

is liable for damage by creek floods, and answers the  
 city in that case, solely because the city emptied  
 into the stream only the water that naturally drained  
 about.

In *Jordan v. Ballou*, 24 L. 296, this court  
 held that: "A municipality has no right, by arti-  
 ficial drains, to divert surface water from the course  
 it would otherwise take, and cast it in a body large  
 enough to do substantial injury, on land where but  
 10 for each artificial drain, it would not go."

By causing the drains to empty into the creek, the  
 municipalities made the stream a part of their drain-  
 age system, and therefore, if they are liable for per-  
 mitting a drain or sewer to overflow, it must follow  
 that the same liability attaches to overflowing of  
 streams caused by artificial means chargeable to the  
 neglect of the municipalities.

The judgment of the Supreme Court striking out  
 the return of action except that nothing is brought  
 should be reversed.

Respectfully submitted,

JAMES J. McGOOGAN,  
 Attorney and of Counsel  
 For Appellant.

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**Notice of Appeal.**

IN CHANCERY OF NEW JERSEY.

Between :

THE BERGENFIELD PRINTING  
COMPANY, a corporation,  
*Complainant,*

and

INTERTYPE CORPORATION, a corpo-  
ration, and CHARLES F. PELLE-  
GRIN and RANDOLPH PERKINS,  
*Defendants.*

On Bill, Etc.  
Notice of Appeal.  
62-354.

10

The complainant, The Bergenfield Printing Com-  
pany, hereby appeals from the final decree made in  
the above entitled cause on the 19th day of Septem-  
ber, 1927, and from the whole and every part there-  
of, to the Court of Errors and Appeals in the Last  
Resort in All Causes.

20

Dated, October 18, 1927.

JOHN DREWEN,  
Solicitor for and of Counsel with Complainant,  
The Bergenfield Printing Company,  
a Corporation.

30

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

JOHN DREWEN,  
Of Counsel with Complainant,  
The Bergenfield Printing Company,  
a Corporation.

40

Petition of Appeal.

Filed—November 8, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between: THE BERGENFIELD PRINTING COMPANY, a corporation, <p style="text-align: center;"><i>Complainant,</i></p> and RANDOLPH PERKINS, <p style="text-align: center;"><i>Defendant-Appellant,</i></p> INTERTYPE CORPORATION, <p style="text-align: center;"><i>Defendant-Appellee.</i></p>	On Appeal from the Court of Chancery. (James F. Fielder, V. C.) Petition of Appeal.
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20 To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Randolph Perkins, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds 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 September 19th, 1927, in a certain cause in said Court of Chancery wherein the said The Bergenfield Printing Company was complainant, and the said Randolph Perkins, Intertype Corporation and others were defendants, in this respect, to wit, that the said decree adjudges that the chattel mortgage in the said decree mentioned, dated October 1, 1921, made, executed and delivered to the defendant Intertype Corporation by the Bergenfield Press, Inc., and recorded in the Bergen County Clerk's Office on November 4, 1921, in Book 84 of Chattel Mortgages, page 194, is a

Petition of Appeal.

good, valid and subsisting lien in the hands of the said defendant Intertype Corporation upon the goods and chattels in the said mortgage mentioned to secure the payment of the sum of \$400.00 and interest thereon at the rate of six per cent per annum from April 27, 1920; and that said mortgage is entitled to priority of payment; and that the said Intertype Corporation is first entitled to have the said sum of money raised and paid out of the said goods and chattels in the said mortgage mentioned; and that in the event of failure of the said complainant The Bergenfield Printing Company to pay to the said defendant Intertype Corporation within twenty days from the date of said decree the principal sum of said mortgage and interest thereon from April 27, 1920, at the rate of six per cent per annum, the said Intertype Corporation shall have leave to proceed with the sale of said goods and chattels under the said chattel mortgage to make the moneys due thereon as aforesaid; and that the counterclaim of the said Randolph Perkins be dismissed with costs; and that the said Randolph Perkins pay to the said defendant Intertype Corporation said costs to be taxed.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the said chattel mortgage dated October 1, 1921, is not a good, valid and subsisting lien on the goods and chattels therein mentioned for the payment of the said moneys, and is not entitled to priority of payment; and in that said Intertype Corporation is not first entitled to have said sum of money raised and paid out of the said goods and chattels in said mortgage mentioned; and in that the said chattel mortgage is invalid, defective and illegal and does not constitute a lien upon the goods and chattels

*Petition of Appeal.*

mentioned in it; and in that the said decree should not have ordered, adjudged and decreed that said defendant Intertype Corporation should under any circumstances have leave to proceed with the sale of the said goods and chattels under said chattel mortgage to make any moneys whatever; and in that the said decree should not have ordered, adjudged and decreed that the counterclaim of the petitioner Randolph Perkins, as defendant in the said cause, be dismissed with costs; and in that the decree denies the relief prayed for in the counterclaim filed by the said defendant Randolph Perkins, whereas, the decree should have sustained the said counterclaim and should have awarded to the said defendant Randolph Perkins the relief prayed for in his said counterclaim.

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

JOHN DREWEN,  
Solicitor for and Counsel with  
Defendant-Appellant.

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40

**Answer to Petition of Appeal.**

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between :

THE BERGENFIELD PRINTING  
COMPANY, a corporation,  
*Complainant,*  
and

RANDOLPH PERKINS,  
*Defendant-Appellant,*

INTERTYPE CORPORATION,  
*Defendant-Appellee,*  
and

CHARLES F. PELLEGRIN,  
*Defendant-Appellee.*

On Appeal from  
the Court of  
Chancery.  
Answer to  
Petition of Appeal.

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20

The answer of Intertype Corporation and Charles F. Pellegrin, above named appellees, to the petition of appeal of Randolph Perkins, above named appellant.

These appellees not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admit that a decree was on September 19, 1927, made and entered in the Court of Chancery in the above entitled cause for the purposes in said petition mentioned and as therein set forth, but as to the substance and form of said decree these appellees beg leave to refer therto when the same shall be produced.

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

LUM, TAMBLYN & COLYER,  
Solicitors for and of Counsel  
with Appellees.

30

40

**Stipulation Amending Petition of Appeal.**

Filed—May 15, 1928.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between:

10

THE BERGENFIELD PRINTING COMPANY, a corporation,  
*Complainant-Appellant,*

and

RANDOLPH PERKINS,  
*Defendant,*

INTERTYPE CORPORATION,  
*Defendant-Appellee.*

On Appeal from the Court of Chancery. Stipulation Amending Petition of Appeal.

20

IT IS HEREBY STIPULATED AND AGREED, by and between the respective parties hereto, that the petition of appeal filed herein, in order that the same be made to conform to the notice of appeal filed in the Court of Chancery, be and the same hereby is amended by substituting The Bergenfield Printing Company, complainant, as the appellant in the said petition of appeal, in the place and stead of Randolph Perkins;

30

AND IT IS HEREBY FURTHER STIPULATED AND AGREED, that the petition of appeal be further amended by omitting from the last paragraph but one any reference whatever to the dismissal of the counter-claim of said Randolph Perkins, as well as any reference to a denial of the relief prayed for in said counter-claim, and also all recitals of what the Court of Chancery should have decreed relative to the said counter-claim and the prayer there-  
40 under.

*Stipulation Amending Petition of Appeal.*

AND IT IS HEREBY FURTHER STIPULATED AND AGREED, that the answer to petition of appeal of the Intertype Corporation shall be and constitute an answer to the petition of appeal as amended by this stipulation.

Dated May 7th, 1928.

10

JOHN DREWEN,  
Solicitor for and of Counsel with  
The Bergenfield Printing Company,  
a Corporation, Complainant-Appellant.

LUM, TAMBLYN & COLYER,  
Solicitors for and of Counsel with  
Intertype Corporation, Defendant-Appellee.

20

**Bill of Complaint.**

Filed—November 16, 1926.

IN CHANCERY OF NEW JERSEY.

To His Honor,

EDWIN ROBERT WALKER,

Chancellor of The State of New Jersey.

30

Complainant, The Bergenfield Printing Company, a corporation of the State of New Jersey, having its principal office at 26 Palisade Avenue, Bergenfield, Bergen County, New Jersey, respectfully shows:

1. That by an order made in this Honorable Court in a cause therein pending between Grove Webster, complainant, and Bergenfield Press, Inc., defendant, which order is dated March 17th, 1926, Harry E. McGrath of Jersey City, was appointed  
40

*Bill of Complaint.*

Receiver of the Bergenfield Press, Inc., and of all of its assets and property of every character and description, with full powers of receiver and with full power to sell and convey and assign any and all of the real and personal estate of said Bergenfield Press, Inc., and to do and perform all the duties imposed upon him by law as such Receiver.

10

2. Said Receiver thereupon took title to and entered into possession of all of the property of the said Bergenfield Press, Inc.

3. That on the 17th day of May, 1926, the stockholders and creditors of the Bergenfield Press, Inc., including the defendant Intertype Corporation, who was then a creditor of said Bergenfield Press, Inc., were required to show cause before this Honorable Court on the 24th day of May, 1926, why the property of the Bergenfield Press, Inc., should not be exposed at public or private sale, and that on the said 24th day of May, 1926, an order was made by this Honorable Court authorizing, empowering and directing the said Harry E. McGrath, as Receiver, of the Bergenfield Press, Inc., to sell the lands and premises and buildings and machinery and appurtenances in and about the same, belonging to the said Bergenfield Press, Inc.; that thereafter upon due notice of sale, the said Harry E. McGrath, in accordance with said order of sell, exposed for sale the said property of the said Bergenfield Press, Inc., and the same was struck off, subject to all liens and encumbrances to one Frederick R. Schellhorn, the highest bidder therefor.

20

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4. The bid of said Frederick R. Schellhorn was afterwards assigned to complainant, and on the 9th day of July, 1926, the said Harry E. McGrath,

40

*Bill of Complaint.*

as Receiver of the said Bergenfield Press, Inc., executed and delivered to complainant a deed for the real estate and a bill of sale for all of the machinery and appurtenances and equipment of the said Bergenfield Press, Inc., including two 2-letter Intertypes or typecasting machines, known as Intertype Serial Nos. 3208-3209, and thereupon the said Bergenfield Printing Company took possession of said real estate, property and plant of the said Bergenfield Press, Inc., and all the machinery and equipment, including the said two typecasting machines and is now the owner and in possession thereof.

10

5. Complainant further shows that on the 13th day of May, 1920, the Bergenfield Press, Inc., made, executed and delivered to the said defendant Intertype Corporation, a chattel mortgage hearing date on the said 13th day of May, 1920, in the sum \$5,800.00, which mortgage was made to secure the payment of forty notes of \$145.00 each, and which chattel mortgage was afterwards, and on the 13th day of July, 1920, recorded in the Bergen County Clerk's Office in book 80 of chattel mortgages, page 475.

20

6. Complainant further shows and charges the fact to be that said chattel mortgage or conveyance was intended to operate as a mortgage of goods and chattels which was not accompanied by immediate delivery and followed by an actual and continued change of possession of the things mortgaged, and was not recorded as soon as might be by immediate diligence and dispatch, and was not in fact recorded until after the lapse of sixty days after its execution and delivery, and was and is void and invalid against the creditors of the Bergenfield Press, Inc., and against subsequent lienors, purchasers

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*Bill of Complaint.*

and mortgagees, and against the said Receiver, and is invalid and void against complainant the Bergenfield Printing Company.

7. Complainant further shows that on the 1st day of October, 1921, the said Bergenfield Press, Inc., made, executed and delivered to the said Intertype Corporation, a chattel mortgage dated October 1, 1921, in the sum of \$4,495.00, but that said mortgage was not recorded in the Bergen County Clerk's office until the 4th day of November, 1921, in book 84 of chattel mortgages page 94, and was and is void and invalid against subsequent mortgages, purchasers and mortgagees, and against the said Receiver, and is invalid and void against complainant the Bergenfield Printing Company.

8. Complainant further shows that said Intertype Corporation, and one Charles F. Pillegrin, acting as attorney in fact for the Intertype Corporation, pretending that the said two mortgages are good and valid mortgages and liens upon the said two typecasting machines of complainant, have given notice that the said two typecasting machines will be sold at public auction on Wednesday, November 17th, 1926, at 1 o'clock in the afternoon, on the premises 26 Palisade Avenue, Bergenfield, New Jersey, and have made or attempted to make a levy upon said two typecasting machines.

9. Complainant has notified said Intertype Corporation and Charles F. Pillegrin that it claims title of the said two machines free and clear of the said chattel mortgages, but notwithstanding the invalidity of the said two chattel mortgages and the title of complainant, and the notice given by complainant to the said defendants Intertype Corpora-

*Bill of Complaint.*

tion and Charles F. Pillegrin, the said defendants, have continued to post notices and to give public notice that they intend to sell said two typecasting machines, under the said chattel mortgages hereinabove set forth.

10. Complainant further shows that the defendants Intertype Corporation and Charles F. Pillegrin have full and complete knowledge of the invalidity of the said chattel mortgages executed by Bergenfield Press, Inc., to said Intertype Corporation, and of the Receivership of the said Bergenfield Press, Inc., and of the sale and conveyance of said machines by the Receiver to the complainant, but notwithstanding the full knowledge of all the facts and circumstances, the said defendants are attempting to take possession of said machines and to sell the same on the 17th day of November, 1926.

11. Complainant further shows that after the execution and delivery of the two chattel mortgages hereinabove set forth, the said Bergenfield Press, Inc., made and delivered to Randolph Perkins, of Woodcliff Lake, New Jersey, on the 4th day of April, 1924, a chattel mortgage on its property and upon said two typecasting machines for the sum of \$12,300.00, and afterwards, and on the 31st day of July, 1925, executed to Randolph Perkins a mortgage thereon for the sum of \$12,400.00, and thereafter said Randolph Perkins levied upon said typecasting machines and took the same into his possession at the time of the appointment of the Receiver, Harry E. McGrath, and that said Randolph Perkins now claims that his two said mortgages are liens upon the said typecasting machines, and that the title to complainant is subject to said two mortgages, to Randolph Perkins. Complain-

*Bill of Complaint.*

ant charges by virtue of the sale, to wit, by the said Receiver, its title is not encumbered by the said mortgages of said Randolph Perkins.

10 12. Complainant further shows that the Intertype Corporation and the said Charles F. Pillegrin have set up notices in public places in Bergenfield and have advertised in the public press that on the 17th of November, 1926, they would expose said typecasting machines for sale and that it is their intention to attempt to take physical possession of said machines.

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

20 1. That the said Intertype Corporation, Charles F. Pillegrin and Randolph Perkins, the defendants herein, may answer this bill of complaint.

2. That it may be determined that the two mortgages held by the Intertype Corporation are void and invalid, and of no effect.

30 3. That complainant's title to said Intertype machines is free and clear of the liens of the said Intertype Corporation and said Randolph Perkins.

4. That the said Intertype Corporation and Charles F. Pillegrin, as its attorney in fact, may be restrained from proceeding with the sale or attempted sale of said typecasting machines until the further order of this Court.

40 5. That the defendants to this suit may make full and complete discovery as to the chattel mortgages set forth in this bill of complaint, when the same were executed, the amount due or claimed to be due thereon, when the same were recorded and

*Bill of Complaint.*

all the facts and circumstances connected therewith.

6. That complainant may have a decree that the said chattel mortgages held by Intertype Corporation and said Randolph Perkins are invalid and void, and that the title of the said complainant is free and clear of said chattel mortgages. 10

7. That complainant may have such other and further relief as may be agreeable to equity and good conscience.

8. That a writ of subpoena may issue commanding the said defendants, Intertype Corporation, Charles F. Pillegrin and Randolph Perkins to answer said bill of complaint and to abide by such decree as this Court may make in the premises. 20

JOHN DREWEN,  
Solicitor for and of  
Counsel with Complainant.

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

GROVE WEBSTER, of full age, being duly sworn according to law, upon his oath deposes and says:

That he is the general manager of the Bergenfield Printing Company, a corporation of the State of New Jersey. That the property of the Bergenfield Press, Inc., including two typecasting machines known as Intertype Serial Nos. 3208-3209 were the property of the Bergenfield Press, Inc., at the time it went into the hands of the Receiver. That said machines were in the possession of the Bergenfield Press, Inc., and were used as part of 40

*Bill of Complaint.*

their plant at No. 26 Palisade Avenue, Bergenfield, New Jersey.

10 That at the receiver's sale they were sold, together with the plant and other equipment and a bill of sale was delivered by Harry E. McGrath, Receiver of said Bergenfield Press, Inc., to the Bergenfield Printing Company, as set forth in the bill of complaint.

20 That said typesetting machines were continuously in the possession of the Bergenfield Press, Inc., to deponent's knowledge, for about a year previous to the sale by the Receiver, and have been in the possession of the Bergenfield Printing Company since the delivery of the bill of sale by the Receiver to it. That they are heavy machines weighing approximately hundred pounds apiece, and are not easily movable or removable.

That notice was served upon the Bergenfield Printing Company by Charles F. Pillegrin, as attorney in fact for the Intertype Corporation, that on November 17, 1926, at 1 o'clock in the afternoon said Charles F. Pillegrin would sell the machines under the chattel mortgages described in the bill of complaint and held by the Intertype Corporation.

30 That notices were posted and advertisements in the public press appeared giving notice of said intended sale. That said two typesetting machines are part of the property which was the Bergenfield Press, Inc., and which was afterwards sold to the Receiver and conveyed to the Bergenfield Printing Company and are now the property of the Bergenfield Printing Company.

GROVE WEBSTER.

40 Subscribed and sworn to before me  
this 16th day of November, 1926.

EDWARD CLAXTON,  
Atty. at Law of N. J.

*Bill of Complaint.*

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

JOHN P. NUGENT, of full age, being duly sworn according to law, upon his oath deposes and says:

I am the secretary of the Bergenfield Printing Company, the complainant in the foregoing bill of complaint. That the matters and things therein contained are true to the best of my knowledge and belief. 10

On the 17th day of March, 1926, Harry E. McGrath of Jersey City, was appointed Receiver of the Bergenfield Press, Inc., by order made by the Court of Chancery of New Jersey. Immediately upon his being appointed Receiver he took possession of all the property of the Bergenfield Press, Inc., including two 2-letter Intertypes or typesetting machines, known as Intertype Serial Nos. 3208-3209, and continued in possession of the same until the sale by the Receiver on the 15th day of June, 1926, when the same were sold at Receiver's sale. Afterwards said Receiver's sale was confirmed by an order of this Court, and on or about July 9th, 1926, said Receiver executed and delivered to the complainant, The Bergenfield Printing Company, a bill of sale for all of the machinery and equipment in the plant formerly of the Bergenfield Press, Inc., at 26 Palisade Avenue, Bergenfield, New Jersey, including the said two Intertypes or typesetting machines, and ever since the 9th day of July, 1926, said typesetting machines have been part of the equipment of the complainant and belong to, and have continuously been, and are now in the possession of said complainant. 20 30

By the record of the Clerks' Office of Bergen County it appears that on the 13th day of May, 1920, the Bergenfield Press, Inc., made and executed to the Intertype Corporation, a chattel mort- 40

*Bill of Complaint.*

gage bearing date on the said 13th day of May, 1920, in the sum of \$5,800.00. That said chattel mortgage was not recorded until the 13th day of July, 1920, it then being recorded in said County Clerk's Office in book 80 of chattel mortgages, at page 475.

10

It also appears by said Clerk's office records that on the first day of October, 1921, said Bergenfield Press, Inc., made and executed to the said Intertype corporation, a chattel mortgage bearing date the 1st day of October, 1921, which mortgage was not recorded in said Clerk's office until the 4th day of November, 1926, it then being recorded in book 84 of chattel mortgages at pages 94, etc.

20

That said mortgages purported to be the mortgages on said two Intertypes or typecasting machines, hereinabove referred to; that at the time of the execution and delivery of said mortgages the said typecasting machines were in and continued to remain in the possession of the Bergenfield Press, Inc., until the appointment of said Receiver, and were at no time in the possession of the Intertype Corporation after they were installed in the plant of the Bergenfield Press, Inc., as aforesaid.

30

Deponent further says that one Charles F. Pellegrin purported to act as attorney in fact for the Intertype Corporation, has given public notice that on Wednesday, November 17th, 1926, at 1 o'clock in the afternoon, at the premises 26 Palisade Avenue, Bergenfield, New Jersey, he would expose for sale and sell the two typecasting machines under the two mortgages hereinabove recited, held by the Intertype Corporation, but deponent is informed and believes it to be true that the Intertype Corporation claims that the said mortgages hereinabove referred to are liens and encumbrances upon the said typecasting machines prior to the rights of the complainant.

40

*Bill of Complaint.*

Deponent is informed and believes it to be true that said Intertype Corporation and Charles F. Pellegrin have had full and complete knowledge of the sale of said property by the said Receiver to the Bergenfield Printing Company, and is informed and believes that they are attempting or making an effort to obtain possession of the machines, and to take the same away from the Bergenfield Printing Company.

10

JOHN P. NUGENT.

Subscribed and sworn to before me  
this 16th day of November, 1926.

EDWARD CLAXTON,  
Atty. at Law of N. J.

20

**Answer of Randolph Perkins.**

Filed—June 23, 1927.

IN CHANCERY OF NEW JERSEY.

BERGENFIELD PRINTING COMPANY,  
*Complainant,*

and

INTERTYPE CORPORATION, CHARLES  
F. PELLEGRIN and RANDOLPH  
PERKINS,

*Defendants.*

On Bill, Etc.  
Answer of  
Randolph Perkins.

30

The defendant, Randolph Perkins, answering the bill and amended bill of complaint filled herein by the Bergenfield Printing Company, says that:

40

1. He admits the allegations of paragraph 1.

*Answer of Randolph Perkins.*

2. He admits the allegations of paragraph 2.
3. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 3.
- 10 4. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 4.
5. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 5.
6. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 6.
- 20 7. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 7.
8. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 8.
- 30 9. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 9.
10. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 10.
- 40 11. This defendant admits the execution and delivery to him of the chattel mortgages herein set forth. This defendant further admits that he levied upon the said typecasting machines, and took

*Answer of Randolph Perkins.*

the same into his possession, and the same were in his possession at the time of the appointment of the receiver of the complainant corporation. Defendant denies that the property sold by the receiver was unencumbered by the chattel mortgages held by him.

10

12. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 12.

EDWARD CLAXTON,  
Sol'r. for Defendant  
Randolph Perkins.

20

**Answer of Intertype Corporation.**  
**IN CHANCERY OF NEW JERSEY.**

Between:

THE BERGENFIELD PRINTING  
COMPANY, a corporation,  
*Complainant,*

and

INTERTYPE CORPORATION, a  
corporation, et al.,  
*Defendants.*

On Bill, Etc.  
Answer of Inter-  
type Corporation.

30

The answer of Intertype Corporation, one of the defendants in the above entitled cause, to the amended bill of complaint of The Bergenfield Printing Company, the complainant herein:

40

This defendant, answering the said amended bill of complaint, says that:

*Answer of Intertype Corporation.*

1. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 1.
2. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 2.
3. This defendant admits the allegations in paragraph 3.
4. This defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 4.
5. This defendant admits the allegations contained in paragraph 5.
6. This defendant admits that the said chattel mortgage was intended to operate as a mortgage of the goods and chattels therein mentioned, but denies all other allegations in paragraph 6.
7. Defendant admits that on October 1, 1921, Bergenfield Press, Inc., executed and delivered to this defendant a chattel mortgage dated and recorded as alleged in paragraph 7. Defendant denies that said chattel mortgage was and is void and invalid against subsequent mortgages, purchasers and mortgagees and against the said receiver. Defendant denies that the same is invalid and void against the complainant. Defendant admits that the said two instruments executed by Bergenfield Press, Inc., to this defendant herein intended to operate as a mortgage of goods and chattels and that they were not accompanied by an immediate delivery and followed by actual and continued possession by this defendant of the things mortgaged. Defendant

*Answer of Intertype Corporation.*

- ant denies all other allegations in the amendment to Paragraph 7 of the bill of complaint.
8. This defendant admits the allegations contained in paragraph 8.
  9. This defendant admits the allegations contained in paragraph 9.
  10. Defendant denies that it has full or complete knowledge of the invalidity of the said chattel mortgages as alleged in paragraph 10. Defendant admits that it has knowledge of the receivership of the said Bergenfield Press, Inc., and of the sale and conveyance of the machines by the receiver to the complainant. Defendant admits that it has taken proceedings for the sale of said machines but denies that it has attempted to take possession thereof.
  11. Defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 11.
  12. Defendant admits that it has caused notice to be set up in public places and has advertised in the public press that the said type casting machines would be exposed for sale as alleged in paragraph 12, but defendant denies that it has attempted to take physical possession of said machines.
  13. Defendant further answering, says that on May 13, 1920, the said Bergenfield Press, Inc., made, executed and delivered to this defendant a chattel mortgage bearing date on said last mentioned day to secure the sum of \$5,800.00, which said mortgage was recorded as set forth in paragraph 5 of the bill; that subsequently and on October 1, 1921, said Bergenfield Press, Inc., made, executed

*Answer of Intertype Corporation.*

10 uted and delivered to this defendant another chattel mortgage dated on said last mentioned day to secure the sum of \$4,495.00, which was recorded as alleged in pagarpah 7 of said bill; that both said chattel mortgages covered two certain Intertype or typecasting machines manufactured by this defendant; that from time to time after the making and execution of said chattel mortgages the mortgagor therein named made payment to this defendant of certain of the moneys secured thereby and that at the time of the institution of this suit there was due to this defendant and secured by said chattel mortgages the sum of \$400.00, together with interest thereon at the rate of six per cent per annum from the 27th day of April, 1920; that said last mentioned sum remains now wholly unpaid and this defendant is entitled to proceed against the property covered by said mortgages to make the amount so due to it as aforesaid.

20

30 14. Defendant further says that the receiver of the said Bergenfield Press, Inc., the mortgagor of the said goods and chattels, pursuant to the order of this Honorable Court, exposed the same for sale with other assets of the corporation and at the sale thereof the same were struck off and sold to one Frederick R. Schellhorn, subject to all liens and encumbrances thereon; that the said chattels were sold by the said receiver pursuant to notice given by him wherein and whereby the chattel mortgages of this defendant and the lien thereof were specifically mentioned, together with the approximate amount due and claimed by this defendant; that the said sale, subject to the lien of this defendant's mortgages, as aforesaid, was subsequently thereto confirmed by an order of this Honorable Court whereby the said receiver was authorized and di-

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*Answer of Intertype Corporation.*

rected to make a bill of sale thereof to the complainant herein as the assignee of the purchaser of said sale; that the said complainant and its assignor purchased the said chattels with full notice and knowledge of the rights and claims of this defendant against the same, pursuant to its mortgages as aforesaid.

10

15. Defendant further answering says that its said chattel mortgages were duly recorded pursuant to the statute in such case made and provided and that the same are good and valid liens against the complainant herein.

LUM, TAMBLYN & COLYER,  
Solicitors for Defendant  
Intertype Corporation.

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**Amendment to Bill of Complaint.**

Filed—January 3, 1927.

IN CHANCERY OF NEW JERSEY.

Between:

10

THE BERGENFIELD PRINTING COMPANY, a corporation,  
*Complainant,*

and

INTERTYPE CORPORATION, a corporation, and CHARLES F. PELLEGRIN, et al.,  
*Defendants.*

On Bill, Etc.  
Amendment to  
Bill of Complaint.

20

Complainant amends this bill of complaint by inserting at the end of paragraph 7, on page 3, the following:

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Complainant further shows that the two instruments executed by the Bergenfield Press, Inc., to the defendant Intertype Corporation, were intended to operate as a mortgage of goods and chattels. That they were not accompanied by an immediate delivery and followed by actual and continued possession by the Intertype Corporation, of the things mortgaged and that said mortgages have not annexed to them, or to either of them, an affidavit or affirmation made and subscribed by the Intertype Corporation, its agent or attorney, stating the consideration of said mortgage or of said mortgages, and as nearly as possible, the amount due and to grow due thereon, but on the contrary neither of said instruments purporting to be chattel mortgages have annexed thereto an affidavit required by the statute and that each of said instruments purporting to be chattel mortgages were and are absolutely void as against the creditors of the Bergenfield Press, Inc., and against the Receiver aforesaid, and against complainant.

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JOHN DREWEN,  
Solicitor for Complainant.

**Answer and Counterclaim of Randolph Perkins.**

Filed—June 23, 1927.

IN CHANCERY OF NEW JERSEY.

Between:

10

BERGENFIELD PRINTING COMPANY,  
*Complainant,*

and

INTERTYPE CORPORATION, CHARLES F. PELLEGRIN and RANDOLPH PERKINS,  
*Defendants.*

On Bill, Etc.  
Answer and  
Counterclaim of  
Randolph Perkins.

20

The defendant, Randolph Perkins, answering the amended bill of complaint of the Bergenfield Printing Company, says:

1. He admits the allegations of paragraphs one, two, three and four of the amended bill of complaint.

2. He has no knowledge or information in respect to allegations in paragraphs five, six, seven, eight, nine and ten of the amended bill of complaint, but denies that the Intertype Corporation has a valid chattel mortgage prior to the chattel mortgages of this defendant.

30

3. He admits the allegations of paragraph eleven, which set forth the mortgages executed to this defendant by the said Bergenfield Press, Inc., and the levy made by this defendant on the said type-casting machines as set forth in said paragraph. He denies that said mortgages held by this

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*Answer and Counterclaim of Randolph Perkins.*

defendant are not good and subsistent liens against the said type-casting machines.

10 By way of counterclaim against the Intertype Corporation, this defendant alleges that he loaned to the Bergenfield Press, Inc., the sum of Twenty-six Thousand Seven Hundred (\$26,700) Dollars and accepted from the said Bergenfield Press, Inc., a chattel mortgage of Twelve Thousand Three Hundred Dollars (\$12,300) on the 4th day of April, 1924, and a chattel mortgage of Twelve Thousand Four Hundred (\$12,400) Dollars on the 31st day of July, 1925, and that said chattel mortgages of this defendant are good and subsistent liens against the said type-casting machines.

20 2. That the loans made by this defendant to the said Bergenfield Press, Inc., were made without the knowledge of the existence of the alleged chattel mortgage held by the defendant, Intertype Corporation, and that the said mortgages held by the defendant, Intertype Corporation, are not liens on said type-casting machines prior to the lien of this defendant's mortgages and that said Intertype Corporation mortgages are defective and invalid, and that they are not a lien on the property described in this defendant's said mortgages, and particularly upon the said type-casting machines.

30 This defendant prays that the Court decree that the Intertype Corporation may answer this counterclaim and that its said mortgage be decreed to be null and void as against the said mortgages of this defendant.

40 RANDOLPH PERKINS,  
Solicitors for Defendant,  
Randolph Perkins.

**Answer of Defendant, Intertype Corporation,  
to Counterclaim of Randolph Perkins.**

IN CHANCERY OF NEW JERSEY.

BERGENFIELD PRINTING COMPANY, <i>Complainant,</i> vs. INTERTYPE CORPORATION, CHARLES F. PELLEGRIN and RANDOLPH PERKINS, <i>Claimants.</i>	}	On Bill, Etc. 10 Answer of De- fendant, Intertype Corporation, to Counterclaim of Randolph Perkins.
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The answer of the defendant, Intertype Corporation, to the counterclaim of the defendant, Randolph Perkins. 20

This defendant, Intertype Corporation, answering said counterclaim says that:

1. It has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of said counterclaim, except to deny that said alleged chattel mortgages are good and subsistent liens against the said type-casting machines. 30

2. It denies each and every allegation contained in paragraph 2 of said counterclaim.

LUM, TAMBLYN & COLYER,  
Solicitors for Defendant,  
Intertype Corporation.

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**Answer of Charles F. Pellegrin.**  
 IN CHANCERY OF NEW JERSEY.

Between:

THE BERGENFIELD PRINTING  
 COMPANY, a corporation,  
*Complainant,*

and

INTERTYPE CORPORATION, a  
 corporation, et als.,  
*Defendants.*

On Bill, Etc.  
 Answer of  
 Charles F. Pelle-  
 grin.

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The answer of Charles F. Pellegrin, one of the defendants in the above entitled cause to the amended bill of complaint of The Bergenfield Printing Company, the complainant herein.

This defendant, answering the bill of complaint says that:

1. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraphs one to seven inclusive.

2. This defendant admits the allegations in paragraph eight.

3. This defendant admits the allegations in paragraph nine.

4. This defendant denies that he has full or complete knowledge of the invalidity of the said chattel mortgages as alleged in paragraph ten. Defendant admits that he has knowledge of the Receivership of the said Bergenfield Press, Inc., and of the sale and conveyance of the machines by the Receiver to the complainant. Defendant admits that he has taken proceedings for the sale of said machines, but denies that he attempted to take possession thereof.

*Answer of Charles F. Pellegrin.*

7. This defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph eleven.

8. This defendant admits that he has caused notices to be set up in public places and has advertised in the public press that the type-casting machines would be exposed for sale as alleged in paragraph twelve, but defendant denies that he has attempted to take physical possession of said machines.

LUM, TAMBLYN & COLYER,  
 Solicitors for Defendant,  
 Charles F. Pellegrin.

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**Replication.**

Filed—April 13, 1927.

IN CHANCERY OF NEW JERSEY.

Between:

THE BERGENFIELD PRINTING  
 COMPANY, a corporation,  
*Complainant,*

and

INTERTYPE CORPORATION, a  
 corporation, et als.,  
*Defendants.*

On Bill, Etc.  
 Replication.

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The complainant, Bergenfield Printing Company, a corporation, denies each and every allegation contained in the answer filed herein.

JOHN DREWEN,  
 Solicitor for Complainant.

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**Opinion.**

July 18, 1927.

## IN CHANCERY OF NEW JERSEY.

Between:

10 THE BERGENFIELD PRINTING  
COMPANY,*Complainant,*

and

INTERTYPE CORPORATION, et al.,

*Defendants.*On Bill, Etc.  
Opinion.  
62—354.20 MR. JOHN DREWEN for Complainant.  
Messrs. LUM, TAMBLYN & COLYER for Defendant,  
Intertype Corporation.MR. RANDOLPH PERKINS, Defendant, pro se.  
FIELDER, V. C.:

30 In the suit of Webster v. Bergenfield Press, Inc. (60-347), in this court, the defendant therein was adjudged an insolvent corporation and a receiver was appointed. The receiver filed a report and petition wherein he prayed for directions concerning a sale of the land and personal property of said defendant, in which report he set out, as among the liens on the personal property, a mortgage held by the Intertype Corporation on one "Intertype" machine, on which there was due "upward's of \$300". An order was entered directing the receiver to sell the real and personal property at public sale, subject to all encumbrances thereon.

40 The receiver made sale and filed his report, showing that he had given notice by publication and posting that he would sell the real and personal

*Opinion.*

property subject to all liens and encumbrances thereon by reason (among others) of chattel mortgages and subject to any and all other liens and encumbrances thereon; that he had exposed the land, plant and equipment at public vendue and publicly announced at the sale that the personal property was subject to certain liens, among which were "chattel mortgage held by Intertype Corporation on Duplex Press, original amount \$5800, balance due \$600; chattel mortgage held by Intertype Corporation on Monotype machine, original amount \$4495, balance due \$300"; that Fred R. Schellhorn bid for all the real and personal property \$500, subject to all the liens and encumbrances aforesaid, amounting in all on the day of sale to "\$68614, or about that sum"; and that the property was struck off and sold to said purchaser for the price aforesaid. An order was entered upon said report reciting that the receiver has made sale of the lands, machinery, plant and equipment for \$500, subject to all liens and encumbrances, amounting to "\$68614, or about that sum" (but not specifying any lien or encumbrance) and directing the receiver to make conveyance to the purchaser or his assignee. The purchaser assigned his bid to Bergenfield Printing Company, the complainant in the instant case, and the receiver executed and delivered to that corporation a bill of sale, wherein is recited all the proceedings aforesaid, including a recital that the sale was made subject to all liens and encumbrances on the property sold.

Included in the property sold by the receiver and conveyed to the complainant herein, were two letter intertypes, or typesetting machines, on which the defendant herein, Intertype Corporation, held two chattel mortgages executed and delivered to it by Bergenfield Press, Inc. (the recording of which

*Opinion.*

antedated the appointment of the receiver in the Webster suit by more than five years), one being dated May 13, 1920, for \$5800, recorded July 13, 1920, and the other dated October 1, 1921, for \$4495, recorded November 4, 1921. Just prior to the filing of the bill of complaint in this cause, the

10 Intertype Corporation proceeded to foreclose its mortgages. The complainant herein thereupon filed its bill to attack the validity of the mortgages on the ground that they do not comply with the provisions of Section 4 of our Chattel Mortgage act (Comp. St., 463) because they were not recorded with reasonable dispatch after their delivery and also because the affidavits annexed thereto are defective. The bill also alleges that subsequent to the execution and delivery of said mortgages and

20 prior to the appointment of the receiver in the Webster suit, Bergenfield Press, Inc., executed two chattel mortgages to Randolph Perkins, covering the mortgagor's entire personal property, including said two typecasting machines and that Perkins has taken said machines into his possession and claims that his mortgages are liens thereon. The bill is filed against the Intertype Corporation and Randolph Perkins and prays a decree that complainant's title is free from the lien of the defendant's chattel mortgages and that the Intertype Corporation be restrained from proceeding with its foreclosure sale.

30

The defendant Perkins filed an answer asserting the validity of his mortgages and of his lien thereunder and denying the validity of the Intertype Corporation's mortgages and he also filed a counterclaim against the Intertype Corporation, setting up his mortgages, alleging their validity and that

40 at the time of their execution and delivery, he had no notice of the mortgages of the Intertype Corpo-

*Opinion.*

ration and further alleging that those mortgages are defective and invalid and praying that they be decreed null and void. The answer of the Intertype Corporation to the bill and to the Perkins counterclaim asserts the validity of its mortgages, claims \$400 with interest from April 27, 1920, due thereon, alleges that the receiver's sale in the Webster suit was made expressly subject to its mortgages and that the sale to complainant was with notice and knowledge of its mortgages. At the hearing of this cause the defendant Perkins abandoned his defense to complainant's bill and his counterclaim against the Intertype Corporation and the hearing proceeded on the issues between the complainant and Intertype Corporation.

10

The right of complainant to come into court for the relief prayed for was not questioned by the pleadings or at the hearing (*Jersey City Milling Co. v. Blackwell*, 58 N. J. Equity, 122; *Dey v. Moody*, 91 N. J. Equity, 14), and I will not question it now.

20

On the merits of the case the complainant ought not succeed against the Intertype Corporation, because the proceedings in the Webster suit, under which it acquired title to the machines in question, gave notice to it that there were liens on all the property owned by the insolvent defendant in that suit and as purchaser, it was bound by the information which an examination of the proceedings would disclose. Such examination, besides showing that the receiver's sale was made subject to all liens and encumbrances, would also disclose that in the receiver's petition for sale it was stated that the Intertype Corporation held a mortgage on one "Intertype" on which upwards of \$300 was due. It would also disclose that in the receiver's conditions of sale it was expressly stated that the In-

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*Opinion.*

tertype Corporation held two chattel mortgages, one for \$5,800 and the other for \$4,495 and while it is true that it was stated that those mortgages covered a duplex press and a monotype machine respectively, the name of the mortgagee and the amount of each mortgage were stated correctly and an examination of the chattel mortgages records would have disclosed the true facts. Moreover, Mr. Perkins, who held chattel mortgages on the machines was present at the receiver's sale and it was he who authorized the successful bid for the property for the benefit of the complainant company, of which he is now the president and treasurer. He had a copy of the conditions of sale and a list of the encumbrances and he heard the receiver's announcement of the particular encumbrances. He is also a lawyer and his law partner was the solicitor for the complainant and for the receiver in the Webster suit and is the solicitor for the complainant in this suit. Because of these facts I feel that before becoming the purchaser at the receiver's sale, the complainant had such notice of the existence of chattel mortgages on the property to be sold, that it was its duty to investigate and investigation would have disclosed the complete facts. Whatever puts a party upon an inquiry, amounts in the judgment of law to notice, provided the inquiry becomes a duty as in the case of a purchaser and would lead to the knowledge of the requisite facts by the exercise of ordinary diligence and understanding (*Hoy v. Bramhall*, 19 N. J. Equity, 563-572; *Vredenburgh v. Burnet*, 31 N. J. Equity, 229; affirmed 34 N. J. Equity, 252; *Moore v. Kremer*, 50 N. J. Equity, 776; *Wahl v. Stoy*, 80 N. J. Equity, 607-616).

It appears from the proofs that the two chattel mortgages given by Bergenfield Press, Inc., to In-

*Opinion.*

tertype Corporation, were not given for separate debts but that the second mortgage was given to secure payment of the balance then due on the first mortgage; the first mortgage should therefore be receipted and delivered up for cancellation of record. It also appears from the proofs that there remains unpaid on the second mortgage the principal sum of \$400, but I do not recall that the evidence showed from what date interest is due on that sum.

The complainant is in no position to attack the validity of the second mortgage on the ground that it was not recorded promptly or that the affidavit thereto is defective, because it became the purchaser of the machines in question, with other property, subject to liens and encumbrances amounting to \$68,614 or about that sum" and from the evidence it appears that the mortgage in question was among those liens and encumbrances and that the amount due thereon was included in said total sum. Having agreed to buy the machines subject to the lien of this mortgage, it would be inequitable to allow the complainant to attack the validity of the lien and through such attack, perhaps, violate the condition upon which it acquired ownership (*Warwick v. Davis*, 26 N. J. Equity, 548-556; *Lee v. Stiger*, 30 N. J. Equity, 610; *Hackensack Water Company v. De Kay*, 36 N. J. Equity, 548; *Fidelity Trust Co. v. Staten Island Clay Co.*, 70 N. J. Equity, 550; *Camden, &c., Co. v. Citizens Ice Co.*, 71 N. J. Equity, 221; *Peoples B. & L. v. Vaniewsky*, 85 N. J. Equity, 557; *Dey v. Moody*, supra; *Patch Mfg. Co. v. Gahagan Co.*, 93 N. J. Equity, 73; *Holloway v. Hendrick*, 98 N. J. Equity, 713-717; *Berk v. Isquith Productions*, 131 Atl., 526).

I will hear counsel on the form of decree to be entered in conformity with these conclusions.

**Final Decree.**

Filed—September 19, 1927.

IN CHANCERY OF NEW JERSEY.

Between:

10 THE BERGENFIELD PRINTING  
COMPANY, a corporation,  
*Complainant,*

and

INTERTYPE CORPORATION, et als.,  
*Defendants.*

On Bill, Etc.  
Final Decree.  
62—354.

20 This cause coming on to be heard before the Court in the presence of John Drewen, Esquire, of counsel with the complainant, William F. Gorman, Esquire, of counsel with the defendants Intertype Corporation and Charles F. Pellegrin, and Randolph Perkins, Esquire, defendant, pro se, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered and the Court having duly considered said pleadings, proofs and arguments, and it now appearing to the Court that the chattel mortgage dated October 1, 1921 delivered to the defendant Intertype Corporation by the Bergenfield Press, Inc., and recorded in Book 84 of Chattel Mortgages for Bergen County, page 194, is a valid and subsisting lien upon the goods and chattels mentioned therein to secure the payment of the moneys hereinafter mentioned to said Intertype Corporation and entitled to priority of payment, and it further appearing that the chattel mortgage made and executed by said Bergenfield Press, Inc., to said Intertype Corporation dated

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40

*Final Decree.*

May 13, 1920 and recorded in the Bergen County Clerk's Office in Book 80 of Chattel Mortgages, page 475 should be receipted and delivered up to complainant for cancellation of record, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by it in its bill of complaint against the said defendant Randolph Perkins, and it further appearing that the defendant Randolph Perkins is not entitled to the relief prayed for by him in his counterclaim filed in this cause;

10

It is thereupon, on this 19th day of September, Nineteen Hundred and Twenty-seven, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED that the chattel mortgage dated October 1, 1921 made, executed and delivered to the defendant Intertype Corporation by the Bergenfield Press, Inc., and recorded in the Bergen County Clerk's Office on November 4, 1921, in Book 84 of Chattel Mortgages, page 194, is a good, valid and subsisting lien in the hands of the defendant Intertype Corporation upon the goods and chattels therein mentioned to secure the payment of the sum of Four Hundred Dollars (\$400.00) and interest thereon at the rate of 6% per annum from April 27, 1920, and is entitled to priority of payment, and that the said Intertype Corporation is first entitled to have the said sum of money raised and paid out of the said goods and chattels in said mortgage mentioned.

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30

It is further ORDERED, ADJUDGED AND DECREED that unless the complainant herein shall, within 20 days from the date hereof, pay to the said Intertype Corporation the aforesaid sum of \$400 and interest from April 27, 1920, at the rate of 6% per annum, said Intertype Corporation have leave to proceed with the sale of the said goods and chat-

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*Final Decree.*

tels under the said chattel mortgage to make the moneys due thereon as aforesaid.

10 It is further ORDERED, ADJUDGED AND DECREED that all restraints heretofore issued against the said Intertype Corporation and Charles F. Pellegrin in this cause be and the same are hereby vacated and dissolved.

20 It is further ORDERED, ADJUDGED AND DECREED that the chattel mortgage dated May 13, 1920, made by the Bergenfield Press, Inc., to the defendant Intertype Corporation and recorded in the Bergen County Clerk's Office in Book 80 of Chattel Mortgages for said County on page 475 be receipted by the defendant Intertype Corporation and delivered up to the complainant herein to the end that the same may be cancelled of record.

It is further ORDERED, ADJUDGED AND DECREED that the complainant herein pay to the defendant Intertype Corporation the costs of this suit to be taxed, including a counsel fee of One Hundred and Fifty Dollars, and that execution issue therefor according to the practice of this court, and

30 It is further ORDERED, ADJUDGED AND DECREED that the counterclaim of the defendant, Randolph Perkins, be and the same is hereby dismissed with costs and that the said defendant Randolph Perkins pay to the defendant Intertype Corporation said costs to be taxed and that execution issue therefor according to the practice of this court, and

40 It is further ORDERED, ADJUDGED AND DECREED that the bill of complaint be and the same hereby is dismissed as against the defendant Randolph Perkins.

Respectfully advised,

JAMES F. FIELDER,  
V. C.

**Case.**

## IN CHANCERY OF NEW JERSEY.

Between:

THE BERGENFIELD PRINTING  
COMPANY, a corporation,  
*Complainant,*

and

INTERTYPE CORPORATION, et als.,  
*Defendants.*

On Bill, Etc.  
Case.

10

TRANSCRIPT OF SHORTHAND NOTES OF TESTIMONY taken on final hearing in above stated cause, at Chancery Chambers, Jersey City, June 28, 1927, at ten o'clock in the forenoon, before His Honor James F. Fielder, Vice Chancellor.

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## APPEARANCES:

PERKINS & DREWEN (Mr. Perkins), for complainant.

LUM, TAMBLYN & COLYER (Mr. Gorman), for defendants.

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## COMPLAINANT'S CASE.

RANDOLPH PERKINS, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination.

I am president and treasurer of the complainant company. I was present at the sale made by the Receiver of the Bergenfield Press, of the property

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*Randolph Perkins—Direct Examination.*

of the Bergenfield Press, an insolvent corporation.

I produce and offer in evidence a copy of the conditions of sale, with Schedule A annexed to it, which is designed to show the liens on the property the Receiver was selling.

10 At the time of the sale I did not know that the defendant, Intertype Corporation, had or claimed to have any mortgage or chattel mortgage on any of the property. The conditions of sale with Schedule A annexed at the Receiver's Sale, indicated that there were two mortgages held by Intertype Corporation.

20 Mr. Gorman: I object to the admission of the conditions of sale. We have the record of the Court of Chancery, with the report of sale, I think the conditions of sale are immaterial.

The Court: At present I will reject the offer.

(Continuing.) The sale was made by the Receiver and I read the conditions of sale and the list of mortgages annexed to it, and it did not appear by those conditions or schedules—

30 Mr. Gorman: I object.  
The Court: Objection sustained.

(Continuing.) When the property was bid in I had no knowledge or information that the Intertype Corporation had or claimed to have any chattel mortgage on the two linotype machines.

By the Court:

40 Q. You testified that you were the president and treasurer of the complainant company? A. Yes.

Q. At the time of this sale what interest had you

**Case.**

## IN CHANCERY OF NEW JERSEY.

Between:

THE BERGENFIELD PRINTING  
COMPANY, a corporation,  
*Complainant,*

and

INTERTYPE CORPORATION, et als.,  
*Defendants.*

On Bill, Etc.  
Case.

10

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LUM, TAMBLYN & COLYER (Mr. Gorman), for defendants.

30

## COMPLAINANT'S CASE.

RANDOLPH PERKINS, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination.

I am president and treasurer of the complainant company. I was present at the sale made by the Receiver of the Bergenfield Press, of the property

40

*Randolph Perkins—Direct Examination.*

of the Bergenfield Press, an insolvent corporation.

I produce and offer in evidence a copy of the conditions of sale, with Schedule A annexed to it, which is designed to show the liens on the property the Receiver was selling.

10 At the time of the sale I did not know that the defendant, Intertype Corporation, had or claimed to have any mortgage or chattel mortgage on any of the property. The conditions of sale with Schedule A annexed at the Receiver's Sale, indicated that there were two mortgages held by Intertype Corporation.

20 Mr. Gorman: I object to the admission of the conditions of sale. We have the record of the Court of Chancery, with the report of sale, I think the conditions of sale are immaterial.

The Court: At present I will reject the offer.

(Continuing.) The sale was made by the Receiver and I read the conditions of sale and the list of mortgages annexed to it, and it did not appear by those conditions or schedules—

30 Mr. Gorman: I object.

The Court: Objection sustained.

(Continuing.) When the property was bid in I had no knowledge or information that the Intertype Corporation had or claimed to have any chattel mortgage on the two linotype machines.

By the Court:

40 Q. You testified that you were the president and treasurer of the complainant company? A. Yes.

Q. At the time of this sale what interest had you

*Randolph Perkins—Direct Examination.*

in this matter? A. The interest that I had was that I held chattel mortgages for the sum of about \$27,000, which were overdue and which were under process of foreclosure, and the situation, when the Receiver was appointed and ousted my constable, was that up to the time the Receiver took possession, through my constable I was in possession of the two linotype machines mentioned in the bill of complaint.

10 Q. Was the complainant in existence at the time of the sale? A. No; the complainant was not in existence at that time. The sale was made by the Receiver to a representative of mine who bid for me at the time of the sale, but in order not to confuse myself with the printing company, I had or caused to be incorporated the Bergenfield Printing Company, as the Receiver, when he got the order of this Court made his bill of sale direct to the Bergenfield Printing Company.

20 Mr. Perkins: I offer in evidence bill of sale made by Harry D. McGrath, Receiver, to the Bergenfield Printing Company, dated July 9, 1926; recorded in Bergen County Clerk's Office in Book 15, page 239, Miscellaneous Records.

30 Mr. Gorman: No objection.

(Marked Exhibit C-1.)

Mr. Perkins: I would like to offer the file of the Court of Chancery in the case of Grove-Webster, complainant, and Bergenfield Press, Inc., defendant, in which action the Receiver was appointed and acted.

Mr. Gorman: No objection.

(Marked Exhibit C-2.)

40 (Continuing.) I know that from December, 1924, up to the time I placed my mortgages on the prop-

*Randolph Perkins—Direct Examination.*

erty, and from that time on to the time of the Receiver's sale and when the property went into the possession of the Bergenfield Printing Company, the Intertype Corporation was not in possession of these two machines.

10 I did not know that the Intertype Corporation claimed any mortgages or any liens on the machines until shortly before the filing of the bill in this case, when, through their agent, Mr. Pelegrin, they attempted to take possession of the machines.

Cross examination by Mr. Gorman:

Q. Were you connected with the Bergenfield Press, the company that was there before the present company? A. Only as a lender of money. I  
20 lent them a large sum of money—\$47,000.

By the Court:

Q. Were you a stockholder, director or officer of the Bergenfield Press? A. No, sir; I was not.

By Mr. Gorman:

Q. That is the company to which you lent this money? A. Yes; I did lend it.

30 Q. How much money did you lend? A. \$47,000.

Q. Did you lend it all at one time? A. No; I did not.

Q. How many mortgages did you hold against this company? A. I had three mortgages—one on the real estate and two on all of the chattels—no; I had four mortgages—I beg your pardon—three on the chattels.

Q. What was the total amount of the mortgages which you held on the chattels? A. Approximately  
40 \$31,000.

Q. Did you know the value of the chattels at

*Randolph Perkins—Cross Examination.*

the time you put these mortgages on them or took back these mortgages? A. I have since learned the value, but I did not then know of my own knowledge the value.

Q. You loaned \$31,000 on chattels of this company and you did not know their value? A. I knew  
10 I was misinformed as to their value. I thought, like any foolish lender. May I explain? The first \$10,000 I loaned I thought was secured. The next \$10,000 I tried to save the first ten thousand; and the next \$10,000 I tried to save the \$20,000.

Q. You did not know the value of the chattels and you loaned \$31,000. Did you know what liens were on these chattels at the time you loaned this money? A. I only knew what was told to me by officers of the Bergenfield Press.  
20

Q. You did not search the records? A. No.

Q. What did the officers of the Bergenfield Press tell you in reference to the liens? A. They told me so many things that it would take me all day to relate them. If you mean to refer to these liens, they told me that they were in fine condition, that they had \$10,000 accounts receivable, and they showed me a book value of the machinery which was largely in excess of \$31,000; but I did not know that they had never depreciated the machinery in seven yaers.  
30

Q. You said they told you something about the liens on the chattels. What did they tell you concerning the liens at the time you loaned this money? A. They did not tell me that there was any lien of any person specifically, I think, except the Duplex Press. They said there were some machinery notes outstanding.

Q. Did they tell you that the Duplex Press had a chattel mortgage on these chattels? A. No. I  
40 think what the Duplex Press had a chattel mort-

*Randolph Perkins—Cross Examination.*

gage on was a machine known as a Duplex Press.

Q. Did they tell you anything about the chattel mortgage of the Intertype Corporation? A. No; I think not. I have no recollection of ever having heard that there was any mortgage held by the Intertype Corporation.

10 Q. What other connection, if any, did you have with this corporation, other than to lend it money? Didn't you have some other connection with this corporation? A. Not the slightest. I was sitting in my library one evening when they came to borrow \$10,000. I thought their security was good.

Q. They came to you to borrow \$10,000 and you let them have it without searching the records? A. That is absolutely true. I believed them to be thoroughly honest men.

20 Q. When was the first time you heard about the mortgage of the Intertype Corporation? A. The first time I had definite knowledge of the Intertype Corporation claiming to have a chattel mortgage was when Mr. Pellegrin threatened to take possession.

By the Court:

30 Q. What do you mean by "definite knowledge"? Had you some other information before that? A. I mean that in a general way I knew there was a lot of conditional bills of sale and chattel mortgages. I thought that I knew at the time of the sale what was on the property because it was annexed to the conditions of sale, which I read.

By Mr. Gorman:

40 Q. Do you know who got up that list of liens set forth in the conditions of sale? A. I know by information. I was informed who did it.

*Randolph Perkins—Cross Examination.*

Q. Who read the conditions of sale at the sale? Who read the conditions publicly at the sale? A. I think Mr. McGrath, who was the receiver.

Q. At any time were they read publicly? A. Yes; they were publicly read and set forth what I supposed was the real situation so far as liens were concerned.

10 Q. Did you have anybody, before this company went into a receivership, search the records in the office of the Clerk of Bergen County for you? A. I had no one make search of the liens on this property. When I heard that there was a lien asserted, I sent a man up there to find out what the lien was.

Q. Your instruction was to go and see what was on your machines? A. Yes, and I think you will find that—

Q. You were informed that there was a lien on the Duplex? A. Yes.

Q. And one on the Monotype? A. Yes.

Q. Were you informed of any other liens on any other chattel upon which you lent money?

The Court: You are talking now before the receiver was appointed.

A. I will have to refer to the notes that I had someone make, if I may do so.

Q. All right. A. Yes; I knew that there was a mortgage held by a Miss Collin, which did not cover the property in question.

Q. What do you mean when you say it did not cover the property in question? A. I mean these two linotype machines. It covered some of the property up there but not the linotype machines. I learned at some time—I cannot tell you when I learned it—that the Bergenfield Press made a mortgage to the Duplex Press Company on the 8th of

*Randolph Perkins—Cross Examination.*

November, 1919; they had given a conditional bill of sale to the Monotype Company; then just previous to the institution of this suit I learned that there was a mortgage made by Bergenfield Press to the Intertype Corporation dated May 13, 1920, set out in the bill.

10 Q. Now, you say you did learn of these mortgages or liens or conditional bills of sale. Did you learn of these before the receivership? A. No; I had no knowledge of them.

The Court: He has already said several times that he did not know anything about the Intertype Corporation's mortgage until just before this suit was commenced—this present suit.

20 Mr. Gorman: I was pressing Mr. Perkins because he said he did not know personally. I wanted to know if he got his information through somebody else.

## Re-direct Examination:

On the 4th of April, 1924, when I took a mortgage on all of the chattels of this concern for \$12,300, I did not know that the Intertype Corporation had any mortgage or claimed to have any mortgage; and on the 31st of July, 1925, when I took a mortgage for \$12,400, I did not know, directly or indirectly, or have any information, that the Intertype Corporation claimed to have a mortgage on the linotype machines.

At each of these dates I had loaned to the Bergenfield Press, Incorporated, the full amount shown in the mortgage—loaned it to them in actual cash.

40

*Randolph Perkins—Cross Examination.*

Q. Who read the conditions of sale at the sale? Who read the conditions publicly at the sale? A. I think Mr. McGrath, who was the receiver.

Q. At any time were they read publicly? A. Yes; they were publicly read and set forth what I supposed was the real situation so far as liens were concerned.

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The Court: You are talking now before the receiver was appointed.

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40

*Randolph Perkins—Re-cross Examination.*

Re-cross Examination by Mr. Gorman:

Q. You were never an officer of the Bergenfield Press?

The Court: He said he was not.

10 Q. Were you an incorporator of the Bergenfield Press? A. No, sir; I was not. I was not a stockholder. When I say I was not a stockholder, I should say that they had assigned some stock as collateral to their loan but I did not hold it in my own right. I did hold physical possession of some certificates of stock, but I never had any control or management or voice in the management of the Bergenfield Press.

By the Court:

20 Q. In the suit of Grove-Webster against Bergenfield Press, was your firm solicitor for the receiver? A. I think Mr. Drewen was—not the firm—my partner, Mr. Drewen.

Q. Your firm was counsel for the complainants in that suit? A. It may be.

Complainant Rests.

30

Defendants' Case.

WILLIAM H. BORDEN, sworn as a witness on the part of the defendant, testifies as follows:

Direct Examination by Mr. Gorman:

40 Q. Are you connected with the Intertype Corporation, one of the defendants in this suit? A. I am.

Q. What is your connection with that company? A. Credit manager.

*William H. Borden—Direct Examination.*

Q. How long have you been credit manager? A. I have been credit manager for four years.

Q. How long have you been employed by this concern? A. Four years.

By the Court:

10

Q. Let me understand: When did you become treasurer of the Intertype Corporation? A. I am not treasurer. I am only the credit manager.

Q. When did you become the credit manager? A. In April, 1923—April 23.

Q. Are you familiar with the account of your company against the Bergenfield Press? A. I am.

20

Q. Can you tell me how much was owed to your company by the Bergenfield Press on November 17, 1926? A. Well, a principal of \$400, plus accrued interest figured to that date, which can be figured out.

Q. How many mortgages did your company hold against that company? A. Two.

Q. Do you know how those mortgages came into existence? A. I do.

Q. Tell us about the first one.

30

Mr. Perkins: I think he should state the basis of his knowledge.

The Court: Yes; I think so, because Mr. Borden has been with the Intertype Corporation only since 1923, and the first mortgage was given in 1920.

A. Perhaps I can explain something.

By the Court:

40

Q. Yes. A. Mr. Whitely Johnson, the secretary, who signed his name, is dead. He died the year I came to the company.

*William H. Borden—Direct Examination.*

Q. You were not connected with this company prior to 1923? A. No; I was not.

By Mr. Gorman:

Q. You were connected with the company at the time the second mortgage was given, were you not? A. I was. 10

Q. Do you know why that second mortgage came to be given by the Bergenfield Press to the Intertype Corporation?

Mr. Perkins: That was in 1921.

By the Court:

Q. Were you connected with the company then? A. No. 20

Mr. Perkins: I waive any sort of technical objection to his telling his story. If they have a lien I will waive all technical objections.

Q. What was the first mortgage given for? A. A purchase money mortgage for two typesetting machines.

Mr. Gorman: I offer in evidence mortgage given by the Bergenfield Press to the Intertype Corporation, dated May 13, 1920, Recorded in Bergen Co. Clerk's Office July 13, 1920 in Book 80 of Chattel Mortgages, page 475. 30

(Marked Exhibit D-1.)

Q. How much was due from the Bergenfield Press to your company on that day? A. The date of the purchase of the new machines? 40

Q. The day that mortgage was given, how much

*William H. Borden—Direct Examination.*

was due your company from the Bergenfield Press?  
A. \$5,800.

Q. Had that sum been reduced when the second mortgage was given? A. It had been reduced; yes.

Q. What was the date of the second mortgage?  
A. Signed as of the first day of October, 1921.

10 Q. At that time how much was due on the notes which the first mortgage was given to secure? A. \$4,495.

Q. That was the balance due on the \$5,800 total of notes secured by the first mortgage, was it? A. Yes.

Q. There was no other indebtedness incurred by the Bergenfield Press to your company other than, perhaps, interest on the notes? A. Interest on  
20 these notes; yes, sir.

Q. No other indebtedness? A. Not that I know of; no.

Q. Eh? A. I mean there was none.

Mr. Gorman: I offer in evidence chattel mortgage given by Bergenfield Press to Intertype Corporation, dated October 1, 1921, in the sum of \$4,495, Recorded in Bergen County Clerk's Office on November 4th, 1921 in Book 84 of Chattel Mortgages, page 94.

30 Mr. Perkins: No objection.  
(Marked Exhibit D-2.)

By Mr. Perkins:

Q. What was this second mortgage given for—in other words, what was the consideration for the second mortgage? A. May I read it from the mortgage itself?

40 Q. No; you are supposed to know it. Generally, what was the second mortgage given for; what was the purpose of it? A. The purpose of the second

*William H. Borden—Direct Examination.*

mortgage was, primarily to accommodate the Bergenfield Press to pay its indebtedness to the Intertype Corporation. It was not intended, however, to surrender the lien which we had by the first mortgage.

Mr. Perkins: I object to what was intended. 10

The Court: I am going to let it stand.

By the Court:

Q. I understand you to say that the consideration for the second mortgage was the then existing debt due from Bergenfield Press to the Intertype Corporation? A. Well, insofar as that did not relinquish any lien on the machines. 20

Q. Never mind about the lien. I am not talking about the lien. I say that the consideration for the second mortgage, I understand you to say, was wholly the then existing debt due from the Bergenfield Press to the Intertype Corporation. Was there any other consideration? A. Well, the consideration was also the delivery to us of the two machines in their possession.

Q. They had the two machines; they had them since May, 1920. A. This was merely part of the purchase of the machinery. The consideration was the payment of their account and the balance due. That is very necessary. 30

Q. The only change that was made in the situation, so far as the indebtedness was concerned, was that you surrendered the note that had been given on the first mortgage and which was then unpaid, and took other notes? A. We took other notes; yes.

Q. Did you surrender the notes that were secured by the first mortgage? A. Your Honor, I cannot answer that because I do not know. 40

*William H. Borden—Direct Examination.*

Q. You do not claim to hold them now, do you?  
A. May I—

Q. Have you got them? A. I would have to investigate. They may be in our place. I don't know. I cannot answer, but if your Honor will permit me—

10 Q. A long explanation will not be evidence at all. A. I understand that it is the universal practice throughout the United States—

Mr. Perkins: I object to that.

Q. When you took this second mortgage from the Bergenfield Press, you also took two new notes, didn't you? A. We took new notes.

20 Q. Did you take two new notes, or what did you take? A. We took the number of notes provided for in the mortgage.

Q. How many did you take? A. Forty-seven notes.

Q. On your second mortgage? A. Yes.

Q. Forty-seven notes? A. Yes.

Q. And they were for a total of \$4,495? A. \$4,495.

30 Q. These notes matured monthly or something like that? A. Yes; monthly.

Cross Examination by Mr. Perkins:

Q. At the time your corporation sold to the Bergenfield Press the two linotypes, you took the first mortgage for \$5,800, didn't you? A. Yes.

Q. And you took forty notes, each for \$145, payable on the 27th of each and every month for forty successive months, didn't you? A. Yes.

40 Q. And that mortgage appears to be dated May 13, 1920; is that right?

*William H. Borden—Cross Examination.*

Mr. Gorman: I object to that. The mortgage speaks for itself.

The Court: I assume that Mr. Perkins is directing the witness' attention to the date for the purpose of asking him some question about it. I will allow the question.

10

A. From the copy I have, it seems that is correct.

Q. Here is the original mortgage. A. Yes; that is correct—May 13, 1920.

Q. Now, how many of the forty notes mentioned in this mortgage, dated as I have indicated, were paid before the execution and delivery of the second mortgage? A. I do not happen to have a copy of the transcript of the ledger here, but I can give the difference between the sum which you have mentioned and the balance of \$4,495 in the second mortgage.

20

Q. So that the mortgagor had paid on account of the first mortgage about \$1,305? A. Yes; whatever the difference is; yes.

Q. The mortgage is dated October 1, 1921? A. Yes.

Q. And it recites the giving of one note for \$45; six notes for \$75 each, and forty notes for \$100 each. How many of those notes have been paid? A. They have been all paid—the principal.

30

Q. The principal has all been paid. A. Wait a minute. They have all been paid; the principal, down to the sum of \$400.

Q. Where are the \$400 of notes; where are the notes that you claim? A. They are in the possession of our attorney.

Mr. Gorman: We have the notes.

40

*William H. Borden—Cross Examination.*

Q. It was not your habit to return these notes when they were paid? A. If there was any interest, they were usually held until that was paid.

10 Q. Your counsel has produced notes running back as far as October, 1924? A. I can explain that, because we are compelled to accept payments on account in even figures on these accounts. I had a tough time in collecting them.

Q. Can you tell the court what notes of those mentioned in the second mortgage still remain unpaid? A. I would have to read off from the ledger on account of the fact that I have received payments on account.

Q. You retained a great many of those notes in your possession? A. We have.

20 Q. You retained mortgage notes, too, didn't you? A. We did.

Q. Don't you know that when the second mortgage was executed your company returned the notes secured by the first mortgage? A. No.

Q. You don't know that? A. No.

By the Court:

30 Q. You don't know? A. What I mean to say—you asked me if I positively knew that we returned the notes to the Bergenfield Press. I say that I do not know.

Q. You don't know whether they did or not? A. In my own practice I return them myself.

Q. That answers the question. When you went to this company as credit manager of the company did you find any of these notes that were secured by the first mortgage? A. No; I did not come across them.

40

*William H. Borden—Cross Examination.*

By Mr. Perkins:

Q. As credit manager, you would know that your corporation would not hold these sets of notes? A. We sometimes do. They are sometimes in the vaults.

10

By the Court:

Q. As a matter of fact, there was not anything due on the first mortgage? A. That is so, but we do retain them.

By Mr. Perkins:

Q. That is to say, the first set of notes is actually paid by the second mortgage and the second set of notes? A. I am saying no such thing.

20

Q. (Question repeated.) That is to say, the first set of notes is actually paid by the second mortgage and the second set of notes? A. Well, when we sell a machine, we take a chattel mortgage, a purchase price chattel mortgage. It is our desire to keep that mortgage in effect, that first mortgage. When we have to take a second mortgage, we do not take it with any intention of taking off the files or records the first mortgage; and in some cases to protect ourselves, we retain the notes for four months, for bankruptcy or any contingency of that kind. We take the second mortgage to give the debtor a little easier time of it. That is the way this whole thing was done.

30

Q. As a matter of fact, you do not say in this case that that practise was followed, do you? A. I don't know.

Q. You don't know anything about it? A. I don't know.

40

Q. Don't your books show that the notes on the first mortgage were all closed out? A. No; I don't think—

*William H. Borden—Cross Examination.*

Q. Why didn't you bring your books here? A. I had a transcript of the ledger.

Q. I asked you why you didn't produce your books? A. Well—

Q. Where is your office? A. 1440 Broadway.

10 Q. New York City? A. New York City. I think I can produce the figures here. We have a copy of the transcript of the ledger page.

By Mr. Perkins:

Q. I say you have not produced your books? A. Well, I have the information. It is physically impossible to take the books over here.

By the Court:

20 Q. Don't dodge around the question. I don't mean to say that you are dodging. I mean to say the question is perfectly plain. Have you your books here? A. We have our books here.

Q. You hold up a sheet of paper which you say is your books? A. Well, they are—

Q. You know they are not your books. They are a copy of your books. Isn't that true? A. That is true.

30 Q. That is all you have—a copy? A. That is all I have—a copy of the ledger page.

Defendants Rest.

Case Closed.

**Exhibit C-1.**

40 THIS INDENTURE, made this ninth day of July, A. D., nineteen hundred and twenty-six, by and between Harry E. McGrath, a Receiver appointed by the Chancellor of the State of New Jersey, party

*Exhibit C-1.*

of the first part, and Bergenfield Printing Company, a corporation of the State of New Jersey, party of the second part, WITNESSETH:

10 THAT WHEREAS, in and by an order of the Court of Chancery of the State of New Jersey, made by the Chancellor aforesaid, on the twentieth day of March, A. D., nineteen hundred and twenty-six, in a certain cause in said Court pending in which Grove Webster is complainant and The Bergenfield Press, Inc., a corporation heretofore organized and doing business under the laws of the State of New Jersey, is defendant, it was ORDERED, among other things, that the said Harry E. McGrath be appointed Receiver of The Bergenfield Press, Inc., with the usual powers of Receiver in equity, upon his taking the oath required by law, and giving bond in the penal sum of \$10,000.00, with sufficient sureties, to be approved by Frank W. Hastings, Jr., one of the Special Masters of the said Court, and that upon the approval and filing of such bond the said Harry E. McGrath should be vested with all his rights and powers as such Receiver.

30 AND WHEREAS, on the twenty-third day of March, 1926, said Receiver duly qualified as such, in accordance with the said order.

40 AND WHEREAS, by certain other orders of said Court made and entered in the cause aforesaid, on the 24th day of May, 1926, and the 26th day of May, 1926, respectively, it was ORDERED that said Receiver should advertise the real estate of said The Bergenfield Press, Inc., being the premises hereinafter described, for sale according to law, together with the machinery, plant and appurtenances thereunto belonging, at public sale, and as a going con-

*Exhibit C-1.*

cern, and subject to all encumbrances on the said lands, premises, machinery and appurtenances, for the highest and best price the same would bring in cash.

10 AND WHEREAS, said Receiver, in accordance with said last mentioned orders, did advertise the sale so ordered as aforesaid by public advertisement signed by himself and set up at five or more public places in the County of Bergen, one whereof is in the Borough of Bergenfield, where the said real estate and plant are situated, at least two weeks before the time of sale, and also published in the Evening Record, the Bergen Record, and Englewood Press, three of the newspapers printed and published in the said County of Bergen, one of which newspapers is published at the County seat of said County, the publishing in said newspapers having been commenced two weeks next preceeding the time appointed for said sale, and having been continued in the said Evening Record twice in each week, and in the said Bergen Record once in each week, and in the said Englewood Press once in each week; and also mailed, postage prepaid to each of the stockholders and creditors of the said The Bergenfield Press, Inc., at his or its last known post office address, at least five days prior to the time of the holding of the said sale; in and by which advertisement so had as aforesaid, the said Receiver did give public notice that the aforesaid lands and premises, together with the buildings thereon and the appurtenances including the machinery, miscellaneous, factory and plant equipment in and about the same on the date of sale, would be exposed for sale at public vendue on Monday the 14th day of June, 1926, at the hour of 2 o'clock in the afternoon, on

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30

40

*Exhibit C-1.*

the premises in the said notice described, that is to say, at No. 26 Palisade Avenue, in the Borough of Bergenfield, County of Bergen and State of New Jersey, and that the same would be exposed as a going concern and subject to all liens and encumbrances thereon by reason of unpaid taxes, mortgages on the realty, chattel mortgages on the machinery and equipment and conditional sale agreements affecting the machinery and equipment, and subject also to any and all other liens and encumbrances on the said property;

10

AND WHEREAS the said Receiver did hold the said sale in all respects pursuant to the notice and advertisement so given and had as aforesaid, and at the time and place aforesaid;

20

AND WHEREAS at said sale, one Fred R. Schellhorn did bid for said real estate, being the premises hereinafter referred to including also the machinery, equipment, appurtenances and the going concern aforesaid, the sum of \$500.00, which is the highest and best bid received therefor;

AND WHEREAS the articles and items of the said machinery, equipment, plant and appurtenances, and all chattels so included and offered for sale and sold by the said Receiver as aforesaid, and which by this bill of sale it is intended to convey, are set forth in the Schedule hereto annexed;

30

AND WHEREAS the said bid of the said Fred R. Schellhorn, together with all rights thereunder, has been duly assigned and transferred to the said party of the second part, as assignee;

AND WHEREAS by another order of said Court made and entered in the cause aforesaid on the

40

*Exhibit C-1.*

6th day of July, 1926, it was ORDERED that said bid be approved and accepted and the sale confirmed, and that said Receiver should proceed to sell and convey unto the purchaser at said sale or his assignee, the said real estate, being the premises hereinafter referred to, and also the said machinery, plant, appurtenance and equipment aforesaid, for said sum of \$500.00, being the amount bid therefor by the said Fred R. Schellhorn, whose bid as aforesaid, is now assigned to the said party of the second part:

And the said Receiver having by his indenture of deed made, executed and delivered on the day of the date hereof, simultaneously with the making and execution of this bill of sale, conveyed pursuant to the order and orders aforesaid, the said lands, premises and real estate, and it being the intention by this bill of sale to convey pursuant to the said order and orders, the said machinery, plant, appurtenances and equipment and chattels;

NOW, THEREFORE, in consideration of the premises, and in obedience to said last mentioned order, and for the purpose of giving effect to the same, and in consideration of the sum of \$500.00 in hand paid by the said party of the second part, to the said party of the first part, the receipt whereof is hereby acknowledged, the said party of the first part has bargained, sold, granted and conveyed, and by these presents does bargain, sell, grant and convey unto the said party of the second part, its successors and assigns, each and every of the articles and items of machinery, equipment, appurtenances, plant and chattels now in the printing plant and establishment of the said The Bergenfield Press, Inc., at No. 26 Palisade Avenue, in the Borough of Bergenfield, County of Bergen, and

*Exhibit C-1.*

State of New Jersey, set forth in the schedule hereunto annexed, and all the estate, right, title, interest, claim and demand whatsoever, either in law or in equity, of the party of the first part, as such Receiver aforesaid, or of the said The Bergenfield Press, Inc., of, in and to the above mentioned and scheduled chattels and each of them; to have and to hold the same unto the Bergenfield Printing Company, the party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part, as such Receiver aforesaid, has hereunto set his hand and seal the day and year first above written.

HARRY E. McGRATH.

Signed, sealed and delivered  
in the presence of:  
JOHN NUGENT.

SCHEDULE OF ALL THE MACHINERY,  
APPURTENANCES, EQUIPMENT AND CHAT-  
TELS MENTIONED IN AND CONVEYED BY  
THE ANNEXED BILL OF SALE.

## SCHEDULE OF GOODS &amp; CHATTELS.

One 34-inch Diamond Power Paper Cutter; No. 21466; with extra cutting knife; General Electric Motor No. 327273, 2 H.P., D.C.  
One No. 4 Boston Wire Stitcher; capacity  $\frac{7}{8}$  inch; Sprague Motor No. 752066,  $\frac{1}{4}$  H.P., D.C.  
One No. 1 Potter Proof Press, size 12x25 inches.  
One Model C-sm. Intertype Machine No. 1694; in addition to the full equipment of three full

*Exhibit C-1.*

sized machines and one side magazine with two-letter matrices, there are one extra full-size magazine and one extra side magazine with matrices; Fort Wayne Motor No. 945504, 1/3 H.P., A.C.

- 10 One 12x18 Miller Platen Press Feeder, with Chandler & Price New Series Press, No. 1001; Star Electric Motor No. 40180, 3/4 H.P., D.C.; with Horton Variable Speed Drive Pulley;
- One Model B. Duplex Flat-bed Perfecting Printing Press; capacity 4, 6 or 8 pages of a seven column newspaper; with 20 chases and other normal equipment; Star Electric Motor No. 40178, with slow speed counter-shaft, pulley and idler and with No. 107074-C, Cutler Hammer Push Button Control System; 10 H.P., D.C.
- 20 One No. 4 Three roller Miehle Patented Printing Press; size of bed 29x42 inches; Press No. 12029; complete with convertible delivery, tools, etc.; Star Electric Motor No. 40179, 1 1/2 H.P., D.C., with No. 107074-B, Cutler Hammer Push Button Control System;
- One Kelly Automatic Printing Press; No. 1593, with standard equipment; Electrical Equipment comprises 1/4 H.P., D.C., Sprague Motor No. 1030328, and 1 H.P., D.C. Sprague Motor No. 1032529, with Push Button Control System;
- 30 One 8x12 Miller Platen Press Feeder, with Chandler & Price New Series Press No. 623; G. E. Motor No. 882974, 1/2 H.P., D.C. with Horton Variable Speed Drive Pulley;
- 40 Forty-three Pieces Kramer Printers Furniture; comprising Type Cabinets, Imposing Stones, etc., as follows:

*Exhibit C-1.*

- Three—K-300 Type Cabinets
- Two —K-300 "A" Galley Units
- One —K-300 "I" Galley Unit
- Three—K-300 "H" Galley Units
- One —K-634 Makeup Table
- One —K-635 Makeup Table
- One —K-444 Makeup Table 10
- One —K-400 Foreman's Desk
- One —K-545 Galley Cabinet
- One —K-402 Linotype Bank
- One —K-611 Imposing Table
- One —K-562 Miller Saw Trimmer Guard
- One —K-365 Linotype M.B. & S. Cabinet
- One —K-234 Job Press Cabinet
- Two —K-501 Stock Tables
- Three—K-649 Linotype Cabinets 20
- One —K-420 Cylinder Press Roller Cabinet
- One —K-360 F.T. Desk
- One —K-681 Storage Cabinet
- One —K-656 Proof Press Cabinet
- One —K-494 D.D.L. & S. Case
- Two —S-4143 Chase Racks
- One —S-4145 Unit Cylinder Br.
- One —S-4010 Metal Truck
- One —S-4290 Make-ready Table
- One —S-4144 Chase Rack 30
- One —S-4069 Saw Trimmer Truck
- One —S-4006 Stock Table
- One —K-374 Monotype Cabinet
- One —K-534 Stock Table
- One —K-420 Duplex Press Roller Cabinet
- One —K-682 Flat Top Desk
- One —K-655 Potter Proof Press Cabinet
- One —S Steel Top, 27x39, for Economic Imposing Table
- 635 —Non-rust Steel Galleys with 16 dozen Adzit Galley Locks; 40

*Exhibit C-1.*

- 10 One Lanston Monotype Caster & Composing Machine with Style "B" Keyboard; complete equipment comprising, in addition to Keyboard and Caster, Air Compressor and Automatic Metal Furnace; Keyboard No. 7710; Caster No. 5874; Extra sorts and case; matrix fonts with molds, and lead, rule, and slug attachment. Electric Equipment comprises  $\frac{3}{8}$  H.P., D.C. General Electric Motor No. 628228; Machine has Standard equipment of accessories, tools, etc.
- 20 Two Model "B" Intertype Machines; No. 3208 and No. 3209; each with Electric Metal Pot; in addition to the full equipment of four full-size magazines with two-letter matrices, there are two extra split magazines with two-letter matrices. Two  $\frac{1}{3}$  H.P., D.C., General Electric Motors No. 1062306 and No. 1062311;
- One Miller Universal Saw Trimmer; No. 2881, with Router and Jig-saw attachment, and complete equipment.  $\frac{1}{2}$  H.P., D.C., Northwest Mfg. Co. Motor No. 47856;
- 30 One No. 2 Stonemetz Two-revolution Cylinder Printing Press; size of bed 24x31 inches; Press No. 237; Star Electric Motor No. 40582,  $1\frac{1}{2}$  H.P., D.C., with variable speed starting box control;
- One 10x15 Miller Platen Press Feeder, with Chandler & Price New Series Press No. 4113; Star Electric Motor No. 40181,  $\frac{1}{2}$  H.P., D. C., with Horton Variable Speed Drive Pulley;
- One 8x12 Chandler & Price Job Press, New Series, No. B-50126;  $\frac{1}{2}$  H.P., D.C., Star Electric Motor, with Horton Variable Speed Drive Pulley;
- 40 Complete General Composing Room Equipment, including cabinets, Display Type and Miscellaneous

*Exhibit C-1.*

- ous Pieces, all as contained in Composing Room, not otherwise mentioned in other items on this list. Includes large assortment of Display Type, Misc. Ornaments, Leads, Rules, Slugs, Iron Furniture, Economic Imposing Table, Tracy Type Cabinet, Numbering Machines, Hansen Mitering Machine, Rouse Lead & Rule Cutter, Linotype & Monotype Metal (cast or in pigs), Galleys and Tools, etc. 10
- One 25 H.P. Fairbanks-Morse Type "Y" Single Cylinder Special Electric Horizontal Semi-Diesel Fuel Oil Engine; complete with Standard equipment No. 438583, with Air Starting Mechanism; with 3 H.P., A.C. Century Motor No. 187328; with Circulating Pump Outfit; 2 Cooling Tanks; heavy sheet steel; 42x94 inches; 20
- One A.C., D.C., Generating Set (connected). This Set comprises one 10 H.P. Bell Motor No. 54005, and 5 Killowatt Star Electric Generator No. 45645; complete with Starting Box, No. 9110-H-59, Cutler Hammer; 20
- One Slate Switch-board, complete with instruments, etc., includes Knife Switches, Circuit Breakers, A.C., Ammeter, and D.C. Voltmeter;
- One Automatic Electric Elevator Lift; capacity 500 lbs.; Push Button Control; Operating Motor, Star Electric No. 40176, 1 H.P., D.C. 30
- Office Furniture & Equipment, comprising:
- One —Large Roll Top Desk, oak, 30x60
  - One —Roll Top Desk, oak, 30-42
  - One —Oak Table, 30x60
  - One —Bookeepers Desk
  - One —Letter File
  - One —Safe
  - Three—Wall Clocks
  - Chairs, Office Partitions, Counters, Cashier's Cage, etc. 40

Exhibit C-1.

One Economic Waste Paper Baler; capacity 100 to 125 lbs.

One 1000-Gallon Steel Oil Tank, 42 inches diameter, 14 feet long, for fuel oil storage, with pipe connections.

10 Annexed and signed this ninth day of July, 1926.

HARRY E. MCGRATH,  
Receiver as Aforesaid.

In the presence of  
JOHN NUGENT.

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

BE IT REMEMBERED, That on this 9th day of July in the year of our Lord One Thousand Nine Hundred and twenty-six, before me, the subscriber, an Attorney at Law of New Jersey, personally appeared Harry E. McGrath, who, I am satisfied, is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

30

JOHN NUGENT,  
Atty. at Law of New Jersey.

40

Exhibit D-1.

Chattel Mortgage \$5,800, dated May 13, 1920, Recorded in Bergen Co. Clerk's Office July 13, 1920, Book 80, Chattel Mortgages, page 475.

INTERTYPE CORPORATION.

1. KNOW ALL MEN BY THESE PRESENTS, That The Bergenfield Press, Inc., a corporation, organized and doing business under the laws of the State of New Jersey and having its principal office and place of business at South Palisade Avenue, in the City of Bergenfield, County of Bergen and State of New Jersey, hereinafter called party of the first part or mortgagor, in consideration of the sum of Fifty-eight hundred Dollars (\$5800.00) in hand to it paid by the Intertype Corporation, a corporation, of New York, in the County of New York and State of New York, hereinafter called party of the second part or mortgagee (the receipt of which sum said first party hereby acknowledges), does hereby grant, bargain, sell, convey, and confirm unto the said Intertype Corporation, and unto its successors or assigns, the following goods and chattels, to wit: Two (2) Two-letter Intertypes or type-casting machines of the manufacture of the said Intertype Corporation, known as Intertype Serial Nos. 3208 and 3209, located in the City of Bergenfield, County of Bergen and State of New Jersey bearing the name "Intertype", and the parts and appurtenances thereunto belonging.

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30

To HAVE AND TO HOLD, all and singular, the said goods and chattels unto the said Intertype Corporation, its successors or assigns, and to its and their sole use and behoof forever; and the said party of the first part, for itself, its successors or assigns, does hereby covenant to and with the said Intertype Corporation, its successors or assigns,

40

*Exhibit D-1.*

that the said mortgagor is lawfully possessed of the said goods and chattels as of its own property; that the same are free and clear of all encumbrances whatsoever, excepting the indebtedness of this mortgage herein recited and secured; and that it will forever warrant and defend the same to the said Intertype Corporation, its successors or assigns, against all lawful claims and demands of all persons whatsoever.

PROVIDED, NEVERTHELESS, that if the said party of the first part, its successors or assigns, shall well and truly pay or cause to be paid to the said Intertype Corporation, or to its successors or assigns, 40 promissory notes, made and executed by said party, bearing interest at the rate of six per cent. per annum given to the Intertype Corporation, to represent and secure the unpaid portion of the purchase money of the aforesaid goods and chattels, and falling due at such times and in such amounts as follows, to wit: Forty (40) notes for One hundred forty-five dollars (\$145.00) each, payable respectively one on the 27th day of each and every month for forty (40) successive months, beginning with the month of May, 1920; each of said notes bearing interest at the rate of six per cent. per annum from the 27th day of April, 1920, and shall well and truly keep and perform all and singular the covenants and conditions herein set forth on the part of said party of the first part to be kept and performed, then and in that event this mortgage shall be void, otherwise it shall remain and be in force and effect.

IT IS FURTHER EXPRESSLY AGREED that the said mortgagor will keep the said goods and chattels insured against loss and damage by fire to the

*Exhibit D-1.*

amount of not less than eighty per cent. (80%) of the selling price, in such insurance company or companies as the said mortgagee shall approve, with loss, if any, payable to Intertype Corporation, as its interest may appear, and will pay the premium for such insurance, and will forthwith deliver to said mortgagee the policy or policies of such insurance and the receipts for the premiums which shall become payable therefor, and in case of mortgagor's default in obtaining and delivering such policy or policies forthwith, it shall be lawful for the said mortgagee, its agents, attorneys or assigns, to procure such insurance, and the premiums for effecting the same shall be a further lien upon said property in addition to the amount hereinbefore named in this mortgage as owing and secured by these presents and which shall be payable on demand, with interest at six per cent. per annum; that the mortgagor shall at its own expense, from time to time, replace and repair all such parts of said goods and chattels as may be broken, worn out, or damaged, and keep the same in every respect in good working order, and in the event of the mortgagor's default therein the party of the second part may cause such replacement and repairs to be made, and the costs thereof and also the cost of any labor, supplies or parts which may be done furnished by the party of the second part on or for use on or in connection with such goods and chattels shall be secured by this mortgage and become a further lien upon the goods and chattels herein described; and the said mortgagee, by reason of its interest that said goods and chattels may remain in perfect condition and maintain their reputation, agrees that it will furnish and continue to furnish the mortgagor with any and all spacebands, matrices, parts or other supplies required for

*Exhibit D-1.*

use on or in connection with said goods and chattels, at prices not exceeding its published list prices; and it is further expressly agreed that said mortgagor shall permit Intertype Corporation, its agents, attorneys or assigns, to have free access to  
 10 said goods and chattels at all reasonable times, and shall pay, bear and discharge all such taxes as may on or after the 27th day of April, 1920, have been or may hereafter be charged against assessed or imposed upon the said goods and chattels at any valuation thereof, and in the event of default of mortgagor to pay such taxes so levied upon said goods and chattels, it shall be lawful for said mortgagee to pay and discharge the same and such amount or amounts so expended in the payment or  
 20 discharge of such taxes shall thereupon be a further lien and charge upon said property secured by this mortgage; and that said mortgagor shall, when thereunto requested by said Intertype Corporation, forthwith execute and deliver to it a new chattel mortgage upon said goods and chattels, in form to be approved by said Intertype Corporation or such other statement, affidavit, instrument or assurance as may by said Intertype Corporation, be deemed proper or necessary to continue, create,  
 30 protect or effect the lien upon said goods and chattels in its favor which is hereby intended to be created and effected, or a new lien similar thereto, until the payments hereby secured shall have been fully paid and discharged; and shall, whenever so requested, furnish to said Intertype Corporation, a waiver of landlord's lien upon said goods and chattels.

40 IT IS ALSO PROVIDED that it shall be lawful for said mortgagor to retain possession of said goods and chattels at its place of business as aforesaid, in

*Exhibit D-1.*

the City of Bergenfield, County and State aforesaid, and that said mortgagor shall not remove nor permit their removal therefrom without the written consent of the mortgagee, under penalty of forfeiture of all rights and title therein and damages; and the said mortgagor, at its own expense,  
 10 may keep and reasonably use said goods and chattels until it shall make default in payment of said sum or sums of money above specified, either as to principal or interest, at the time or times and in the manner hereinbefore specified. And the said mortgagor hereby agrees and covenants that in case default shall be made in the payment of any of the notes aforesaid, or any part thereof, or the interest thereon, or any part thereof, on the day or days  
 20 respectively on which the same shall become due; or if the said mortgagor shall fail, neglect or refuse to keep said goods and chattels insured, as herein provided, or to keep said goods and chattels in good condition and repair, or shall make default in any of the provisions of this mortgage, or if the said mortgagee, its successors or assigns, shall feel itself insecure or unsafe, or fear diminution, removal or waste of said property, or if the mortgagor shall sell, assign, mortgage or in any way  
 30 encumber, or attempt to sell, assign, mortgage or in any way encumber said property, or any part thereof, or any interest therein, or underlet or part with the possession of the same either directly or indirectly; or if any writ of any court, or any distress warrant shall be levied on said goods and chattels, or any part thereof, then, and in any or either of the aforesaid events all of said notes and sum or sums of money owing thereon, both principal and interest, shall, at the option of said mortgagee, its successors or assigns, without notice of  
 40 said option to any person, become at once due and

*Exhibit D-1.*

payable, and the said mortgagee, its successors or assigns, shall thereupon have the right to take immediate possession of said property, or any part thereof and for that purpose may pursue the same wherever it may be bound, and may enter any of the premises of said mortgagor, with or without force or process of law wherever said goods and chattels may be, or may be supposed to be, and search for the same, and if found, take possession and remove, sell and dispose of said property, or any part thereof at public auction, to the highest bidder, for cash or credit as the said mortgagee, its successors or assigns, agents or attorneys, or any of them, may elect, and at any such public sale, by whomsoever conducted Intertype Corporation may become a bidder therefore and purchase the same, and no greater obligation shall be by it thereby incurred or imposed upon it than the actual payment of the amount bid; or at private sale, with or without notice, for cash or on credit, as the said mortgagee, its successors or assigns, agents or attorneys, may elect, and out of the money or moneys arising from such public or private sale to pay all attorney's fees, costs and charges incurred in pursuing searching for, recovering, removing storing, advertising and selling such goods and chattels, together with the amount due and unpaid upon said notes, all sums owing to said mortgagee by said mortgagor for insurance premiums and taxes, and for Intertype machine, materials, accessories, parts and appurtenances, sold and delivered by said mortgagee to said mortgagor, and all other liens upon such goods and chattels, and may retain a sufficient amount of the proceeds of said sale to indemnify said Intertype Corporation, its successors or assigns, for any damages by it or them sustained by reason of the violation on the part of said party

*Exhibit D-1.*

of the first part of any of the covenants or conditions of this mortgage, rendering the surplus, if any, unto the said mortgagor, or its legal representatives.

This mortgage is executed pursuant to authority given by the Board of Directors of said party of the first part.

IN WITNESS WHEREOF, the said mortgagor has hereunto caused its corporate seal to be affixed and these presents to be signed, acknowledged and delivered by Milton O. Jones, Jr., its present, and attested by Paul S. Towne its Secretary, this 13th day of May A. D., one thousand nine hundred and twenty.

THE BERGENFIELD PRESS, INC.,  
By MILTON O. JONES, JR.,  
President.

Attest:

PAUL S. TOWNE,  
Secretary.

Witnesses:

JOHN H. VON WIEDERHOLD.

State of New Jersey, }  
County of Bergen, } ss.:

BE IT REMEMBERED, that on the 13th day of May, A. D. 1920, before me a notary public personally appeared Paul S. Towne, who being by me duly sworn, doth depose and make proof to my satisfaction that he is the Secretary of, and well knows the seal of The Bergenfield Press, Inc., the grantor named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said corporation, and that the same was so affixed

*Exhibit D-1.*

thereto, and the said instrument signed and delivered by Milton O. Jones, Jr., President of said corporation, in the presence of said deponent, as the voluntary act and deed of the said corporation, and that the said deponent thereupon signed the same as subscribing witness.

10 Subscribed and sworn to before me, the day and year first above written.

JOHN H. VON WIEDERHOLD.

State of New York, }  
County of Kings, } ss.:

20 ARTHUR F. J. WHEATLEY, Secretary of Intertype Corporation the mortgagee named in the foregoing mortgage, being duly sworn on his oath, says that the true consideration of said mortgage is as follows: Namely: Two (2) two-letter Intertype machines, manufactured by the said Intertype Corporation and known as Model B's, Serial Nos. 3208 and 3209, bearing the name "Intertype" and the parts and appurtenances thereunto belonging, and deponent further says that there is due on said mortgage the sum of Fifty-eight hundred dollars (\$5800.00), besides lawful interest thereon from 30 the 27th day of April, 1920.

ARTHUR F. J. WHEATLEY,  
Secretary,  
Intertype Corporation.

Subscribed and sworn to before me  
this 27th day of April, 1920.

40 ALFRED A. YOUNG,  
Notary Public,  
N. Y. Kings County.

Register No. 2000.  
Commission expires March 30, 1922.

*Exhibit D-2.*

Chattel Mortgage \$4,495, dated October 1, 1921, Recorded Nov. 4, 1921, Bergen Co. Clerk's Office, Book 84 of Chattel Mortgages, page 94.

## INTERTYPE CORPORATION.

KNOW ALL MEN BY THESE PRESENTS, That The 10  
Bergenfield Press, Inc., a corporation, organized and doing business under the laws of the State of New Jersey and having its principal office and place of business at So. Palisade Ave., of Bergenfield, County of Bergen and State of New Jersey, hereinafter called party of the first part or mortgagor, in consideration of the sum of Forty-four Hundred Ninety-five Dollars (\$4495.00) in hand to it paid by the Intertype Corporation, a corporation 20  
of New York, in the County of New York and State of New York, hereinafter called party of the second part or mortgagee (the receipt of which sum said first party hereby acknowledges), does hereby grant, bargain, sell, convey and confirm unto the said Intertype Corporation, and unto its successors or assigns, the following goods and chattels, to wit: Two (2) two-letter Intertype or type-casting machines of the manufacture of the said Intertype Corporation, known as Intertypes Model "B" 30  
No. 3208 and Model "B" No. 3209, located in Bergenfield County of Bergen and State of New Jersey, each bearing the name "Intertype" and the parts and appurtenances thereunto belonging.

To HAVE AND TO HOLD, all and singular, the said goods and chattels unto the said Intertype Corporation, its successors or assigns, and to its and their sole use and behoof forever; and the said party of the first part, for itself, its successors or assigns, 40  
that the said mortgagor is lawfully possessed of the

*Exhibit D-2.*

10 said goods and chattels as of its own property; that the same are free and clear of all encumbrances whatsoever, excepting the indebtedness of this mortgage herein recited and secured; and that it will forever warrant and defend the same to the said Intertype Corporation, its successors or assigns, against all lawful claims and demands of all persons whatsoever.

20 PROVIDED, NEVERTHELESS, that if the said party of the first part, its successors or assigns, shall well and truly pay or cause to be paid to the said Intertype Corporation, or to its successors or assigns, 47 promissory notes, made and executed by said party, bearing interest at the rate of six per cent. per annum given to the Intertype Corporation, to represent and secure the unpaid portion of the purchase money of the aforesaid goods and chattels, and falling due at such times and in such amounts as follows, to wit: One (1) note for Forty-five Dollars (\$45.00), six (6) notes for Seventy-five Dollars each (\$75.00) and forty (40) notes for One Hundred Dollars (\$100.00) each, payable respectively one on the 15th day of each and every month for forty-seven (47) successive months, beginning with the month of October, 1921, each of said notes bearing interest at the rate of six per cent. per annum from the 27th day of April, 1920, and shall well and truly keep and perform all and singular the covenants and conditions herein set forth on the part of said party of the first part to be kept and performed, then and in that event this mortgage shall be void, otherwise it shall remain and be in force and effect.

40 IT IS FURTHER EXPRESSLY AGREED that the said mortgagor will keep the said goods and chattels insured against loss and damage by fire to the amount

*Exhibit D-2.*

10 of not less than eighty (80%) per cent. of the selling price, in such insurance company or companies as the said mortgagee shall approve, with loss, if any, payable to Intertype Corporation, as its interest may appear, and will pay the premium for such insurance, and will forthwith deliver to said mortgagee the policy or policies of such insurance and the receipts for the premiums which shall become therefor, and in case of mortgagor's default in obtaining and delivering such policy or policies forthwith, it shall be lawful for the said mortgagee, its agents, attorneys or assigns, to procure such insurance, and the premiums for effecting the same shall be a further lien upon said property in addition to the amount hereinbefore named in this mortgage as owing and secured by these presents, and which shall be payable on demand, with interest at six per cent. per annum; that the mortgagor shall at its own expense, from time to time, replace and repair all such parts of said goods and chattels as may be broken, worn out, or damaged, and keep the same in every respect in good working order, and in the event of the mortgagor's default therein the party of the second part may cause such replacement and repairs to be made and the cost thereof and also the cost of any labor, supplies or parts which may be done or furnished by the party of the second part on or for use on or in connection with such goods and chattels, shall be secured by this mortgage and become a further lien upon the goods and chattels herein described; and the said mortgagee, by reason of its interest that said goods and chattels may remain in perfect condition and maintain their reputation, agrees that it will furnish, and continue to furnish the mortgagor with any and all spacebands, matrices, parts or other supplies required for use on

*Exhibit D-2.*

or in connection with said goods and chattels, at prices not exceeding its published list prices; and it is further expressly agreed that said mortgagor shall permit Intertype Corporation, its agents, attorneys or assigns, to have free access to said goods and chattels at all reasonable times, and shall pay, bear and discharge all such taxes as may on or after the 28th day of November, 1919, have been or may hereafter be charged against, assessed or imposed upon the said goods and chattels, at any valuation thereof, and in the event of default of mortgagor to pay such taxes so levied upon said goods and chattels, it shall be lawful for said mortgagee to pay and discharge the same and such amount or amounts so expended in the payment or discharge of such taxes shall thereupon be a further lien and charge upon said property secured by this mortgage; and that said mortgagor shall, when thereunto requested by said Intertype Corporation, forthwith execute and deliver to it a new chattel mortgage upon said goods and chattels, in form to be approved by said Intertype Corporation, or such other statement, affidavit, instrument or assurance as may by said Intertype Corporation, be deemed proper or necessary to continue, create, protect or effect the lien upon said goods and chattels in its favor which is hereby intended to be created and effected, or a new lien similar thereto, until the payments hereby secured shall have been fully paid and discharged; and shall, whenever so requested, furnish to said Intertype Corporation, a waiver of landlord's lien upon said goods and chattels.

IT IS ALSO PROVIDED that it shall be lawful for said mortgagor to retain possession of said goods and chattels at its place of business as aforesaid, in Bergenfield County and State aforesaid, and that

*Exhibit D-2.*

said mortgagor shall not remove nor permit their removal therefrom without the written consent of the mortgagee, under penalty of forfeiture of all rights and title therein and damages; and the said mortgagor, at its own expense, may keep and reasonably use said goods and chattels until it shall make default in payment of said sum or sums of money above specified. And the said mortgagor hereby agrees and covenants that in case default shall be made in the payment of any of the notes aforesaid, or any part thereof, or the interest thereon, or any part thereof, on the day or days respectively on which the same shall become due; or if the said mortgagor shall fail, neglect or refuse to keep said goods and chattels insured, as herein provided, or to keep said goods and chattels in good condition and repair, or shall make default in any of the provisions of this mortgage, or if the said mortgagee, its successors or assigns, shall feel itself insecure or unsafe, or fear diminution, removal or waste of said property, or if the mortgagor shall sell, assign, mortgage or in any way encumber, or attempt to sell, assign, mortgage or in any way encumber said property, or any part thereof, or any interest therein, or underlet or part with the possession of the same either directly or indirectly; or if any writ of any court, or any distress warrant shall be levied on said goods and chattels, or any part thereof, then, and in any or either of the aforesaid events all of said notes and sum or sums of money owing thereon, both principal and interest, shall, at the option of said mortgagee, its successors or assigns, without notice of said option to any person, become at once due and payable, and the said mortgagee, its successors or assigns, shall thereupon have the right to take immediate possession of said property, or any part thereof, and for

*Exhibit D-2.*

that purpose may pursue the same wherever it may be found, and may enter any of the premises of said mortgagor, with or without force or process of law, wherever said goods and chattels may be, or may be supposed to be, and search for the same, and if found, take possession and remove, sell and  
 10 dispose of said property, or any part thereof, at public auction, to the highest bidder, for cash or credit as the said mortgagee, its successors or assigns, agents or attorneys, or any of them, may elect, and at any such public sale, by whomsoever conducted, Intertype Corporation may become a bidder therefor and purchase the same, and no greater obligation shall be by it hereby incurred or imposed upon it than the actual payment of the  
 20 amount bid; or at private sale, with or without notice, for cash or on credit, as the said mortgagee, its successors or assigns, agents or attorneys, may elect, and out of the money or moneys arising from such public or private sale to pay all attorneys fees, costs and charges incurred in pursuing, searching for, recovering, removing, storing, advertising and selling such goods and chattels, together with the amount due and unpaid upon said notes, all sums owing to said mortgagee by said mortgagor for insurance premiums and taxes, and for Intertype machine, materials, accessories, parts and appurtenances sold and delivered by said mortgagee, to said mortgagor, and all other liens upon such goods and chattels, and may retain a sufficient amount of the proceeds of said sale to indemnify said Intertype Corporation, its successors or assigns, for any damages by it or them sustained by reason of the violation on the part of said party of the first part of any of the covenants or conditions of this mortgage, rendering the surplus, if any, unto the said  
 30 mortgagor, or its legal representatives.  
 40

*Exhibit D-2.*

This mortgage is executed pursuant to authority given by the Board of Directors of said party of the first part.

IN WITNESS WHEREOF, the said mortgagor has hereunto caused its corporate seal to be affixed and these presents to be signed, acknowledged and delivered by Milton O. Jones, Jr., its President, and attested by Wm. R. Jones, its Secretary, this first day of October A. D., one thousand nine hundred and twenty-one. 10

THE BERGENFIELD PRESS, INC.,  
 By MILTON O. JONES, JR.,  
 President.

20

Witnesses:

JOHN H. VON WIEDERHOLD.

(Seal)

WM. R. JONES,  
Secretary.

JOHN H. VON WIEDERHOLD.

(THE BERGENFIELD PRESS, INC.  
 Seal: (Corporate Seal  
 (1919 New Jersey

30

State of New Jersey, }  
 County of Bergen } ss.:

BE IT REMEMBERED, that on the first day of October A. D. 1921, before me a notary public personally appeared, Wm. R. Jones who, being by me duly sworn, doth depose and make proof to my satisfaction that he is the Secretary of and well knows  
 40 the seal of The Bergenfield Press, Inc., the grantor

Exhibit D-2.

10 named in the foregoing instrument; that the seal thereto affixed is the proper corporate seal of the said corporation; and that the same was so affixed thereto, and the said instrument signed and delivered by Milton O. Jones, Jr., President of said corporation, in the presence of said deponent, as the voluntary act and deed of the said corporation, and that the said deponent thereupon signed the same as subscribing witness.

.....

Subscribed and sworn to before me  
the day and year first above written.

20 JOHN H. VON WIEDERHOLD,  
Notary Public,  
(Seal) N. P. of N. J.

State of New York, }  
County of Kings, } ss.:

30 ARTHUR F. J. WHEATLEY, Secretary of Intertype Corporation, the mortgagee named in the foregoing mortgage, being duly sworn on his oath, says that the true consideration of said mortgage is as follows: Namely: Two (2) two-letter Intertypes or Type-casting machines of the manufacture of the said Intertype Corporation and known as Model "B" No. 3208 and Model "B" 3209 each bearing the name "Intertype" and the parts and appurtenances thereunto belonging, and deponent further says that there is due on said mortgage the  
40 sum of Forty-four Hundred Ninety-five Dollars

Exhibit D-2.

(\$4495.00) besides lawful interest thereon from the 27th day of April, 1921.

ARTHUR F. J. WHEATLEY,  
Secretary,  
Intertype Corporation.

Subscribed and sworn to before me 10  
this 9th day of September, 1921.

ALFRED A. YOUNG,  
Notary Public, No. 1,  
Kings County.

Register No. 2000.  
Commission expires March 30, 1922.

State of New York, } 20  
County of Kings, } ss.:

I, WILLIAM E. KELLY, Clerk of the County of Kings, and also Clerk of the Supreme Court for said County (said court being a court of record) Do HEREBY CERTIFY that Alfred A. Young whose name is subscribed to the certificate of proof, acknowledgment or deposition of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public 30 of the State of New York in and for said County of Kings, dwelling in said County, commissioned and sworn and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such notary, and verily believe that the signature to said Certificate is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York. 40

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said County and Court this 9th day of September, 1921.

WM. E. KELLY,  
Clerk.

New Jersey Court of Errors and Appeals

OCTOBER TERM, 1928.

Between

THE BERGENFIELD PRINTING COMPANY, a corporation,  
Complainant-Appellant,

and

INTERTYPE CORPORATION,  
Defendant-Appellee.

ON APPEAL  
FROM  
COURT OF  
CHANCERY.

BRIEF FOR BERGENFIELD PRINTING COMPANY, COMPLAINANT-APPELLANT.

Facts.

This case involves the validity of a chattel mortgage as against a subsequent purchaser in good faith.

The mortgages in question are two. They purport to have been made by the Bergenfield Press, a corporation of the State of New Jersey, to Intertype Corporation, the defendant-appellee. The chattels set forth in the mortgages are described as "Two (2) two-letter Intertype or type-casting machines of the manufacture of the said Intertype Corporation, known as Intertype or type-casting machines of the manufacture of the said Intertype Corporation, known as Intertypes Model 'B' No. 3208 and Model 'B' No. 3209." The two mortgages are Exhibits D-1 and D-2, printed

respectively on pages 67 and 75 of the Case. One mortgage bears date May 13th, 1920; the other, October 1, 1921.

On March 17th, 1926, the mortgagor went into the hands of a receiver appointed by the Court of Chancery. In the Chancery suit in which the receiver was appointed such steps were taken that on June 14th, 1926, the mortgagor's plant was sold as a going concern. In the plant at the time, and sold as a part of it, were two machines conforming to the description of the chattels covered by the mortgages mentioned.

The property of the mortgagor was heavily encumbered by mortgages on its realty, and also by chattel mortgages such as those in question. At the receiver's sale the plant was sold to one Frederick R. Schellhorn, whose bid was assigned to the complainant-appellant in this case. And it was to the complainant-appellant that the receiver conveyed the land, premises and chattels of the insolvent mortgagor.

On November 16th, 1926, complainant-appellant (the corporation that purchased of the receiver) filed its bill of complaint in the Court of Chancery, praying, among other things, that the defendant-appellee, as chattel mortgagee, be restrained from foreclosing the two chattel mortgages above stated, and praying also that it be determined by the Court of Chancery that the two mortgages, held as such by the defendant-appellee, are void and invalid, and of no effect, and that title of the complainant-appellant, as purchaser at the receiver's sale, is free and clear of any lien of or by reason of the chattel mortgages in question.

The bill of complaint was dismissed. The Court below took no note in its opinion (Case, p. 30, *et seq.*) of the irregularities and defects in the two mortgages, and based its conclusion upon

what it deems the actual notice that the purchaser at the receiver's sale had of the lien of the two mortgages on the Intertype machines in question.

Before proceeding to an argument of the points, it is necessary to observe that we are concerned, on this appeal, with but one of the two mortgages stated, and that is the later mortgage, being Exhibit "D-2", page 75, and dated October 1st, 1921. This is so by reason of the fact that the Court below decreed that the earlier mortgage (Exhibit "D-1", dated May 13th, 1920), was fully paid and satisfied by the execution and delivery of the later mortgage, and ordered that the earlier mortgage be surrendered up for cancellation. It is with the second mortgage, therefore, that we are concerned, and this argument is addressed to it.

The points of this brief urged in behalf of the complainant-appellant are:

1. That the mortgage of October 1st, 1921, is, in form and substance, not in compliance with our Chattel Mortgage Act.

2. That, being thus defective, it is, under the terms of the statute, "absolutely void" as against the complainant-appellant, a subsequent purchaser in good faith.

3. That the complainant-appellant, at the time of its purchase at the receiver's sale, had no notice of the existence of the mortgage on the two Intertype machines, and was in the exercise of good faith throughout.

### POINT I.

**The chattel mortgage so far fails to comply with our Chattel Mortgage Act that it is "absolutely void" as against a subsequent purchaser in good faith.**

The statute here in point is Section 4 of "An Act Concerning Mortgages on Chattels" (Revision 1902), Vol. 1 Comp. Stat., page 463. This section provides:

"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 mortgagors in good faith, unless the mortgage, having annexed thereto an affidavit or affirmation made and subscribed by the holder of said mortgage, his agents, or attorney, stating the consideration of said mortgage and as nearly as possible the amount due and to grow due thereon, be recorded as directed in the succeeding section of this act."

We contend that this mortgage is not in compliance with the statute, for the reason that:

- (a) It was not recorded until thirty-three days after its making and delivery (p. 75, lines 1-3).
- (b) The affidavit of acknowledgment is defective in that it is not signed by the affiant therein named; the jurat appended to this affidavit being a falsity, since the affidavit was never "subscribed."

- (c) The affidavit of consideration is defective in that it is not made by anyone who is stated or shown to be either the agent or attorney of the corporate holder of the mortgage.
- (d) The affidavit of consideration is defective in that it contains no proof showing how the indebtedness arose or the nature of the transaction between the mortgagor and the mortgagee.

These deficiencies shall be considered in their order. It needs no citation of authorities to demonstrate that the recording of a chattel mortgage thirty-three days after its making is certainly not an "immediate" recording as required by the statute. The cases are plentiful enough which hold that a lapse of from four to eight days after the making of the mortgage constitutes a breach of the statutory requirement. There is in the present case not so much as an offer, on the part of the mortgagee, to show any circumstances that would excuse or explain the failure to record the mortgage.

The affidavit of acknowledgment appears in the printed case (p. 81, line 35). The form of the jurat appended to the affidavit of acknowledgment is as follows:

"*Subscribed* and sworn to before me the day and year first above written.

John H. von Wiederhold,  
Notary Public,  
(Seal) N. P. of N. J."

It is obvious from this jurat that it was intended that the affidavit should be "subscribed". It was not. The affidavit itself is not a mere certificate of acknowledgment. It is what we have called it—

an affidavit. It is an affidavit which, in form and design, requires the subscription of the affiant. And the officer before whom the affidavit purports to have been made states that such subscription was had. But this statement is immediately contradicted by the fact that, with the statement itself, it is shown that the affidavit was never subscribed. The form of New Jersey corporate acknowledgment given by Corbin (2nd Ed.) calls for subscription by affiant.

Now as to the affidavit of consideration (Case, p. 82, line 30, etc.). This affidavit is made by one who is said to be "Arthur F. J. Wheatley, Secretary of Intertype Corporation, the mortgagee named in the foregoing mortgage." Nothing more than this statement, to show the character or authority of the one making the affidavit, is given. There is not so much as a claim of authority or agency for the making of the affidavit, nor anything to show knowledge or understanding of the transaction.

In the case of *American Soda Fountain Company vs. Stolzenbach*, 75 N. J. L. 721, the affidavit of consideration was made by the Vice-President of the corporate holder of a chattel mortgage. The Court held that the affidavit was "therefore the affidavit of the corporation and valid without allegation of specific authority." The Court, in the latter case, avoided the question of agency by resting its decision upon the theory that the affidavit in question was the affidavit "of the corporation." But it must be observed that the Court in its opinion was careful to characterize the officers, whose affidavits were considered as the affidavits of the corporation, as *administrative* officers. The case now referred to is in no sense authority for any principle that would make an officer of the corporation, simply as such, competent to

speak for or bind the corporation, apart from agency or express authority. It is not any officer with whose affidavit this case identifies the affidavit of the corporation itself, but an *administrative* officer. Webster's "New International Dictionary" makes the word "administrative" synonymous with "executive". How a secretary, the normal and ordinary functions of whose office are ministerial and clerical in character, can in any sense be called an *executive* officer, is certainly not clear. A secretary may or may not be vested with administrative or executive powers. But it certainly cannot properly be *presumed* that merely as secretary he has such powers.

In the case of *North Penn Iron Co. v. Boyce*, 71 N. J. L. 434, in an opinion of the Supreme Court, delivered by Mr. Justice Dixon, it is stated (p. 435):

"The authority of the secretary of a corporation, as defined in our act concerning corporations (Pamph. L. 1896, p. 277, Sec. 13), is 'to record all the votes of the corporation and directors \* \* \* and perform such other duties as shall be assigned to him.' Plainly, in the absence of a special assignment, the authority thus defined does not extend to the making of an affidavit upon which litigation is to be instituted, and I know of no adjudication to the effect that the authority of a corporate secretary, as such, would reach so far. We are thus brought to the question whether it is necessary that the affidavit should appear to have been made 'by the plaintiff, his agent, or attorney'."

In the *North Penn* case (*supra*), Justice Dixon considers the importance of the affidavit before him in dealing with the character of the corporate officer by whom it was made. There the affidavit was to procure the issuance of a writ of attach-

ment. Justice Dixon deemed that an important matter. But no court has ever shown a disposition to relax the rules in this matter of affidavits which are designed to show the good faith and honesty of dealings that underlie the giving of chattel mortgages. So that it is fair to give at least equal consideration, by reason of importance, to an affidavit like the one *sub judice*. Justice Dixon says, at page 436:

“Bearing in mind that our proceeding by attachment is wholly statutory, an affirmative answer to this question seems logically compelled. The writ directs the seizure of the defendant’s property and issues without judicial action and is therefore readily capable of oppressive and unjust use. For this reason, doubtless, the legislature has carefully prescribed the conditions on which it may be procured, and it is the duty of the courts to see that those conditions are observed. Although the legislature has directed that the Attachment Act shall be construed in the most liberal manner for the advancement of justice and the benefit of creditors, that does not warrant a disregard of the terms of the statute. If the legislature had intended that the writ might issue on the filing of an affidavit made by any person, though without apparent authority from the plaintiff, the present restrictive language would not have been employed. Such, also, is the trend of judicial decisions, as will be perceived on examining the cases referred to in 4 Cyc. 471 and 3 Encycl. Pl. & Pr. 7. To the same effect was the dictum in *Wescott v. Sharp*, 21 Vroom 392, 394, where Justice Scudder, speaking for this court, said that an omission to state, in the affidavit of an attorney, that the plaintiff was absent, when the statute authorized an agent to make such affidavit only in case of the plaintiff’s absence, would be fatal on a motion to quash the writ.”

More recently the Court of Chancery has considered the character of a secretary’s office in connection with a corporate secretary’s affidavit of consideration for a chattel mortgage. The case is *Pincus v. U. S. Dyeing and Cleaning Works*, 99 N. J. E. 160. The Court held that:

“The signature of the secretary of the corporation, attached to the affidavit, is also insufficient, as it does not appear that, *by virtue of the office*, the secretary is the agent of the corporation for the purpose of making the affidavit; nor does it appear, in the body of the affidavit, that the Secretary was such agent.”

The Vice-Chancellor says at page 162:

“My attention has been called to the cases of *American Soda Fountain Co. v. Stolzenbach*, 75 N. J. L. 721, and *Lessler v. Paterson National Bank*, 97 N. J. Eq. 396, by counsel for the defendant.

“In the *American Soda Fountain* case the affidavit was made by the vice-president and his official position appeared in the body of the affidavit. In the *Lessler* case the affidavit was made by the president. These cases differ from the case at bar in that they distinguish between the acts of a corporation through an agent and those of an *executive* officer. Acts of a president or vice-president of a mortgagee corporation are in legal contemplation the acts of the corporation. *Those of a secretary or agent may or may not be.* This affidavit is therefore defective.”

We next consider the deficiencies, in substance, of the affidavit of consideration. The affidavit sets forth:

“that the true consideration of said mortgage is as follows, namely: Two (2) two-letter Intertypes or Type-casting machines,” etc.

In a word, it does no more than state that the consideration of the mortgage *is two machines*. Obviously this does not state the transaction. There is not so much as a hint of the part these machines played in any *transaction which resulted in the relation of debtor and creditor* and led to the execution of the mortgage in question. That is the pith and meaning of the law that requires such an affidavit; and the affidavit here falls completely short of satisfying the requirement.

In the recent case of *Hunt v. Ludwig*, 93 N. J. E. 314, V. C. Backes, while stating that substantial compliance with the statute is all that is necessary, holds the rule to be that the affidavit must at least disclose the *nature of the debt*, its *cause* and *how it came into existence*. It is in these very particulars that the affidavit in the present case fails. *Hunt v. Ludwig* adds another authority to those that hold that where the affidavit required by the statute as to the nature of the consideration for a mortgage is insufficient, the true consideration cannot be established by extraneous circumstances.

In *Metropolitan Fixture Co. v. Albrecht*, 70 N. J. L. 150, the affidavit stated that the consideration of the mortgage was \$520, "being the purchase price of the within-named goods, and that there is due on said mortgage the sum of \$445, besides interest from the date thereof." The Supreme Court in that case held that the affidavit and chattel mortgage, *read together*, sufficiently disclosed the true consideration. This but emphasizes the shortcomings of the chattel mortgage in the present case. For here there is nothing to show, in the body of the mortgage itself, what part the Intertype machines played in the transaction. Reference to the body of the mortgage in

no way supplements the deficiency of the affidavit. The mortgage contains no recital which in any way *describes the transaction* or assists the affidavit in making it known. So that here there is nothing with which the affidavit can be conjointly read; the affidavit stands alone.

In *Wilkinson, Gaddis & Co. v. Bohlen*, 88 N. J. L., p. 680, Justice Kalisch says at page 682:

"The trial judge further found that the affidavit as to the consideration of the mortgage was not in compliance with the statute in that it failed to state *how the debt on which it was founded arose or was incurred*, and therefore very properly decided that, under the statute, the mortgage was absolutely void as to creditors who existed at the time the mortgage was executed."

In the case of *Collerd v. Tully*, 77 Eq. 439, the Court of Chancery held that:

"Under Section 2, Gen. Stat. 1895, p. 2113, Sec. 252, making a chattel mortgage void as against the mortgagor's creditors unless it has annexed an affidavit stating the consideration of the mortgage, the affidavit must show *how the debt arose on which the mortgage was founded, how the debt came into existence, and how the relation of debtor and creditor as between the mortgagor and mortgagee was created.*"

This same case also holds that an affidavit stating that the consideration for a chattel mortgage was "also \$700" which the mortgagor owed, the debt being assigned to the mortgagee, is insufficient. The same case holds, too, that the mortgage is void where the consideration is insufficiently stated in part, though partly sufficient.

In *Collerd v. Tully* the mortgagee was the assignee of a judgment recovered by one Winantz

against the mortgagor. V. C. Garrison stated that the mere recital of the indebtedness due upon the judgment was insufficient. The important question, however, in that case as in the present case, is whether it was shown in the affidavit annexed to the chattel mortgage that the mortgage was given upon consideration of that judgment; or, as the Court says at page 48, "that is, whether it appears from the proof that the chattel mortgagee cancelled the judgment, or bound herself not to proceed for a period, or obligated herself in any manner concerning the judgment *so as not to make it consideration for the mortgage*. The mere fact that she held a judgment would not be consideration for the mortgage unless she agreed that upon receiving the mortgage, she would be bound in some way with respect to the judgment." So in the present case: Just as there was nothing in the *Collerd* case to show what part the judgment played in the consideration for the mortgage, in the present case there is nothing to show *how the two machines become consideration for the present mortgage*. This case of *Collerd v. Tully* was affirmed in the Court of Errors and Appeals, 78 Eq. 557.

The Court of Errors and Appeals went further than Vice-Chancellor Garrison in its requirements for the affidavit of consideration. The Court says, at the bottom of pages 559-60:

"Section 4 of the Chattel Mortgage Act (P. L. 1902, p. 487) makes the chattel mortgage absolutely void as against creditors unless the affidavit is annexed; and the statute makes it obligatory that it should set forth the consideration of the mortgage, *not partially, but completely*. The affidavit is, however, defective in stating the consideration *even so far only as it secures the judgment*. We do not agree with the Vice-Chancellor that the con-

sideration is the balance of \$700 due upon a judgment recovered by Ellen C. Winantz against John J. Kelly and assigned to appellant. The affidavit ought to show *even the origin of the debt upon which the judgment was based*, or the amount, if anything, that was paid by the mortgagee for the assignment of the judgment."

There is nothing in the present case to show that the Intertype Corp. parted with anything for this chattel mortgage. The mere statement that the consideration was the two Intertype machines does not disclose how the indebtedness, if any, came into existence.

In the case of *Dunham v. Cramer*, 63 N. J. E. 151, the Court holds:

"An affidavit of consideration annexed to a chattel mortgage must on its face, or by reference to the mortgage, show *how the relation of debtor and creditor arose* between the mortgagor and mortgagee."

In the *Dunham* case the affidavit states "that the true consideration of said mortgage is as follows, viz.: for the payment of a certain promissory note dated July 8th, 1898, for the sum of \$800. \* \* \* This chattel mortgage is given as collateral security for the payment of the above note, and there is due on said mortgage the sum of \$800, besides lawful interest from the 8th day of July, 1898."

The Court says, page 156, concerning this affidavit:

"An examination of the affidavit to which this chattel mortgage is annexed affords no aid to the deficiencies of the chattel mortgage, for the chattel mortgage recitals make less disclosure of the transaction than does the affidavit itself. Nothing in this affidavit shows

whose promissory note is secured by the chattel mortgage in question, nor who is the holder of the promissory note, nor for what consideration—whether for the loan of money or the sale of goods; nor how otherwise the promissory note or chattel mortgage *came to be given, nor how the debt was created*, to secure which the mortgage was made. The affidavit is so markedly deficient in the statement of the transaction out of which the mortgage arose that it affords no opportunity to inquiring creditors of the mortgagor to ascertain whether the mortgage is given for a valuable consideration which would be binding upon them, or a merely voluntary one, which would not be obligatory upon them.”

In the case of *Graham Button Co. v. Spielman*, 50 N. J. E. 120, the affidavit of consideration went so far as to state that the consideration of the mortgage was for “*a present indebtedness of \$1,500.*” That is a fuller statement of consideration than we have in the present case, for the reason that nothing by way of indebtedness is shown. Notwithstanding the statement of indebtedness in the *Graham Button* case the Court held the affidavit to be “*radically defective.*” The Court says, at page 122:

“Nothing, as it seems to me, can be more certain than that simply saying, under oath, that the consideration of a mortgage is the indebtedness of the mortgagor to the mortgagee, consisting of a present indebtedness of \$1,500, and that is all that is said here, without disclosing *how the debt on which the mortgage is founded* arose—whether it arose out of a sale, a loan or how otherwise—is not a compliance with the statute; on the contrary, the statement of consideration, expressed in language so general and indefinite, so plainly contravenes the fundamental purpose of legislation that if it were adjudged

to be a compliance with the law, such judgment would unquestionably defeat the most salutary provision of the statute. The command of the statute is imperative. Unless the mortgage, when recorded, is accompanied by an affidavit which states *fully and plainly* the consideration on which it is founded, the statute says the court shall treat the mortgage as absolutely void as against the creditors of the mortgagor.”

It seems to us plain that, bad as the affidavit in the *Graham Button* case was found to be, it goes further toward a statement of the transaction, and how the debt arose, than does the affidavit before the Court in the instant case.

## POINT II.

### The chattel mortgage is void as against a subsequent purchaser in good faith.

“Where a chattel mortgage is not executed in full compliance with the statute, and is therefore invalid, the mere fact of recording will not give it validity.”

“When the statute required an affidavit by the party to a mortgage, together with the certificate of the oath, signed by the officer administering it, to be appended to the mortgage and recorded therewith, the papers constitute one instrument for recording; and if the affidavit and certificate are omitted from recording, the mortgage is not legally recorded.”

11 C. J. 538, footnote 20.

The case of *Longley v. Sperry*, 71 N. J. E. 537, holds that “the recording of chattel mortgage assignments not properly acknowledged and there-

fore not entitled to record, does not operate as constructive notice to a subsequent mortgagee.”

“Recordation of a mortgage will not validate it if it is otherwise invalid.”

11 C. J. 538 (Cases cited).

In the case of *Van Emmen v. Fleer*, 71 Atl. 692, it was held:

“In the absence of *actual notice* of a prior mortgage or the record thereof, the good faith of a subsequent mortgagee is not destroyed by the constructive notice afforded by a record containing a false affidavit touching the consideration, and the subsequent mortgagee will receive the protection of the statute.”

V. C. Leaming in the latter case says (p. 693):

“The mortgage which the record protects against creditors and subsequent bona fide mortgagees of the mortgagor is a mortgage recorded with an affidavit annexed thereto which complies with the requirements of the statute. The fifth and eighth sections of the Act clearly refer to mortgages executed in conformity to the provisions of the 4th section.”

Nothing could be more explicit than the statute itself as a statement of the rights of a subsequent purchaser in good faith as against a prior mortgage that is not made in full compliance with the statute. Such a mortgage, from the language of Sec. 4 of the Chattel Mortgage Act, *supra*,

“shall be absolutely void as against subsequent purchasers and mortgagees in good faith.”

### POINT III.

**Complainant-appellant purchased the two machines from the receiver in good faith and without notice of any lien thereon under any mortgage held by the appellee.**

In announcing and advertising the sale, the receiver stated that the property would be sold subject to all existing liens and encumbrances.

And the Court below seems to have based its conclusion entirely upon this circumstance. It ascribed to the appellant *actual notice of the prior mortgage*. It held its title to be subject to the lien of the prior mortgage regardless of defects. A search of the record, however, discloses that there is no justification for such a conclusion. A statement of the encumbrances *subject to which the receiver sold the property* is contained in the receiver's report of sale printed as a supplement in the state of the case. An examination of this schedule of encumbrances fails to disclose that the receiver made known the existence of the mortgage brought up by this appeal. The only mortgages described as held by the Intertype Corporation are:

“Chattel mortgage held by Intertype Corporation on <i>Duplex Press</i> , original amount \$5,800.00;	
balance due .....	\$600.
Chattel mortgage held by Intertype Corporation on <i>Monotype Machine</i> , original amount \$4,495., balance due.....	300.”

Since the receiver undertook to announce specifically the mortgages and liens subject to which the property was being sold, it is not fair to say that it was incumbent upon purchasers to make ex-

aminations for encumbrances *additional to those announced by the receiver*. What we are interested in, in this instance, is good faith. There was a "Duplex Press" in the plant; and there was a "Monotype Machine" in the plant. The receiver announced that the Duplex Press was subject to a chattel mortgage held by the Intertype Corporation; and he announced that the Monotype Machine was subject to a mortgage held by the Intertype Corporation; *but there is no announcement, and no proof in the record, that the appellant was in any way fairly put upon inquiry with regard to any chattel mortgage on the two Intertype machines.*

"Failure to inquire of mortgagor as to prior encumbrance must arise from *bad faith*, and not merely from negligence, in order to charge a person with constructive notice." 11 C. J. 533. (Cases cited.)

There was an effort to trace notice to the appellant corporation through its president, Randolph Perkins, by showing that he was also an officer of the corporate mortgagor; but this effort was without result (See testimony printed case p. 44, lines 10-30; p. 47, lines 1-20).

#### POINT IV.

##### **There was no proof of any legal indebtedness under the mortgage.**

An examination of the testimony of the witness, William H. Borden (Case, p. 47, etc.), will show that defendant below, Intertype Corporation, offered no legal proof of an amount due and unpaid under its chattel mortgage. Borden is the

only person who testified on the subject of indebtedness and balance due. He was, at the time of his testimony, credit manager of the corporation. He had only been with the company since 1923—three years after the giving of the earlier mortgage, but knew nothing whatever about the transaction between the mortgagor and the mortgagee. The defendant below, Randolph Perkins, waived any sort of technical objection to his telling his story: "If they have a lien, I will waive all technical objections" (Case, p. 49, line 20, etc.). Any such waiver by the defendant, Perkins, could, however, in no way bind the complainant below. And it is respectfully submitted that there never was any adequate legal proof given by the witness Borden, the only witness on the subject, of any amount due under the mortgage. He had no original records or books of account of his company with which to establish any amount due, and his testimony was of necessity made up entirely of hearsay.

Another related point to be made under this head is that concerning the date from which the decree fixes the interest. Regardless of the right or wrong of our point as to the establishing, at the trial, of an amount due under the mortgage, the fact is that there certainly was nothing in the testimony which in any way justified the Court below in fixing a date from which interest is to run. The final decree (page 36, etc.) provides that interest on the amount due is to be paid "at the rate of 6% per annum from April 27th, 1920." There is nothing in the case to justify the finding of *any* date from which interest is to run. And since that is so, the only proper thing left for the Court to do was to make no decree whatever concerning

the running of interest prior to the making of the decree.

The decree of the Court of Chancery should be set aside.

Respectfully submitted,

JOHN DREWEN,  
Counsel for the Bergenfield Printing  
Company, Complainant-Appellant.

77  
OCT. 1. 1928

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

<i>Between</i>	BERGENFIELD PRINTING COM- PANY, a corporation, Complainant-Appellant,	}	<i>On Appeal from the Court of Chancery.</i>
	<i>and</i>		
	INTERTYPE CORPORATION, Defendant-Appellee.		

### BRIEF FOR INTERTYPE CORPORATION.

#### Facts.

The complainant-appellant in this cause is the assignee of a purchaser at a receiver's sale at which sale certain goods and chattels were sold upon which the defendant-appellee claims a lien by virtue of two chattel mortgages. The defendant-appellee is the holder of two chattel mortgages given by Bergenfield Press, Inc., covering certain machines described as Two (2) two-letter Intertype or typesetting machines of the manufacture of said Intertype Corporation known as Intertype's Model (B) No. 3208 and Model (B) No. 3209. (Exhibits D. 1 and D. 2.) The complainant-appellant contests the validity of the chattel mortgages held by Intertype Corporation for the reason that said mortgages are invalid.

The Bergenfield Press was decreed to be insolvent and Harry E. McGrath was appointed receiver by an order of the Court of Chancery dated January 17, 1926, and at which time the said machines covered by the chattel mortgages were in the possession of the insolvent company.

An order for the sale of all the machinery and appurtenances thereto belonging subject to all encumbrances upon said machinery and appurtenances was made by the Court of Chancery on May 24, 1926. On June 23, 1926, the receiver for said company filed a report of sale in the Court of Chancery stating that he had sold the assets of the company including the machines and equipment to Fred T. Schellhorn for the sum of \$500.00 subject to all the liens and encumbrances which were announced at said sale amounting in all on the day of sale to the sum of \$68,614.00 or about that sum. And among which announced liens and encumbrances were "chattel mortgage held by Intertype Corporation on Duplex Press, original amount \$5,800.00, balance due \$600.00; chattel mortgage held by Intertype Corporation on Monotype Machine, original amount \$4,495.00, balance due \$300.00." (Supplement to State of Case, Receiver's Report of Sale.)

The receiver's report of sale was confirmed by the Court of Chancery on July 6, 1926, (Supplement to State of Case, Order Confirming Sale), and that sometime thereafter the purchaser at the sale, Fred R. Schellhorn, assigned his bid to the complainant-appellant, Bergenfield Printing Company (State of Case, p. 41, ll. 14-23).

#### POINT I.

**Complainant-appellant was not a subsequent purchaser of the chattels covered by the mortgage in good faith.**

The act concerning mortgages on chattels (Revision of 1902, C. S. p. 463) Section 4, reads as follows:

"Every mortgage or conveyance intended to operate as a mortgage of goods and chattels hereafter made, which shall not be ac-

companied 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 thereon, be recorded as directed in the succeeding section of this act; \* \* \*."

The complainant-appellant contends that the chattel mortgage (Exhibit D. 2) is defective for several reasons and, therefore, any constructive notice that might have been given by recording said mortgage was destroyed. Assuming that to be the law, it does not apply to the purchaser in this case, who was a purchaser not in good faith. The purchaser, Fred R. Schellhorn, was present at the receiver's sale when the conditions of sale were publicly announced (State of Case, p. 45, ll. 1-10; p. 41, ll. 13-23). The defendant-appellee grounds its right and claims herein on actual notice and a purchaser who buys having a notice of a chattel mortgage is not acting in good faith and, therefore, not protected by the statute.

Mr. Randolph Perkins is president of the complainant-appellant (State of Case, p. 39, l. 39), and was present at the sale and heard the conditions of the sale read and formed the complainant-appellant company to take over the machinery and equipment from the purchaser at the receiver's sale (State of Case, p. 41, ll. 15-23). It must not be overlooked that the attorney for the receiver was John Drewen, the partner of Mr. Perkins (State of Case, p. 47, ll. 20-26), and that

the searches for liens and encumbrances covering the chattels of the insolvent company were made by that office and that as counsel for the receiver the conditions of sale were drawn up by that office.

It is contended by the complainant-appellant that although the purchaser had notice of the Intertype mortgages, it was a defective notice. The purchaser, Fred R. Schellhorn, was the representative of Mr. Perkins (State of Case, p. 40, ll. 12-23). Mr. Perkins testified that the first time he had "definite" knowledge of the Intertype Corporation claiming to have a chattel mortgage was when the constable threatened to take possession (State of Case, p. 44, ll. 21-27). Mr. Perkins seems to make some distinction between knowledge and "definite" knowledge. The notice which was given at the time of the sale was a notice that Intertype Corporation held two mortgages; one for \$5,800.00, which is the same amount stated in the chattel mortgage, and the other for \$4,495.00, which is the amount stated in the second chattel mortgage and that there was due on both mortgages the amount of \$900.00. Any notice which is enough to put a person on inquiry is sufficient to destroy the good faith of a purchaser as demanded by the statute. The purchaser, through the notice given which stated the name of the mortgagee and the amount of the mortgage, had the opportunity to search the records in the Bergen County Clerk's Office and in addition to this the purchaser, who was merely representing Mr. Perkins, had the opportunity of examining the search which was, no doubt, in the office conducted by Mr. Perkins.

The complainant-appellant is the assignee of the purchaser at the sale and, therefore, is in the same position as the purchaser. It is because of

the inequitable stand taken by the complainant-appellant that the Court should decide that the lien of the defendant-appellee is valid as against the complainant-appellant. The purchaser at the sale in making his bid took into consideration that the defendant-appellee held liens amounting to approximately \$900.00 and now his assignee comes into court attempting to set aside these liens which were instrumental in having the assignor of the complainant-appellant make a smaller bid for the property than he otherwise would. The receiver of the insolvent company did not contest the validity of the mortgages. The purchaser took subject to the mortgages believing that he was indebted to the defendant-appellee for the sum of approximately \$900.00 and now reverses his position and says he will not pay the sum which he assumed.

It makes no difference whether the mortgages are valid or invalid if the purchaser assumed the payment at the time of sale, he is bound by the liens thereof.

*Warwick v. Dawes*, 26 N. J. Eq. 548. In this case the purchaser at a foreclosure sale bought the premises subject to a first mortgage. The purchaser thereafter in a suit to foreclose the mortgage which was on the property at the time of sale interposed the defense that the mortgage was invalid because it was tainted with usury. The Court said:

"At the sale, the solicitor of this second mortgage gave public notice that the property was sold subject to this first mortgage, and that the principal sum of \$800.00 was due upon it. A similar notice was given by the attorney of Mr. Marlatt, the owner of the equity of redemption; and it was also proved in the case, that the purchaser, Mr. Dawes, who now insists on this defence of

usury, inquired, before he purchased, what was the amount due upon that encumbrance, and that after the sale, he promised to pay it as soon as he got his deed. It is thus apparent, that the appellee got this property for just \$800. less than he would if this mortgage had not then been regarded as a legal lien on it; and that the second mortgagee failed, from the same cause, to realize this same amount on his decree, which, it appears, was not satisfied by the sale. The injustice of such a result must condemn it, and, as I think, must go far towards demonstrating that it cannot be the legitimate outcome of the statute, which was designed to protect the borrower. In this case, if the purchaser can succeed in his defence against that mortgage, it is painfully obvious that he is allowed to violate the condition on which he acquired this property, as such condition was understood and consented to by himself, and by all the other parties interested, \* \* \*."

In the case of *Camden Safe Deposit and Trust Company v. Citizens' Ice and Cold Storage Company, et al.*, 71 N. J. Eq. 221, the Court said:

"The material facts necessary to be considered upon this appeal are as follows: Some years after the giving of the mortgage in suit the Citizens' Ice and Cold Storage Company became insolvent, and went into the hands of a receiver. There were at that time other liens upon the mortgaged premises, each of which was of later date than the complainant's mortgage. A controversy having arisen in the insolvency proceedings as to the validity of these subsequent liens, an order was made by the court of chancery directing the receiver to sell the mortgaged premises 'free and clear of all liens and encumbrances, excepting only that said property be sold subject to the lien and encumbrance of' the complainant's mortgage. The receiver thereupon offered the premises for sale at public auction upon the terms specified in the order, but failed to receive a satisfactory

bid. The Pennsylvania Iron Works Company then submitted to the receiver a written offer to purchase the property for the sum of \$25,000. 'free and clear of encumbrances as set out in the order for sale, subject only to the first mortgage held by the Camden Safe Deposit and Trust Company, trustee.' This offer was submitted by the receiver to the chancellor, who thereupon directed the property to again be put up for sale at public auction, and fixed the upset price at \$25,000. This latter order was executed by the receiver and the property was struck off and sold to the Pennsylvania Iron Works Company for the sum of \$25,000. 'Subject to the lien and encumbrance' of the complainant's mortgage, and to the balance of principal and interest that may be due and that may grow due thereon."

"It is apparent from the facts recited that the parties interested in the insolvency proceeding, including those creditors who held liens subsequent in date to the complainant's mortgage, united in conceding the validity of that instrument, and the right of the complainant to enforce it for its full amount less such sums as had been paid upon the principal. It is equally apparent that the Pennsylvania Iron Works Company, by purchasing the premises subject to the complainant's mortgage, got them for a sum less, by just the amount of the mortgage, than it would have done if the sale had been made free from its lien, and reduced by this amount the sum which would otherwise have been raised to satisfy the debts due to the creditors of the insolvent corporation. The injustice of such a claim as it now sets up must condemn it. To repeat, in substance, what was said by Chief Justice Beasley, speaking for this court in *Warwick v. Dawes*, 26 N. J. Eq. (11 C. E. Gr.) 556, a case almost identical in its legal aspect with that now before us: 'If the purchaser can succeed in its defences against this mortgage it is painfully obvious that it is allowed to violate

the condition upon which it acquired the property as such condition was understood and consented to by it, and by all the other parties interested. By the repudiation of this security it is not the mortgagor, not its creditors for whose account the sale was directed to be made, who are benefited, but the purchaser, and this to the loss of those creditors whose claims remain partly unsatisfied by reason of the fact that the sum produced by the sale under the condition stated was insufficient to pay them in full. Nothing can be more inequitable than the claim of this purchaser. It asks the court to help it violate the fair understanding on which the sale was made, and its own express promise, in order that it may retain money which does not of right belong to it and for which it has given absolutely nothing in the way of consideration.' In our opinion the circumstances under which the sale was made preclude the appellants from maintaining successfully so unfair a position."

"The decree under review should be affirmed."

In the case of *F. R. Patch Manufacturing Company v. William A. Gahagan Company, et als.*, 93 N. J. Eq. 73, the Court said:

"Here Edward furnished all the information to the constable upon which he levied and conducted the sale; he heard the announcement that the sale would be made subject to complainant's mortgage without protest, with the result that persons who otherwise might have bid may have refrained from doing so because of the prior lien of upwards of \$1,000. The acknowledgment of the complainant's lien made it unnecessary for it to bid to protect its interest. He accepted a bill of sale in strict compliance with the terms of bidding. If he should now prevail he would obtain the property for about \$1,000. less than it might otherwise have sold for; with the result that the complainant's lien will be lost and the Gahagan com-

pany continue liable on its notes aggregating \$1,000. and interest. To countenance such a contention would be giving aid in support of fraud, a thing that can hardly be expected from a court of equity."

## POINT II.

**There was proof of a legal indebtedness under the mortgage.**

The testimony was that the amount mentioned in the mortgage (Exhibit D. 2) was reduced to the sum of \$400.00 (State of Case, p. 53, ll. 33-36; p. 48, ll. 20-22). In addition to this Mr. Perkins, who was president of the complainant-appellant company, stated (State of Case, p. 49, l. 20):

"I waive any sort of technical objection to his telling his story. If they have a lien I will waive all technical objections."

This statement by Mr. Perkins would have avoided the necessity of giving any legal proof of the lien if none had been given. Mr. Borden who testified for the defendant-appellee said that the amount due on the principal was the sum of \$400.00 plus interest figured to that date (State of Case, p. 40, ll. 20-22). The chattel mortgage (Exhibit D. 2) which was decreed valid as against the complainant-appellant by the Court of Chancery, and from which decision the complainant-appellant appeals to this court states therein, referring to the notes which the mortgage secured, "each of said notes bearing interest at the rate of six per cent. per annum from the 27th day of April, 1920" and the decree allows interest from that date.

It is respectfully submitted that the decree of  
the Court of Chancery should be affirmed.

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