93.50 plus $ interest
3rd Note 93.50 plus $ interest
4th Note 93.50 plus $ interest
5th Note 93.50 plus $ interest
6th Note 93.50 plus $ interest
Total Unpaid Balance $561.50.
10 Total Interest $..........

SPECIFICATIONS

Fire & theft insurance only for as much as possible also drawing and recording of papers, etc.

This purchase is made subject to the conditions printed on the back hereof which constitute a part of this agreement, and in which Thayer Mercantile Co., Inc, 1755 Broadway, N. Y. City, is referred to as the Seller and J. B. Chaffee, 203 West 111th St., N. Y. City, is re-
20 ferred to as the Purchaser.

Constant 6% Interest factor .005.

CONDITIONS

1. It is understood and agreed that this contract cannot be transferred or assigned by the Purchaser without first securing the written consent of the Seller. Title to property hereby (conditionally) sold shall remain in the Seller until all agreements of the Purchaser are ful-
30 filled.

The Purchaser hereby declares he is over twenty-one years of age.

2. The Purchaser for himself, heirs and assigns hereby agrees that he will pay the purchase price in notes as set forth in foregoing, which notes are given only as collateral and may be sold or discounted without waiver of any rights under this contract. He will also pay all charges and liens which may accrue on said property; he will not sell or mortgage the said property nor suffer
40 it to be attached or remove it from the place of keeping

designated herewith without the written consent of the Seller.

3. Upon breach of any of the above covenants, or bankruptcy or insolvency or general assignment by the Purchaser, or whenever in the opinion of the Seller the property is threatened with loss, damage or destruction of any kind, except reasonable wear and tear, or with the imposition of a lien or adverse claim of any kind or in case of the failure on the part of the Purchaser to make any of the said payments when due as aforesaid, the Seller may retake possession of said motor vehicle and all equipment attached thereto free from all claims whatsoever and to that end, without notice to the Purchaser, to enter the premises of the Purchaser or other premises wherever said motor vehicle and equipment may be found and with or without legal process take and remove said motor vehicle with the body and all equipment attached thereto or used in connection therewith, or either or any of said chattels, the Purchaser hereby waiving any action for trespass or damages therefor and disclaiming any right of resistance thereto, and the Seller in that event may retain as consideration for the use of said motor vehicle and for depreciation, any sums which may have been theretofore paid in respect to said motor vehicle. In case of failure on the part of Purchaser to make any payments when due as aforesaid, the entire balance of the purchase price remaining unpaid, shall immediately become due and payable, the fact that the date of maturity of subsequent payments shall not yet have arrived notwithstanding. The Purchaser hereby waives all the provisions of Section 65, 66 and 67 of the Personal Property Law as amended to date.

4. As a further inducement to the Seller to enter into this agreement, the Purchaser hereby agrees that in the event of default of payment of any installment, should the Seller engage an attorney to enforce collection, he will reimburse the Seller for legal expenses which the Seller agrees shall

be 10% of the total balance of the purchase price remaining unpaid at the time of default. Purchaser further agrees to pay in addition to such sum, the amount of expenses incident to such suit, including a bond if same becomes necessary. And the Purchaser agrees that the Seller may have judgment for such amount in addition
10 to the amount due on the purchase price or under any other clause of this agreement.

5. The Purchaser hereby agrees during such time as title to said motor vehicle may rest with the Seller to use the motor vehicle therein described with all reasonable care and caution, and to be responsible to the Seller for any damage or physical injury done to said vehicle, ordinary wear and tear excepted; and the Seller, its agents and servants shall have access at all times during business hours to said vehicle whether in operation or not, for the purpose of giving such mechanical attention to it
20 as may in the Seller's judgment be required from time to time.

6. The Purchaser hereby authorizes the Seller during the term of this agreement to make from time to time such repairs on the aforesaid vehicle as in the judgment of the Seller shall at any time be necessary to maintain said vehicle in marketable condition or to save it from excessive depreciation, the Purchaser hereby agreeing to pay cash for all such repairs within ten days from pres-
30 entation of invoice for same; and in case of Purchaser's default in making any such payment when due as aforesaid the amount of said repairs shall be added to the current monthly instalment next due as aforesaid. In case of Purchaser's failure to pay the same at the time said instalment falls due, the Seller is authorized to resort to any of the remedies hereinbefore provided under Section 3 of this agreement.

7. In the event of the total loss or destruction of said motor vehicle by fire or otherwise, the Seller shall have
40 the sole right to collect the insurance or other form of in-

demnity that may be payable to it by reason of such destruction, and thereafter shall, out of the grand total made up from the total collected from the Purchaser, plus the total collected from the insurance company, pay to itself, the price of the motor vehicle herein mentioned, and interest on the total amount of deferred payments above referred to from the date of this agreement to the date of loss. The Seller shall thereupon pay to the Purchaser the balance remaining which the Purchaser agrees to accept in full settlement of all amounts due hereunder and this contract shall thereafter be void. 10

8. In the event of the partial loss or destruction by fire or otherwise of said motor vehicle and equipment the Purchaser agrees to give Seller prompt notice and the Seller shall take immediate steps for the necessary repair of the motor vehicle and equipment hereby sold, applying thereto such net amount as it may receive on account of insurance covering such loss, the Purchaser remaining liable for the balance, if any, of the cost of said repairs. In such case, the Seller shall not be liable to the Purchaser as a result of such partial loss or destruction for any damages growing out of delays, temporary withdrawals from service or any other cause whatever. 20

9. It is understood and agreed that if insurance on said property shall be insufficient to cover any loss to said property the Purchaser shall remain liable to the Seller for the unsatisfied balance of the purchase price. 30

10. Should this agreement be assigned by the Seller the Assignee shall have all the rights of the Seller hereunder.

11. All promises, understandings or agreements of any kind pertaining to this purchase not contained herein are hereby expressly waived, this instrument constituting the entire agreement between the Seller and the Purchaser.

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Conditional Sale Contract.

Car to be kept at Lotos Garage, 56 St., N. Y. C.
License................
Received above Motor Vehicle

Witness	JEROME B. CHAFFEE, Purchaser
....	By Jerome B. Chaffee,
	City, N. Y. State, N. Y.
	Business Address,
Accepted..............	203 West 111 St.,
....	Residence, Same.
By......................	City, Do. State, Do.

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STATE OF NEW YORK,
CITY OF NEW YORK, } *ss.*
COUNTY OF NEW YORK,

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On this 20th day of Dec., 1920, before me personally came J. B. Chaffee, to be known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

(SEAL)

MADELINE M. REID,
Notary Public, N. Y. Co. No. 391.
Register No. 1432.

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Conditional Sale Contract.

State of New York, }
City of New York, } *ss.*
County of New York, }

Be it remembered, That on this...... day of.......... in the year of Our Lord, One Thousand Nine Hundred and................... before me personally appeared ...., who, I am satisfied, is the person mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and deliv-
her
ered the same as his voluntary act and deed for the uses and purposes therein expressed.

CONDITIONAL SALES AGREEMENT

No. 3150

Thayer Mercantile Co., Inc.
1755 Broadway, New York City
and
Jerome B. Chaffee,
203 W. 111 St.
N. Y. C.

Size 561.00

Number of Payments, 6
Date, Dec. 20, 1920
Last Payment Due June 20, 1921.

LETTERS.

December 28, 1920.

Fred DeVoe, Esq.,
40 Paterson St.,
New Brunswick, N. J.

10 Dear Sir:

I represent the Thayer Mercantile Company, Inc., of New York, which Company sold an Oldsmobile Sedan to one J. B. Chaffee of 203 West 111th Street, New York City on December 20, 1920, under a conditional agreement wherein my client retains title until the full amount is paid. The automobile was to be kept at Lotos Garage, 56th Street and Seventh Avenue, New York City. The conditional agreement was filed in the County Clerk's Office of New York County. The purchase price was
20 $1011.00, $450.00 was paid leaving a balance of $561.00 still due.

I am informed that you represent the First National Bank of Milltown, New Jersey, and that you attached the said automobile. Under our agreement we have the right to retake possession of said automobile and all equipment, if the same is attached or removed from the State. We, therefore, claim possession of this automobile. Will your client release the attachment from the
30 machine so that we may obtain same, or will it be necessary for us to replevin.

Very truly yours,

HG-O.

HARRY GREEN.

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Letters.

Fred DeVoe, Esq., January 5, 1921.
40 Paterson St.,
New Brunswick, N. J.

Dear Sir:

Re: *Thayer Mercantile Co., Inc.,* vs.
First National Bank of Milltown, N. J. 10

Please let me have a response to my letter of December 28th, regarding the automobile attached by you.

Very truly yours,

HG-O. HARRY GREEN.

FRED W. DeVOE
Counsellor at Law
40 Paterson St.
New Brunswick, N. J. 20

January 6, 1921.

Harry Green, Esq.,
Counsellor at Law,
156 Market Street,
Newark, N. J.

Dear Sir:

Thayer Merc. Co vs. *First National Bank of Milltown.*

Will you please send me a copy of the bill of sale in this matter in order that I may be able to intelligently decide the question involved. I assure you that I do not wish to do anything other than to protect my client's interests. 30

Yours respectfully,

FWD.EP. FRED W. DeVOE.

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Letters.

January 7, 1921.

Fred W. DeVoe, Esq.,
40 Paterson St.,
New Brunswick, N. J.

Dear Sir:

10 Re: *Thayer Mercantile Co.* vs. *First Nat'l Bank.*

I thank you for your kind letter of January 6th. I enclose copy of conditional agreement, same was filed in the Register's Office of New York County, Hall of Records, on December 22, 1920, the Register's Office Certificate No. thereof being 77036.

We financed purchase of this car, and it was expressly understood that the car was to be used in New York City. We did not know, and we did not consent to the car leaving the City and State of New York. Under the 20 laws of New York our lien on the car is valid, and our lien is also valid in this State. I respectfully call your attention to Wooley *vs.* Geneva Wagon Co., 59 N. J. L. 278, also Lane *vs.* Banda Mexicana Co., 78 N. J. Eq. 439.

I will, therefore, greatly appreciate your releasing the car, as no part of the balance of $561.00 has been paid.

Thanking you for your courtesies and awaiting an early decision, I am,

30 Very truly yours,

HG-O. HARRY GREEN.

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Release of Jerome B. Chaffee.

FRED W. DeVOE
Counsellor at Law
40 Paterson St.
New Brunswick, N. J.

January 8, 1921.

Harry Green, Esq.,
Counsellor at Law,
156 Market Street,
Newark, N. J. 10

Dear Sir:

Re: *Thayer Merc. Co.* vs *First National Bank.*

I thank you for your letter of January 7 with enclosure. I will look up the matter and advise you more fully at an early date.

Yours respectfully, 20

FWD.EP. FRED W. DeVOE.

Thayer Merc. Co., Inc., having heretofore retaken its possession a certain Oldsmobile Sedan auto # Motor X85178, which was sold on December 20th, 1920, to the undersigned by said Thayer Merc. Co., Inc., 1755 Broadway, N. Y. City, under a conditional sale agreement. 30
Now, in consideration of the premises and inability of the undersigned to further carry out the said agreement and in order to save further expenses, the undersigned hereby waives all provisions of the sections #65 and #66 of the Personal Property Law of the Consolidated Laws of the State of New York, and consents that the said Thayer Merc. Co., Inc., make such disposition of said automobile as they may see fit, without any liability under said contract, or under said statutes, provided however, if said automobile is sold by the Thayer Merc. Co., 40

Inc., either at public auction or at a private sale, the undersigned shall be entitled to such amount of the money realized from the sale as shall exceed the amount due the Thayer Merc. Co., Inc., less expenses for storage, repairs, and sale of said automobile.

Signed JEROME B. CHAFFEE.

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Dated New York, Jany. 8th, 1920

Witnessed by:

JOHN J. HANLEY.

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STIPULATION AS TO VALIDITY OF CONTRACT IN NEW YORK.

Filed September 7, 1921.

It is stipulated and agreed by and between Harry Green, attorney for plaintiff, Fred W. De Voe, attorney for defendant, First National Bank of Milltown, and Frederick F. Richardson, attorney for defendant, Elmer E. Wyckoff, Sheriff of Middlesex County, that the conditional sale agreement mentioned in Sections 2 and 3 of the stipulation as to facts, was valid in the State of New York.

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It is further stipulated and agreed, that this stipulation shall form a part of the State of Case on appeal.

HARRY GREEN,
Attorney for Plaintiff.

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FRED W. DE VOE,
Attorney for Defendant, First National Bank of Milltown.

FREDERICK F. RICHARDSON,
Attorney for Defendant, Elmer E. Wyckoff, Sheriff of Middlesex County.

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DECISION.

Filed June 23, 1921.

Dungan, *J.:*

The facts in this case sufficiently appear by the stipulation of the facts signed by the attorneys of the plaintiff
10 and defendants on file in this case.

It is true that ordinarily in such cases the law of the *sitis* will prevail, and that there are a number of cases in the state holding that the title to personal property removed from another state to this state will be controlled by the laws of the former state, yet at the time those cases were decided there was no statute in New Jersey which assume to control the conditions under which the title to such property should remain under the control of the laws of such foreign state.

20 Section 14 of the Conditional Sales Act, passed in 1919, does specify the conditions under which property sold under Conditional Sales agreements in other states and removed therefrom to this State shall remain the property of the seller, and when the reservation of the property in the seller shall be void as to purchasers and creditors.

The right of the legislature to enact such a provision is beyond question.

The defendant, having acquired a lien by the attach-
30 ment upon the automobile in question, without notice of plaintiff's right, and the plaintiff having failed to file his contract in Middlesex County within the time provided by Section 5 of our act, I hold that the reservation of the property in the plaintiff is void as to the defendant, and do therefore award possession of the automobile to the defendants.

NELSON Y. DUNGAN,
Circuit Court Judge.

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STIPULATION AS TO VALUE OF GOODS AND CHATTELS.

Filed March 18, 1922.

It is stipulated and agreed by and between Harry Green, attorney for plaintiff, Fred W. De Voe, attorney for defendant, First National Bank of Milltown, and Frederick F. Richardson, attorney for defendant, Elmer E. Wyckoff, Sheriff of Middlesex County, that the value of the goods and chattels are hereby fixed at the sum of $657.75. 10

It is further stipulated and agreed, that this stipulation shall form a part of the State of Case on appeal.

Dated, February 15, 1922.

HARRY GREEN,
Attorney for Plaintiff. 20

FRED W. DE VOE,
Attorney for Defendant, First National Bank of Milltown.

F. F. RICHARDSON,
Attorney for Defendant, Elmer E. Wyckoff, Sheriff of Middlesex County.

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AMENDED FINDINGS, AND RULINGS OF LAW.

Filed March 18, 1922.

This case was tried before Judge Nelson Y. Dungan, without a jury, in the Middlesex Circuit, on May 23, 1921.

After hearing the agreed state of the case and counsel for plaintiff and counsel for the defendants, the Court finds:

1. It appears that this case is submitted upon three signed stipulations of facts agreed upon by the parties and filed by the clerk of this court.

2. The statements in paragraph 1 of the complaint are supported by the said agreed statements of facts.

3. The statements in paragraph 2 of the complaint are supported by the said agreed statements of facts.

4. The statements in paragraph 3 of the complaint are supported by said agreed statements of facts.

5. The statements in paragraph 4 of the complaint are supported by the said agreed statements of facts.

6. The statements in paragraph 5 of the complaint are supported by the said agreed statements of facts.

7. The statements in paragraph 6 of the complaint are supported by the said agreed statements of facts.

8. The statements in paragraph 7 of the complaint are supported by the said agreed statements of facts.

9. The statements in paragraph 8 of the complaint are supported by the said agreed statements of facts.

10. The statements in paragraph 1 of the counter-claim of the defendant, the First National Bank of Milltown, are supported by the said agreed statements of facts.

11. The statements in paragraph 2 of the said counter-claim are supported by the said agreed statements of facts.

12. The statements in paragraph 3 of the counter-claim are supported by the said agreed statements of facts.

13. The statements in paragraph 4 of the said counter-claim are supported by the said agreed statements of facts.

14. The statements in paragraph 5 of the counter-claim are supported by the said agreed statements of facts.

15. The Court finds in favor of the defendants and against the plaintiff, for the possession of the chattel re-plevied. 10

16. The Court rules, that under the Uniform Conditional Sales Act, P. L. 1919, p. 461, reservation of property in the plaintiff is void as to the defendant, the First National Bank of Milltown.

17. The Court rules, that the defendant, the First National Bank of Milltown, is not estopped from invoking said Uniform Conditional Sales Act, P. L. 1919, under the facts in this case.

Defendant shall have judgment against the plaintiff for the value of the goods and chattels, which is fixed 20 at $657.75.

NELSON Y. DUNGAN,
Circuit Court Judge,
presiding in Middlesex Circuit.

We hereby consent to the form of amended findings and rulings of law in the above-stated action.

HARRY GREEN,
Attorney for Plaintiff. 30

FRED W. DE VOE,
Attorney for Defendant,
First National Bank of Milltown.

FREDERICK F. RICHARDSON,
Attorney for Defendant,
Elmer E. Wyckoff,
Sheriff of Middlesex County.

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JUDGMENT FOR DEFENDANT.

Filed April 5, 1922.

This action was tried before Judge Nelson Y. Dungan, without a jury, on May 23, 1921, at the Middlesex Circuit. The case having been heard by the Court upon an agreed
10 state of case and the findings and rulings at law of the Court having been filed by the Court, wherein the Court rules that the defendant, the First National Bank of Milltown, shall have judgment against the plaintiff for the value of the goods and chattels, which value has been fixed at $657.75, as appears by a signed stipulation entered into by and between all the parties hereto;

It is, thereupon, adjudged, that the defendant, the First National Bank of Milltown, recover of the plaintiff the sum of $657.75, with its costs, which are taxed at the
20 sum of , making in the whole the sum of $.

Judgment entered April 5, 1922.

We hereby consent to the form of the foregoing judgment and the entry thereof.

HARRY GREEN,
Attorney of Plaintiff.

FRED W. DE VOE,
Attorney of Defendant,
First National Bank of Milltown.

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FREDERICK F. RICHARDSON,
Attorney of Defendant,
Elmer E. Wyckoff,
Sheriff of Middlesex County.

Damages $657.75.
Costs

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OPINION OF SUPREME COURT.

Filed December 8, 1922

NEW JERSEY SUPREME COURT

No. 36, June T., 1922.

THAYER MERCANTILE CO., INC., a corporation,

vs.

FIRST NATIONAL BANK OF MILLTOWN, a corporation, *et al.*,

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Appeal from Middlesex Circuit Court.

Argued before Gummere, Chief Justice, and Justices Swayze and Trenchard.

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For appellant, Harry Green.

For respondent, Fred W. DeVoe.

The opinion of the Court was delivered by GUMMERE, *C. J.*

This is an action of replevin. The case was tried before Dungan, *J.*, without a jury, upon an agreed state of facts which disclosed the following situation. The plaintiff company, doing business in New York, sold to one Chaffee on December 20, 1920, a certain automobile, under a conditional sales agreement which was filed in the office of the Register of New York County, the purchase having been made and consummated in that jurisdiction. In less than a week thereafter Chaffee removed the automobile from New York City to Middlesex county, in this state, without the knowledge or consent of the plaintiff and before having paid the full amount of the purchase price.

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He did this in violation of one of the provisions of the contract, which prohibited him from removing the automobile from the City of New York (which was the place designated for its keeping) without the written consent of the plaintiff. Almost immediately after the car had been taken to Middlesex county the defendant bank sued
10 out a writ of attachment against Chaffee, and the sheriff by virtue thereof attached the car. On December 28, 1920, the plaintiff, having learned of the existence of the attachment, caused its attorney to write to the attorney of the bank, advising him that the plaintiff had learned of the attachment, and calling his attention to the fact that the removal of the car was in violation of the sales contract, and asserting the right of the plaintiff, because of such violation, to take possession of the car. Some correspondence between these two attorneys followed this initial letter, but was not productive of any result. The
20 plaintiff failed to file its conditional sale agreement or a copy thereof in the office of the clerk of Middlesex county within ten days after receiving notice of the removal of the car to that county, or on any subsequent date.

On January 20, 1921, the present suit was instituted. The attorneys for the respective parties filed with the stipulation of facts the following agreement; "Under these facts the question of issue is: Is the provision in the conditional sale contract reserving property in the plain-
30 tiff void as to defendants, under the Uniform Conditional Sales Act of New Jersey, Pamphlet Laws 1919, by reason of the fact that the aforementioned conditional sales contract was not filed in the office of the County Clerk of Middlesex county?" On the hearing before the Trial Court, however, it was further contended on behalf of the plaintiff that, even if it should be considered that the statute ordinarily would protect an attaching creditor of the vendee resident in this state against the claim of the vendor, under conditions such as were exhibited in
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the present case, defendants were estopped by their conduct from invoking the benefit of the statute.

The trial judge, notwithstanding the limitation contained in the agreement of the attorneys, and apparently without objection on the part of the defendant, considered both questions, and held, first, that, under the statute, the reservation of the property in the plaintiff was void, so far as the rights of the bank as an attaching creditor of the vendor were concerned; and, second, that the claim of the plaintiff that defendants were estopped by their conduct from taking advantage of the protection afforded by the statute was not justified by the facts in the case. As a result of these conclusions, the Court awarded possession of the automobile to the defendants, and the plaintiff appeals.

The provisions of the Conditional Sales Act, so far as they are pertinent to the present issue, are contained in the 5th and 14th sections of the statute (P. L. pp. 462 & 466). The 14th section declares that "When prior to the performance of the condition" (payment of the purchase price in full) "the goods are removed by the buyer—from another state into a filing district in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to * * * creditors described in section 5, unless the conditional sale contract, or a copy thereof, shall be filed in the filing district to which the goods are removed within ten days after the seller has received notice of the filing district to which the goods have been removed." And the creditors described in section 5 are those who, without notice of the provision in the contract reserving property in the seller until the whole purchase price is paid, "acquire by attachment or levy a lien upon the goods." The language of these provisions is free from ambiguity, and our examination of the other sections of the statute satisfies us that they do not in any way restrain or limit the natural force to be given to it. In the present case there is nothing

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in the agreed state of facts tending to show that, at the time the attachment was executed, the creditor bank had any knowledge or notice that the automobile had been purchased by the defendant in the attachment proceedings from the plaintiff under a conditional sale agreement which reserved the title to the automobile in the vendor
10 until the purchase price had been fully paid. This being the case, such reservation of title could only be made effective as against the attaching creditor by complying with the statutory requirement and filing the conditional sale contract, or a copy thereof, in the office of the County Clerk of Middlesex county within ten days after December 28, 1920; and this, as we have before stated, was not done.

It was suggested on the argument before us that, as the contract of sale was made and executed in the State of New York, the rights of the parties to this litigation are to be determined by the law of that state relating to
20 the respective rights of the vendor under a conditional sale contract and of an attaching creditor of the vendee. It is true that the agreed stipulation as to facts contains no reference to the state of the law upon this subject as it exists in New York. But, in the absence of proof or of an agreement between the parties, the presumption is that these rights would be there determined by the application of common law rules. *Waln* v. *Waln,* 53 N. J. L. 432; *Bodine* v. *Berg,* 82 N. J. L. 464. And at
30 common law the ownership of the conditional vendor is paramount to the claims of creditors of his vendee. *Wooley* v. *Geneva Wagon Co.,* 59 N. J. L. 278. This being the law of the forum in which the agreement for sale was made and consummated, the question presented is whether the superior right of the vendee as it existed before the chattel was removed into this state is avoided by force of our own statute. We think that it is; at least so far as the claims of resident creditors of the conditional vendee are concerned. As a general rule, a transfer of
40 property valid where made is effectual everywhere; but

a universally recognized exception to this rule is that where it is opposed to some statutory policy of the state of the *rei sitae* and where it is sought to be enforced, the statute is paramount and the rule is nullified thereby. *Varnum* v. *Camp,* 13 N. J. L. 326; *Moore* v. *Bonnell,* 31 N. J. L. 90; *Bentley* v. *Whittemore,* 19 N. J. Eq. 462. And so where a state, in the exercise of its sovereign power, regulates by positive law the disposition of personal property found within its borders, and prefers its own attaching creditors to a foreign assignee of a chattel, or the conditional vendor thereof, the statutory right conferred upon the resident creditor overrides the rights of such assignee or conditional vendor vested in him by the law of the forum where the contract was made. *Varnum* v. *Camp, supra.* The present case comes within the exception to the general rule, and we conclude, therefore, that there was no error in the determination of the Trial Judge upon the first of the questions submitted to him.

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The claim of the plaintiff that the defendants are estopped from appealing to the statute for protection seems to us to be without merit. The contention is that it was induced by the conduct of the bank, or its attorney, to refrain from filing the conditional sale agreement with the clerk of Middlesex county until the expiration of the ten day limit fixed by the statute. Neither the stipulated facts nor the correspondence between the attorneys of the respective parties to the litigation, which was submitted to the Trial Court by mutual consent, contain anything which is even suggestive that the failure of the plaintiff to comply with the statutory requirement as to filing was the result of something that was said or written or done either by the defendant or by its attorney, and we conclude, therefore, that the finding of the Trial Judge upon this point was entirely justified by the facts.

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The judgment under review will be affirmed, with costs to the defendants.

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RULE OF AFFIRMANCE AND REMITTITUR.

Filed December 19, 1922.

NEW JERSEY SUPREME COURT.

THAYER MERCANTILE CO., INC., *Appellant,* vs. FIRST NATIONAL BANK OF MILLTOWN, *et al., Appellees.*	*On Appeal.* *Rule of Affirmance and Remittitur.*

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This cause having been heard at the June Term, 1922, of this Court, and the Court having inspected the record and proceedings of the Court below, and considered the reasons assigned for error, and being of the opinion that the judgment of the Middlesex County Circuit Court removed by appeal in this cause should be affirmed.

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It is Ordered that the judgment of the Middlesex County Circuit Court removed by appeal in this cause be affirmed with costs, and the record remitted to the said Circuit Court to be proceeded with according to law and the practice of said Court.

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Entered December 19, 1922.

On motion of

FRED W. DE VOE,
Attorney of Appellees.

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NOTICE AND GROUNDS OF APPEAL.

Filed January 25, 1923.

NEW JERSEY SUPREME COURT.

THAYER MERCANTILE CO., INC., *Plaintiff-Appellant,* *vs.* FIRST NATIONAL BANK OF MILLTOWN, *et al.,* *Defendants-Appellees.*	*Action at Law.* *Notice of Appeal and Grounds.*

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To Fred W. DeVoe, Attorney for Defendant-Appellant, First National Bank of Milltown; and Frederick F. Richardson, Attorney for Defendant-Appellee, Elmer E. Wyckoff, Sheriff of Middlesex County:

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TAKE NOTICE, that the plaintiff-appellant appeals to the Court of Errors and Appeals, from the whole of the judgment entered in the above-stated cause, on the ground that the Supreme Court erred in giving judgment for the defendants-appellees instead of for the plaintiff-appellant.

Dated, January 16, 1923.

HARRY GREEN,
Attorney for Plaintiff-Appellant.

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79 MAR. 1. 1923

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

THAYER MERCANTILE CO., INC., a corporation, *Plaintiff-Appellant,* vs. FIRST NATIONAL BANK OF MILLTOWN, a corporation, *et al., Defendants-Appellees.*	*Action at Law. On Appeal.*

BRIEF OF PLAINTIFF-APPELLANT.

This is an appeal by the plaintiff below, Thayer Mercantile Co., Inc. (hereinafter called the Thayer Company), from a judgment rendered by Judge Dungan, in the Middlesex County Circuit Court, in favor of the defendant below, the First National Bank of Milltown (hereinafter called the Bank), affirmed by the Supreme Court on appeal.

The case was tried before the Court, without a jury, upon agreed state of facts.

Facts.

The facts appear by the stipulations on file in this cause (Case, pp. 12 to 27), and may be briefly recited as follows:

The automobile in suit was sold by the Thayer Company to one Jerome B. Chaffee, in the City and State of New York, under a conditional sale contract, said Company retaining title therein until all agreements of the said purchases had been fulfilled, which contract was duly filed in the Register's Office of New York County, and was valid in the State of New York.

The said Chaffee removed the car from New York City to Middlesex County, New Jersey, prior to the performance of his agreements, without the consent or knowledge

of the said Company, where it was attached by the Bank without the knowledge of the Company.

Upon learning of said attachment, the Thayer Company's attorney communicated with the attorney for the Bank, informing him that said Company was the owner of said car, claiming possession thereof, and inquired whether said Bank would release the attachment, or whether it would be necessary to replevy, all of which appears by letter in State of Case, page 22. Then followed a correspondence between the attorneys, as to the Thayer Company's interest in the car, for the purpose of enabling the Bank's attorney to determine whether he should release the attachment or compel the Thayer Company to replevy, which correspondence took place over a period exceeding ten days, at the expiration of which time the Bank's attorney refused to release the attachment on the ground that ten days had elapsed since the Thayer Company's attorney first communicated with him, and a copy of the contract had not been filed in Middlesex County, and therefore, under Section 14 of the Uniform Conditional Sales Act, P. L. 1919, pages 461, 466, said Company's title therein was void, and the Trial Court so held.

The replevin proceedings for possession of the automobile were instituted in the Circuit Court of Middlesex County, a bond was put up by the Thayer Company, and no claim of property being put in by the Bank, the Company received possession of the car, and possession thereof being awarded to the Bank, its value was fixed at $657.75, as per stipulation on file (Case, p. 29), and judgment was entered in favor of said Bank for this amount, from which judgment the Thayer Company appeals.

The Thayer Company claims that under a true construction of the Uniform Conditional Sales Act, its title was good in this State under the facts in this case, and even if a copy of the contract was required to be filed against purchasers and creditors as contemplated by Section 5 of the Act, the Bank is not such a purchaser or creditor, and furthermore, even if it is such a purchaser

and creditor, it is estopped from taking advantage of said act, because the Bank's conduct induced the Thayer Company to wait over ten days before commencing its replevin action.

POINT I.

Ground of Appeal 1.

Because the Court erroneously ruled, on the facts stipulated, that under the Uniform Conditional Sales Act, P. L. 1919, p. 461, reservation of property in the plaintiff was void as to the defendant, the First National Bank of Milltown.

Section 4 of the aforesaid act provides that:

> "Every provision in a conditional sale reserving property in the seller after possession of the goods is delivered to the buyer, shall be valid as to all persons, except as hereinafter otherwise provided."

The exception refers to Section 5 thereof, which provides:

> "Every provision in a conditional sale reserving property in the seller, shall be void as to any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy thereof shall be filed as hereinafter provided, unless such contract or copy is so filed within ten days after the making of the conditional sale."

It is therefore manifest that the reservation of title is good against all persons, except those described in Section 5 aforesaid. The Bank is not that kind of a person described in Section 5, because it had notice, and it is not an innocent person for whose benefit only this section is intended. The Court will readily see that the Bank was not induced to extend credit, or purchase the vehicle, on the strength of apparent ownership in said Chaffee, and it, therefore, cannot be said that the Bank will sustain a

loss which it otherwise would not, if a copy of the contract was filed within the ten-day period, as it was holding the car when the Thayer Company made demand upon it for possession thereof.

Furthermore, in view of the fact that the contract otherwise provided (Case, p. 16, ll. 39-40; p. 17, ll. 1-2), the buyer did not have the right under Section 13 of the Conditional Sales Act to remove the automobile from the original filing district.

This section then provides that the buyer shall not remove the goods "except for temporary uses for a period of not more than 30 days, unless the buyer not less than ten days before such removal shall give seller notice of the place to which the goods are to be removed and the approximate time of such intended removal, * * *"

The Legislature by this section undoubtedly intended the notice to be given, so that the seller would know when and where to file copy of contract required by Section 14 of the act, and these sections are therefore complementary to each other.

Section 13, for the purpose of clarity, may be divided into five parts.

The first part:

> "Unless the contract otherwise provides, the buyer may, without the consent of the seller, remove the goods from any filing district and sell, mortgage or otherwise dispose of his interest in them;"

and the fourth part:

> "If any buyer does so remove the goods, or does so sell, mortgage or otherwise dispose of his interest in them without such notice or in violation of the contract, the seller may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price."

are pertinent to our situation, because the contract (Case, p. 16, ll. 39-40; p. 17, ll. 1-2), provides, *inter alia,* that buyer will not remove it from place of keeping (New York

City), (Case, p. 20, l. 1), without written consent of seller (Thayer Company), which consent was not given (Case, p. 12, Sec. 5).

Upon ascertaining removal of automobile from New York City to Middlesex County, New Jersey, the Thayer Company had the right under the fourth part of Section 13 hereinbefore quoted, to retake possession of the goods, which it endeavored to do, but ascertained car was attached, and tried to obtain possession thereof amicably, which it was justified in doing, because the law presumes that if one has possession of goods to which he is not entitled, he will give up the possession, on demand, to the rightful owner, without the trouble and expense of a law suit. *Shapiro* v. *DeLeuce,* 89 N. J. L. 161, 162.

Section 14 of the Conditional Sales Act, which states that "contract or copy shall be filed in the filing district to which the goods are removed, within ten days after the seller has received notice of the filing district to which the goods have been removed * * *" contemplates removal in accordance with, but not in violation of the contract, as provided in Section 13, which was not done in this case. The Legislature never intended by Section 14 that property of another wrongfully and unlawfully brought into this State and detained here, could not be retaken by the rightful owner unless he files a copy of his contract here, which would serve no useful purpose, because he would immediately remove it to his own State, and this would needlessly and for no apparent purpose or reason, impose burdens and expense upon him. The only possible theory on which such an intent could be justified would be on the ground that the filing would protect citizens of this State. But how would it protect our citizens when even if contract was filed, goods would be removed as soon as it was turned over to the rightful owner?

Prior to the enactment of our Uniform Conditional Sales Act, P. L. 1919, p. 461, there was no question as to the right of the conditional seller to retake possession of

his property under the facts of this case. *Wooley* v. *Geneva Wagon Co.,* 59 N. J. L. 278; *Lane* v. *Banda Mexicana Co.,* 78 N. J. Eq. 439, 441; *Hirsh* v. *Leatherbee Lumber Co.,* 69 N. J. L. 509; *Cooper* v. *Philadelphia Worsted Co.,* 68 N. J. Eq. 622, 628, 631.

To uphold construction of the act as laid down by the Trial Court would mean setting aside those long established principles of law laid down in the aforementioned decisions, and which are not affected in one tithe by the Uniform Conditional Sales Act, because said cases are in as perfect consonance with the Uniform Conditional Sales Act as they were with the pre-existing act.

The construction of the act by the Trial Court violates the fundamental rights in property of the plaintiff and deprives it of its property without due process of law.

Section 14 never contemplated a situation where the goods are already detained and the seller demands possession thereof.

Properly construed the act means notice of over ten days, before property is seized or purchased, and even so only if permanently removed to place where seized, or temporarily if over thirty days, but not for just a temporary removal of under 30 days.

Section 13, with regard to the temporary removal, unquestionably was intended to cover an automobile, which is practically the only kind of a chattel which moves from place to place rapidly, exclusive of railway equipment and trolleys which are comprehended in Section 8 of the act. It is a very simple thing for an automobile to go from one county to another, or even across the State in a very short period of time, and the Legislature undoubtedly had this in mind when they enacted the section regarding temporary removal, otherwise the seller would have to follow an automobile constantly every minute of the day, and file copies of his contract in every county it went through if the construction of the Trial Court is upheld.

Sections 13 and 14 should be construed together, and Section 14, with regard to filing copy of contract in new filing district, pre-supposes that the property was lawfully removed as set out in Section 13 of the act.

It would be beside the point, to contend that the act in question, compels a foreign cititzen to file a notice in this State, when he contends that his property is held here against his wishes.

The parties never contemplated the removal of the automobile to Middlesex County.

POINT II.

Ground of Appeal 2.

Because the Court erroneously ruled, that the defendant, the First National Bank of Milltown, was not estopped from invoking said Uniform Conditional Sales Act, P. L. 1919, under the facts in this case.

Mr. DeVoe was the attorney of said Bank, and therefore, its agent. The Bank is chargeable with notice to him and he had notice of the fact that the Thayer Company claimed title to the automobile by virtue of a conditional sale contract when he received letter of plaintiff's attorney, dated December 28, 1920.

The Bank induced the Thayer Company to withhold the institution of replevin proceedings until more than ten days had elapsed, and it should, therefore, not be permitted to take advantage thereof, on the doctrine of an ESTOPPEL IN PAIS which "arises in any situation when the parties have acted on the faith of conduct or representations which cause one of the parties to change his position to his detriment." *Wysokowski* v. *Polish-American Building & Loan Ass'n,* 113 A. 246. In this case, and in the case of *Sun Dredging Co.* v. *Ottens* (Errors and Appeals), 84 N. J. L. 740, 87 A. 1003, the Courts hold that ESTOPPELS IN PAIS may be set up in actions at law as well as in equity.

Candor and fair dealing required the Bank not to cause the Thayer Company to wait over ten days before deciding whether to release the car from the attachment, in order to take advantage of the Company under the aforesaid act. The Bank should have spoken within a reasonable time after getting the letter of December 8, 1920, instead of delaying its decision for over ten days in order that it might invoke the Conditional Sales Act to defeat the plaintiff's right to possession of the car. In *Sun Dredging Co.* v. *Ottens, supra,* the Court of Errors and Appeals, said: "The principle is familiar law that the Court will refuse its aid to one who remains silent when duty, candor and fair dealing require him to speak out, and such ESTOPPEL IN PAIS may be set up in actions at law as well as in equity."

"The doctrine of estoppel (says Herman) 'is both equitable and legal, and will be applied by courts, both in law and equity, in all proper cases upon well ascertained facts and between the proper parties.' *Herm. Estop. 11,* par. 9; *2 Pom. Eq. Jur.,* par. 802; *16 Cyc.* 725-727, and cases cited."

"*Central Railroad Co.* v. *MacCartney,* 39 Vroom 167, and cases cited on page 175. In the opinion of Mr. Justice Pitney in this case, it is said (at p. 175) that the doctrine of equitable estoppel, although the creature of equity and depending upon equitable principles, is recognized and enforced alike by the courts both of law and of equity. *Ross* v. *Elizabeth Town,* 1 Gr. Ch. 422."

In Pomeroy's Equity Jurisdiction, Bk. 2, 4th ed., par. 804, p. 1642, the doctrine is defined as follows:

"Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on

his part acquires some corresponding right, either of property, of contract, or of remedy.''

The Thayer Company in good faith relied upon the letters of Bank's attorney, dated January 6, 1921, and January 8, 1921, and did not believe that Bank would take advantage of the passing of time in order to defeat the Thayer Company's title to car, and as a result of the letters of said Bank's attorney, it was led to change its position for the worse, and the Bank has acquired a right, which did not exist at the time its attorney wrote the said letters. The Thayer Company will suffer a loss if it is compelled to surrender its right to the automobile by reason of the Bank being permitted to repudiate its conduct and to assert rights inconsistent with it.

In *La Rosa* v. *Nichols,* 92 N. J. L. 375, 377, the Court of Errors and Appeals repeated what it said in *Central Railroad Co.* v. *MacCartney,* 68 N. J. L. 165, where it said the doctrine of *equitable estoppel,* although the creature of equity and depending upon equitable principles, is recognized and enforced by rights of courts of law and equity. In this case the Court speaks of ESTOPPEL IN PAIS as EQUITABLE ESTOPPEL.

By means of the conduct of the Bank's attorney, the Thayer Company was led to change its position, and the Company acted in good faith in withholding replevin proceedings until it received word from the Bank's attorney, and thereby its position was changed.

In *Phillipsburg Bank* v. *Fulmer,* 31 N. J. L. 52, 55, the Supreme Court said:

''To constitute an ESTOPPEL IN PAIS there must be an admission intended to influence, or of such a nature as will naturally influence the conduct of another, and so change his position as materially to injure him, if the party making it is allowed to retract it.''

In the case at bar, the conduct of the Bank was of such a nature as would naturally influence the conduct of the Thayer Company to withhold the institution of the rep-

levin suit until it was informed that the attachment would not be released, and so its position was changed as a direct result thereof, and Bank should not be permitted to retract it.

It is therefore respectfully submitted that the judgment of the Supreme Court should be reversed, and judgment for possession rendered in favor of plaintiff-appellant.

Respectfully submitted,

HARRY GREEN,
Attorney and Counsel of
Plaintiff-Appellant.

New Jersey Court of Errors and Appeals

THAYER MERCANTILE CO., INC., a corporation, *Plaintiff-Appellant,* *vs.* FIRST NATIONAL BANK OF MILLTOWN, N. J., a corporation, and ELMER E. WYCKOFF, Sheriff of Middlesex County, *Defendants-Appellees.*	*Action at Law.* *On Appeal from Supreme Court.*

BRIEF OF DEFENDANTS-APPELLEES.

This is an appeal by the plaintiff below, Thayer Mercantile Company, Inc. (hereinafter called the Thayer Mercantile Company), from a judgment of the Supreme Court affirming the judgment rendered by Judge Nelson Y. Dungan in the Middlesex County Circuit Court in favor of the defendant-appellee, First National Bank of Milltown, N. J. (hereinafter called the Bank).

The case was tried before Judge Dungan, in the Circuit Court, without a jury, upon an agreed state of facts.

Statement of Facts.

The facts need not be repeated here, as they fully appear by the stipulations which are made a part of this case on appeal. (Case, pg. 12-27.) The statement of facts in the brief of the plaintiff-appellant, filed in this case, does not fully conform with the agreed state of facts, especially with reference to the correspondence between the attorney for the Thayer Mercantile Company and the attorney for the Bank, which correspondence is contained in the State of Case. (Case, page 22-25.)

POINT I.

The plaintiff-appellant appeals on the ground that the Court erroneously ruled that the reservation of property in the plaintiff was void as to the defendant, First National Bank of Milltown, N. J. The failure of the plaintiff-appellant to file the conditional sales

agreement in Middlesex County made the said reservation subject to the rights of the defendant, First National Bank of Milltown, N. J.

The first Conditional Sales Act in this state was enacted on May 9, 1889 (Chapter 271, Laws of 1889). Section 1, of said Act, was amended on March 14, 1885 (Chapter 302, Laws of 1895). The act of 1889 provided that unless the contract for sale was recorded it would be void "as against subsequent purchasers and mortgagees in good faith." The amendment of 1895 added to the class designated as "subsequent purchasers and mortgagees in good faith," a new class referred to as "judgment creditors of the person so contracting to buy the same." There is no further legislation effecting Conditional Sales in this state, down to the Uniform Sales Act of 1919.

The late Chief Justice Beasley, in giving the opinion of the Supreme Court in a case very similar to this, pointed out that Section 1 of the Act of 1889 did not refer to general creditors and, therefore, the Act as then standing would not operate for the benefit of an attaching creditor. The case was started on August 14, 1894, when a writ of attachment was issued, and it is very likely that the point discussed by the late Chief Justice was the cause of the amendment of 1895.

The Chief Justice also pointed out that, in that case, the vendee was not a resident of this state, nor were the articles sold within this state at the time of the execution of the contract of sale, and consequently the statute had no bearing upon the transaction. "The sale is good in common law both in New York and in this state," said Chief Justice Beasley, "and as there is nothing in our statute that regulates its status, so as to expose it to the attack of creditors under certain conditions, the title of the vendor must prevail."

Wooley v. Geneva Wagon Company, 59 L. 278.

The opinion by Chief Justice Beasley in the Geneva Wagon Company case has been concurred in by the Court of Errors and Appeals.

Reischmann v. Masker, 69 L. 353.

The Uuiform Conditional Sales Act in 1919 contains the very provision suggested by Chief Justice Beasley in his opinion rendered in the Geneva Wagon Company case.

In the case now before the Court, the vendor and vendee were non-residents of this state and the article sold was not in this state at the time of the sale, but was subsequently brought into this state by the vendee. The sale was good at common law both in New York and New Jersey, but our statutes regulate its status in so far as the rights of the citizens of New Jersey are concerned. Defendants herein are citizens of the State of New Jersey.

It is well settled that a corporation of this state is a citizen of this state.

The pertinent sections of the Uniform Conditional Sales Act of 1919, in so far as this case is concerned, are Sections 5, 13, 14 and 15.

Section 5 provides that "every provision in a conditional sale reserving property in the seller, shall be void as to any *purchaser* from, or creditor of the buyer, who, *without notice* of such provision, purchases the goods or *acquires by attachment* or levy a lien upon them." It is conceded that the defendant, First National Bank of Milltown, N. J., is a creditor of the buyer and "without notice" acquired by attachment a lien upon the chattels involved in this case. The attachment was issued on December 24, 1920, and the First National Bank of Milltown, N. J., did not receive any notice of any kind whatsoever of the rights of the plaintiff in the chattel, prior to December 28, 1920, at which time a letter was received by the attorney of the Bank (Case, page 22). The defendant's right was vested, and could not be divested except in accordance with the terms of the statute.

Section 13, of the Act of 1919, provides that the buyer of the chattels shall not remove the goods from any filing district unless the buyer shall give the seller "personally, or by registered mail, written notice of the place to which the goods are to be removed." Section 13 expressly deals only with the proposition whereby the buyer of a chattel shall "sell, mortgage or otherwise dispose of his interest in the goods," and does not in any way refer to a creditor who "acquires by attachment or levy a lien upon them." Section 13, therefore, is material only to show that the Legislature did not contemplate notice by the buyer to the seller excepting when the buyer desired to "sell, mortgage or otherwise dispose of his interest in the goods."

Section 15 inflicts a penalty for the failure of the buyer to give the notice prescribed in Section 13, and says that the buyer shall be guilty of a misdemeanor if such notice is not given. It is apparent that the Legislature did not intend to have Section 13 operate as to Section 5 and Section 14, of said Act, because if the Legislature so intended, it would have referred to the notice mentioned in Section 14, in providing for the penalty inflicted in Section 15.

Section 14 is as follows:

> "When prior to the performance of the condition, the goods are removed by the buyer from a filing district in this State to another filing district in this State in which such contract or a copy thereof is not filed, *or are removed from another from another state into a filing district in this state where such contract or copy is not filed,* the reservation of the property in the seller shall be void as to purchasers and creditors described in section five, unless the conditional sale contract or a *copy thereof shall be filed in the filing district to which the goods are removed, within ten days after the seller has received notice of the filing district to which the goods have been removed.* The provisions of this section shall not apply, however, to the goods described in section eight. The provisions of section eleven regarding the duration of the validity of the filing and the necessity for refiling shall apply to contracts or copies which are filed in a filing district other than that where the goods are originally kept for use by the buyer after the sale.

Section 14 places upon our statute books the very regulation suggested by Chief Justice Beasley, in the Geneva Wagon Company case, and the First National Bank of Milltown, N. J., the defendant herein, being a citizen of this state, has a right to invoke the aid of the law of this state in its behalf.

Local statutes have been successfully invoked to subvert the law of the state of the contract which, but for the local statute, would have been recognized.

Lane v. Roach's Banda, 78 *Eq.,* 439, and cases cited therein.

No state is bound to give effect to the law of a foreign state when to do so will prejudice either the rights of citizens or the interests of the state; but, on the contrary, each state is bound to give its citizens the full

benefit of all the remedies and securities provided by its laws.

Receiver v. First National Bank, 34 *Eq.,* 450.

This case has been numerously cited not only in our State Courts, but in the United States Courts, and in the Law Encyclopaedias.

In the case of Parr v. Brady, Supreme Court, 1874, (37 L. 201), the opinion reads in part as follows:

> "The evident purpose of the Act (referring to the Registry Act) is to reach only two cases—one where the mortgagor resides in the state; and the other where he does not and the property is within the state. The legislature, if it were thought good policy, could prevent the foreign mortgage (or a conditional bill of sale, as in the case at bar) from having effect in this state, but the intention so to do ought to be clearly manifested when the object is to abridge the validity of a common law contract."

It must be presumed that the Legislature, when it enacted the Uniform Conditional Sales Act of 1919, was conversant with the law as laid down in the case of Parr v. Brady; therefore, it must be presumed that the Legislature intended by said Act to prevent a foreign mortgage, or a conditional bill of sale, as the case may be, from having effect in this state, unless the statutory requirement were complied with.

The Act of 1919, and particularly Section 14, shows by a clearly manifested intent that a foreign mortgage, or a foreign conditional bill of sale, should have no effect in this state as against the rights of the citizens hereof, unless the conditions of the statute were complied with.

Section 14 states that when goods are removed from another state into this state, the contract, or copy, must be filed in this state within ten days after the seller has received notice, etc. The seller had notice on December 28, 1920, as set forth in the stipulation filed herein. (Case, page 13). It may be argued that the notice should have been in the form, and served in the manner, as prescribed in Section 13. Can that interpretation be put on Section 14? Section 15 prescribed that the notice therein provided be given as required by Section 13. Why did the Legislature omit to refer to Section 13, in the provisions of Section 14? It was omitted because

the Legislature intended that Section 14 should be interpreted, and read, as it provides, i.e., "Notice," however given or received. It is submitted that if the Legislature intended otherwise, then, in that case, Section 13 or some other provision, would have been incorporated or referred to in Section 14, as Section 13 was referred to in Section 15.

The cases cited herein all sustain each other, as well as the common law, on the following law:

(a) Conditional sales were valid at common law.

(b) Conditional sales, valid at common law, are valid in New Jersey, subject to the restrictions of any statutory enactment in this state.

(c) The comity of states requires that one state shall give full force and effect to the laws of a sister state, unless

(d) The law of a state should be pleaded by a citizen of that state, as against the law of a sister state; in that case, a state will protect its citizen even though contrary to the law of a sister state.

(e) That the Act of 1889, as amended in 1895, does not provide for the recording of agreements or contracts in this state, unless (a) vendee is a resident hereof, or (b) the chattel is located herein.

It is argued, in conclusion, that it must be presumed that the Legislature was acquainted with the decisions in this state, as well as the statutory law, respecting conditional sales agreements, and, therefore, the enactment of Section 14, of the Act of 1919, was for the purpose of modifying the common law rule, said modification being exactly in line with the implied recommendations in the decisions cited herein.

The comity of states does not bar a judgment for the defendants herein, because if a citizen of New Jersey is presumed to know the laws of New York, then it must be presumed that a citizen of New York (the plaintiff herein), must know the laws of New Jersey.

POINT II.

The defendant, the First National Bank of Milltown, N. J., was not estopped from invoking the Uniform Conditional Sales Act of 1919.

The Bank had notice of the claim of the plaintiff

herein on December 28, 1920, but such notice was not received until four days after the attachment was issued and the chattel attached by the defendant herein, Elmer E. Wyckoff, Sheriff of the County of Middlesex. The rights of the defendant, the Bank, were vested four days before the receipt of such notice.

Section 5, of the Act of 1919, provides, " * * who, without notice," "acquires by attachment or levy." The defendant, the First National Bank of Milltown, N. J., acquired by attachment, and before notice, a right, and that right was vested and could not be divested or defeated, except in accordance with the terms of the statute. The letter written by the plaintiff's attorney to the defendant's attorney, gave notice of the claim of the plaintiff herein after the right of the defendant herein, the First National Bank of Milltown, N. J., had become vested.

The plaintiff herein claims that the Bank induced the plaintiff herein to withhold the institution of replevin proceedings until more than ten days had elapsed, and, therefore, the Bank should not be permitted to take advantage thereof on the doctrine of an estoppal in pais.

The plaintiff herein had notice on December 28, 1920, of the removal of the chattel from the State of New York to a filing district in this State, as evidenced by the letter from the attorney of the plaintiff herein to the attorney of the defendant, the First National Bank of Milltown, N. J., which letter bears date December 28, 1920, (Case, page 22). The ten day period expired on January 7, 1921.

The only communication from the Bank, and, of course, the only communication upon which the plaintiff could have relied, was a letter from the attorney of the Bank to the attorney of the plaintiff herein, bearing date January 6, 1921 (Case, page 23). Can that letter be interpreted in any way to show that the Bank induced the plaintiff herein to withhold the institution of replevin proceedings?

Does the letter from the attorney of the plaintiff herein, dated January 7, 1921, to the attorney of the Bank, indicate that the bank had induced the plaintiff herein to withhold the institution of replevin proceedings?

Does not that letter indicate that the plaintiff relied upon its title in New York, without reference whatsoever to the act of 1919 of this State?

The attorney for the plaintiff herein is presumed to have known that the ten day period expired on January 7, 1921, and yet he does not refer to that fact in his letter of January 7, 1921, but based his claim to the chattel on the laws of the State of New York, and also upon cases reported in New Jersey. The cases cited by the attorney for the plaintiff were decided before the Act of 1919 and no doubt were the cause for the enactment of the strict provisions of Section 14 of the Act of 1919.

The Bank did not cause the plaintiff herein to change its position. The position of the plaintiff herein was clearly set forth in the letter of January 7, 1921, from the attorney of the plaintiff herein to the attorney of the Bank (Case, page 24). It is evident by that letter that the plaintiff considered that its position as given in that letter was correct, and strong enough to sustain its claim to the chattel in question.

It is argued in the brief of the attorney for the plaintiff herein, that "the conduct of the Bank was of such a nature as would naturally influence the conduct of the Thayer Company to withhould the institution of the replevin suit until it was informed that the attachment would not be released." The question of whether or not a replevin suit was instituted, and at what time it was instituted. is not material to this issue. In other words, if the attorney of the Plaintiff herein had immediately followed his letter of December 28, 1920 (Case, page 22), by the institution of a replevin action, as therein referred to, the institution of such action would not have divested the right of the defendant, the First National Bank of Milltown, N. J., to the chattel. The only way such a right could have been divested was by the strict compliance, by the plaintiff herein, with the statutory requirements.

It is further submitted that the argument by the attorney of the plaintiff herein on the question of the estoppal is not properly before this Court. It is not based upon any facts contained in the agreed state of facts as set forth in the stipulations filed in this cause and made

a part of the case on appeal. (Case, page 12-17). Furthermore, it was not a part of the case before the Trial Court, and neither was it argued by the attorney of the plaintiff herein before the Trial Court. Briefs were submitted on the entire case to the Court below, and the point of estoppal now raised by the attorney of the plaintiff herein was not presented in the brief of the attorney of the plaintiff herein, submitted to the Court below, and which brief is on file in this cause.

This point is not properly before the Appellate Court.

It is respectfully submitted that the judgment of the Supreme Court should be sustained.

Respectfully submitted,

FRED W. DeVOE,
Of Counsel With
Defendants-Appellees.

Dated: March 8, 1923.