INDEX.

Writ of Certiorari.

(Allowed June 28, 1930.)

NEW JERSEY, ss. THE STATE OF NEW JERSEY TO STATE BOARD OF TAXES AND ASSESSMENT OF NEW JERSEY:

GREETING:

We being willing, for certain reasons, to be certified of a certain decision rendered March 25th, 1930, by the State Board of Taxes and Assessments of New Jersey, in relation to the appeal to said State Board of Taxes and Assessment of New Jersey by the Remington Cash Register Co., Inc., from an assessment for taxation made against the said Remington Cash Register Co., Inc., upon the alleged interests of the said Remington Cash Register Co., Inc., in and to certain cash registers sold by the Remington Cash Register Co., Inc., under conditional bills of sale to various vendees in the City of Newark, County of Essex and State of New Jersey, do command you that you certify and send under your seal, to our Justices of our Supreme Court of Judicature, at Trenton, on the 18th day of July, 1930, the said decision of said Board of Taxes and Assessment of New Jersey above mentioned, together with all things touching and concerning the same, as fully and completely as they remain before you, together with this our writ, that we may cause to be done thereupon what of right and justice and according to the laws of the State of New Jersey ought to be done.

WITNESS, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this 28th day of June, in the year of our Lord One Thousand Nine Hundred and Thirty.

FRED L. BLOODGOOD,
Clerk.

BLANCHARD & CAREY,
Attorneys for Prosecutor.

Order Admitting the City of Newark as Party Respondent.

(Entered Aug. 1, 1930.)

NEW JERSEY SUPREME COURT.

REMINGTON CASH REGISTER CO., INC., Relator, v. STATE BOARD OF TAXES AND ASSESSMENTS, Respondent.	On Application for Writ of Certiorari.

THIS MATTER being opened to the court by Frank A. Boettner, Corporation Counsel of The City of Newark, on application for the City of Newark to be made a party respondent in the above entitled proceedings; and upon the consent hereunder written,

IT IS ORDERED, on this 29th day of July 1930, that the City of Newark be and it is hereby made a party Respondent in the above entitled matter.

J. L. BODINE,
J.

CONSENT to the admission of The City of Newark as a party Respondent in above entitled proceedings is hereby given this 14th day of July, 1930.

BLANCHARD & CAREY,
Attorneys for Relator.

WILLIAM A. STEVENS,
Attorney-General.

Return to Writ.

NEW JERSEY SUPREME COURT.

REMINGTON CASH REGISTER CO., INC., Prosecutor, vs. STATE BOARD OF TAXES AND ASSESSMENTS, Defendant.	On Certiorari.

The State Board of Taxes and Assessments doth herewith send to the Supreme Court of the State of New Jersey the petition, judgment and proceedings in the matter of the appeal of Remington Cash Register Co., Inc., from the assessment of property located in the City of Newark, county of Essex, for the year 1929, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

STATE BOARD OF TAXES AND ASSESSMENTS,
By CHAS. E. COOK,
Secretary.

(SEAL)

Petition.

(Filed August 3, 1929.)

IN THE MATTER

of

The application of Remington Cash Register Co., Inc., for the reduction of the tax assessment for the year 1929 on property situate in the City of Newark, County of Essex and State of New Jersey.

TO THE STATE BOARD OF TAXES AND ASSESSMENTS:

Your petitioner, Remington Cash Register Co., Inc., a New York State Corporation, residing at 25 Broadway, in the City and County of New York and State of New York, respectfully shows that Remington Cash Register Co., Inc., is the owner of certain property situate in the taxing district of Newark, County of Essex, consisting of Cash Registers and Furniture and Fixtures and known as*

That said property has been assessed for the purpose of taxation for the year 1929 at a valuation of** Land, $ none; Improvement, $ none; Personal, $10,000.00; Total, $10,000.00; at which assessment your petitioner is aggrieved, because the said assessment is in excess of its true value.

That an appeal from said assessment has been filed with the Essex County Board of Taxation, which appeal said Board disposed of as follows: Assessment upheld, as we did not list accounts receivable covering cash registers sold on conditional sales contracts.

Your petitioner, therefore, prays that said assessment of*** Land $ none; Impt., $ none; Pers.,

$10,000.00; Total, $10,000.00, for the year 1929, be reduced to the true value of the property, to wit: Land, $ none; Impt., $ none; Pers., $1,395.72; Total, $1,395.72.

Dated, July 25, 1929.

REMINGTON CASH REGISTER CO., INC.
(Signed) By E. J. BOWERS,
Comptroller.

---

* Where city property is the subject of appeal, care should be taken to describe the lot, block and street number, so that the same may correspond with the tax collector's books.

** This amount should be the original valuation of the property, as it appears on the tax bill.

*** This amount should be the valuation to which the assessment was changed by the County Board of Taxation, on appeal.

Petition.

STATE OF NEW JERSEY, }
COUNTY OF HERKIMER. } SS.:

E. J. BOWERS, Comptroller of the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

E. J. BOWERS.

Sworn and subscribed before me }
this 25th day of July, 1929. }

CHAS. H. BUCKLEY,
Notary Public.
(Seal)

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

DANIEL T. CONSIDINE, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on W. J. Egan, Clerk of the City of Newark, this 30th day of July, 1929.

DANIEL T. CONSIDINE.

Sworn and subscribed before me }
this 30th day of July, 1929. }

FRANK A. KEANE,
Notary Public of N. J.
(Seal)

Petition.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

DANIEL T. CONSIDINE, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on James Mungle, Secretary of the Essex County Board of Taxation, personally, this 30th day of July, 1929.

DANIEL T. CONSIDINE.

Sworn and subscribed before me }
this 30th day of July, 1929. }

FRANK A. KEANE,
Notary Public of N. J.
(Seal)

Memorandum.

(Filed March 25, 1930.)

STATE OF NEW JERSEY,

STATE BOARD OF TAXES AND ASSESSMENT.

IN THE MATTER
of
The application of Remington Cash Register Co., Inc., for the reduction of the tax assessment for the year 1929 on property situate in the City of Newark, County of Essex and State of New Jersey.

For Petitioner, Mr. R. A. Peters.
For Respondent, Mr. Louis A. Fast.

THE BOARD: This appeal relates to an assessment against certain personal property of the petitioner found in the City of Newark on the day fixed by law for making assessments of real and personal property in that taxing district to raise the taxes thereon payable in the year 1929. The levy was made as of October 1, 1928.

The property largely consists of cash registers sold under conditional bills of sale by the petitioner to sundry vendees. The registers are sold on the instalment plan, with a condition that the title to the property shall remain in the vendor until the last payments are made, whereupon the title automatically passes to the vendees, possession having passed to the vendees at the date of the sale. In each case the Company is unquestionably the owner of the property until the last payment is made.

Memorandum.

The Company is a foreign corporation having an office in Newark, and it is our view that the property is subject to taxation in the City of Newark pursuant to the General Tax Act of 1918, as amended by Chapter 310 of the Laws of 1920.

> "The tax on all tangible personal property in this State and on all taxable personal property of non-residents of this State shall be assessed in and for the taxing district where such property is found."

The petitioner contends that the registers sold under such contracts and not fully paid for on the assessing date may not be assessed against the vendor, but only against the purchasers. Inasmuch as the Company retained title to the property and was the owner thereof when the assessment was made, we think the property was lawfully entered in the tax list in the name of the Company.

The appeal is dismissed and the action of the Essex County Board of Taxation is sustained.

Judgment.

(Filed March 25, 1930)

STATE OF NEW JERSEY,

STATE BOARD OF TAXES AND ASSESSMENT.

IN THE MATTER

of

Appeal of Remington Cash Register Company, Inc., from the Assessment of Property in City of Newark, County of Essex, for the year, 1929.

An appeal in writing having been filed with the State Board of Taxes and Assessments, duly verified according to the rule of practice prescribed by said Board, by Remington Cash Register Company, Inc., in which it is alleged that an injustice has been done the said complainant by the assessment of personal property for taxation for the year 1929, located at Newark, in the County of Essex, consisting of cash registers and furniture and fixtures, and that said property is assessed higher than the true value thereof;

After hearing evidence on the part of said complainant , and the said respondent , and the argument of R. A. Peters, Esquire, for the complainant, and Louis A. Fast, Esquire, for the City of Newark, and after considering the same, it is on this twenty-fifth day of March, nineteen hundred and thirty, at a session of the State Board of Taxes and Assessments, ORDERED, ADJUDGED and DECREED, under and by virtue of Chapter 67 of the Laws of

1905, Chapter 244 of the Laws of 1915 and Chapter 236 of the Laws of 1918, that the assessment of $10,000 be affirmed and the appeal therefrom dismissed.

F. D. WEAVER, President,
M. R. MARGERUM,
GEORGE COMPTON,
J. WM. HUGEL,
D. H. AGANS,
State Board of Taxes and Assessments.

Attest:
CHAS. E. COOK,
Secretary.

Docket.

REMINGTON CASH REGISTER CO., INC., Petitioner, vs. CITY OF NEWARK, CO. OF ESSEX, Respondent.	6587

Petitioner's Attorney.
Respondent's Attorney.
Assessment of 1929.
Property: Cash registers, furniture and fixtures.
Amount, $10,000.00. Judgment, $.

Aug.	3.	Petition filed.
Oct.	8.	Hearing fixed for October 31 at Newark and notice sent.
Oct.	31.	Case heard. Decision reserved, pending the filing of briefs.

1930.

Mar.	25.	Memorandum filed.
"	25.	Judgment dismissing petition entered.

Minutes.

State House, Trenton, New Jersey.
Tuesday, October 8, 1929.

The Board met at 10:30 A. M. on the above date.

Present, President Weaver, Commissioners Agans, Huegel and Margerum.

Absent, Commissioner Compton.

* * * * * * *

The Board fixed the following additional dates for hearings:

* * * * * * *

Thursday, October 31: Industrial Office Bldg., Newark. 23 Essex and 3 Union County cases.

* * * * * * *

Industrial Office Building, Newark, N. J.
Thursday, October 31, 1929.

The Board met at 10:30 A. M. on the above date for the purpose of hearing appeals.

Present, Commissioners Agans, Compton and Huegel. Commissioner Huegel presided.

The following calendar of appeals was called:

* * * * * * *

Remington Cash Register Co., Inc. vs. City of Newark.

Case heard, Mr. R. A. Peters appearing for the petitioner and Mr. Louis A. Fast appearing for

the City of Newark. The Board heard the testimony of Charles H. Buckley on behalf of the petitioner, and reserved decision pending the filing of briefs.

* * * * * * *

State House, Trenton, New Jersey,
Tuesday, March 25, 1930.

The Board met at 10:30 A. M. on the above date.

Present, President Weaver, Commissioners Agans, Compton and Margerum.

Absent, Commissioner Huegel.

* * * * * * *

The Board took up the appeals heard and awaiting decision, and after reviewing and considering the evidence produced ordered judgments entered as follows:

Remington Cash Register Co. Inc. vs. City of Newark.

That the assessment of $10,000, levied for the year 1929 on cash registers and furniture and fixtures, be affirmed and the appeal therefrom dismissed. A memorandum was filed in this case setting forth the grounds for the Board's conclusions.

* * * * * * *

Certificate.

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

I, CHAS. E. COOK, Secretary of the State Board of Taxes and Assessment, DO HEREBY CERTFIY, that the foregoing are true copies of the petition, judgment and proceedings in the matter of the appeal of Remington Cash Register Co., Inc., from the assessment of property in the City of Newark, County of Essex, for the year 1929 as the same are taken from and compared with the originals filed in the office of the State Board of Taxes and Assessment, on the third day of August and other dates A. D. 1929 and 1930, and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Board, at Trenton this eighteenth day of July, A. D. 1930.

CHAS. E. COOK,
Secretary.

Stipulation.
(Filed August 6, 1930.

NEW JERSEY SUPREME COURT.

REMINGTON CASH REGISTER CO., INC., Relator, v. STATE BOARD OF TAXES AND ASSESSMENTS, Respondent.	On Application for Writ of Certiorari.

IT IS HEREBY STIPULATED by and between Frank A. Boettner, Esquire, Corporation Counsel of the City of Newark, Blanchard & Carey, attorneys for Relator, and William A. Stevens, Attorney General of the State of New Jersey, attorney for the respondent, State Board of Taxes and Assessments, that the State of Facts as stated in this Stipulation shall be considered the facts in dispute in these proceedings:

1. That a tax assessment of $10,000 was levied against Remington Cash Register Co., Inc., for the year 1929 by the City of Newark;

2. That said Company took an appeal from said assessment to the Essex County Tax Board, which Board affirmed the assessment of the City of Newark;

3. That subsequently Remington Cash Register Co., Inc., appealed from the decision of the Essex County Tax Board to the State Board of Taxes and Assessments, which Board did on March 25,

1930, affirm the decision of the Essex County Tax Board by memorandum opinion and definite order which is attached to and made part of the original petition and incorporated herein by reference.

4. The Remington Cash Register Co., Inc., sold cash registers to various people in the City of Newark under conditional sales contracts, all of which were duly recorded in the Essex County Register's Office, according to the statutory requirements. Said sales were made pursuant to contracts executed in the State of New York and all payments on account of said contracts were due and owing and payable at the office of said Company in the City, County and State of New York. The reasonable value of the merchandise so sold and upon which the assessment herein contested was laid was in excess of the sum of $10,000, the amount assessed against said Company on account of the interest of said company in the merchandise so sold.

5. Remington Cash Register Co., Inc., made application for a reduction of the assessment from $10,000 to $1,395.72, claiming that such sum was the value of the merchandise and fixtures on hand in Newark as of October 1, 1928. These assets belonged to said Company, free and clear of any additional sales contracts. The valuation of $1,395.72 consists of a value of $1,082.20 representing stock and $313.52 as accounts.

6. The tax assessors of the City of Newark based their assessment on the value of the registers sold by conditional sales contract to various persons in the City of Newark and that as of October 1, 1928,

the value of the registers sold were in excess of $10,000.

7. Attached hereto and made part hereof is a copy of the conditional sales contract under which terms the cash registered assessed by the City of Newark are sold to purchasers in said City;

8. The assessments made by the City of Newark against Remington Cash Register Co., Inc., were made without reference to or consideration of any balance due by purchasers of cash registers assessed against said Company.

FRANK A. BOETTNER,
Corporation Counsel of the City of Newark.

WILLIAM A. STEVENS,
Attorney General.

BLANCHARD & CAREY,
Attorneys for Relator.

Conditional Sales Contract—Annexed to Stipulation.

City..... County..... State.....

REMINGTON CASH REGISTER COMPANY, INC., ILION, N. Y.

Date.....192..

Please manufacture and ship as soon as possible to .....Street, City..... County ..... State..... or to the nearest railroad station..... of your Style No.....Registers..... Finish, Serial No.....denominations of keys .....for which undersigned agrees to pay you..... Dollars ($.....) the price of register f. o. b. Ilion, N. Y., freight paid to destination, on the following terms:

A: (For Deferred Payments).

$.....Cash with order.
$.....Cash on delivery of register.
$.....Allowed for exchange register. Make.....Size and Serial Nos. .....
$ .....
$.....in.....monthly payments of $.....each and .....of $.....evidenced by installment note of the undersigned, which you are authorized to detach for collection purposes.

Conditional Sales Cotnract.

B: (For Cash Sales).

$.....Cash with order.
$.....Cash on delivery of register.
$.....Allowed for exchange register.
Make.....Size and Serial Nos. .....
$.....
$.....less 5% discount on $.....
if paid within thirty days from date of delivery . (No discount to apply on allowance for registers taken in exchange).

.....
.....
.....
.....

This register will be used in the.....business of the undersigned at the address above given, and shall not be removed therefrom without your previous written consent.

The signing and delivering of note shall not be considered a payment or waiver of any term, provision or condition of this contract. You are authorized to give said note such date as you may elect, either prior to or after the execution of same.

It is expressly agreed that this contract shall not be countermanded, and upon refusal of undersigned to accept the register when tendered or to make any cash or other payment provided for herein at the time same is due and payable; or upon any removal or attempt to remove, sell or transfer possession or ownership of said registed, it is agreed that the purchase price of said register, less any actual payments thereon, shall at once become due

and payable; and you or your agent may, if you so elect, enter upon the buyer's premises or any place or places where the property aforesaid or any part thereof may be, and take possession of and remove said register without legal process, and retain, as rental for use of said register while in possession of the undersigned, all payments theretofore made.

In the eevnt of suit or the necessity for you to employ counsel to collect any portion of the purchase price or to recover possession of said register, the undersigned agrees to pay reasonable attorney's fees, such fees to be taxed as part of the costs.

You guarantee that should the register get out of order from ordinary use within one year from date of shipment you will repair same gratis, the undersigned to pay transportation charges to and from your factory or nearest agency capable of making the necessary repairs, or the expense of the serviceman. Any repairs or alterations made by anyone other than your authorized serviceman without your written consent shall be at the expense and risk of the undersigned.

The register shall remain your property and title remain in you until the price, or any judgment for same is paid in full. The undersigned shall hold said register at his own risk pending the vesting of title in him, and no injury, loss or destruction of same after delivery to carrier shall release him from this obligation to pay said price. Undersigned agrees to pay all taxes on the register, and in event of default to reimburse you for all taxes paid on same by you.

This contract covers all agreements between us, and you shall not be bound by any inducement, representation or promise made relative to this trans-

action by any person whomsoever which is not embodied herein.

Witnesses .....
Witnesses .....
.....
Print customer's name plainly on this line

Signed .....
By .....
.....
Customer's home address

All order subject to acceptance by the Company at Ilion, N. Y.

.....
City..... County..... State..... Date....192..

For Value Received.....Promise to Pay to the Order of REMINGTON CASH REGISTER COMPANY, INC., ILION, N. Y.,

The Sum of.....Dollars ($.....)
In.....Installments
Payable Monthly from date at.....
.....as follows:

COLL'N NO.	DATE DUE	DATE PAID		AMOUNT
.....	.....	.....	1st month	.....
.....	.....	.....	2nd "	.....
.....	.....	.....	3rd "	.....
.....	.....	.....	4th "	.....
.....	.....	.....	5th "	.....
.....	.....	.....	6th "	.....
.....	.....	.....	7th "	.....
.....	.....	.....	8th "	.....
.....	.....	.....	9th "	.....
.....	.....	.....	10th "	.....

Conditional Sales Contract.

COLL'N NO.	DATE DUE	DATE PAID		AMOUNT
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

It is agreed that default in payment of any of the above installments shall, at the option of the holder, render the unpaid balance immediately due and payable.

Register No. .....

.....

Print customer's name plainly on this line

.....

Customer's home address

Signed .....

By. .....

No. .....Street

Avenue

This contract filled with Register No. .....

Branch Manager or Sales Agent. .....

Closing Salesman .....

Assisted by .....

Salesman or Sales Agent in whose territory register is to be delivered .....

Salesman or Sales Agent, if any, to receive 2/5 of the commission according to decisions 107 and 109. .....

Do Not Write In Space Below

Reasons.

(Filed July 22, 1930)

NEW JERSEY SUPREME COURT.

REMINGTON CASH REGISTER CO., INC., Prosecutor, vs. STATE BOARD OF TAXES AND ASSESSMENT OF NEW JERSEY, Defendant.	On Certiorari.

The said prosecutor by his attorney comes and prays that the judgment of the State Board of Taxes and Assessments of the State of New Jersey may be set aside and reversed and for nothing holden for the following reasons:

1. The State Board of Taxes and Assessment erred in sustaining the decision of the Essex County Board of Taxation wherein the latter sustained an assessment by the City of Newark upon the right, title and interest of your prosecutor in and to certain cash registers sold by your prosecutor under a contract executed in the State of New York on the following grounds:

(a) The interest of your prosecutor as a conditional vendor of cash registers sold in the County of Essex under conditional bills of sale duly and properly recorded in the said County is such an interest as is not properly taxable within the County of Essex and State of New Jersey.

(b) The interest of your prosecutor in and to the property taxed in the above matter is that of a

claim for money due and owing to the prosecutor in the State of New York, payable in the State of New York, upon a contract executed in the State of New York, and as such is not taxable in New Jersey.

(c) The full value of the cash registers assessed and taxed in the City of Newark, County of Essex and State of New Jersey, is taxed to the conditional vendees in the full amount of the value of the said cash registers and the effort of the State of New Jersey to tax your prosecutor for a proportion of the value thereof constitutes double taxation and is unconstitutional and unlawful under the laws of the State of New Jersey and of the United States.

(d) The interest of your prosecutor in the cash registers sold as hereinbefore set forth is a security title valid only for the purpose of securing to your prosecutor payment on account of the merchandise so sold and is not properly taxable against your prosecutor in the State of New Jersey.

(e) The cash registers sold under conditional bills of sale as set forth in the above entitled proceedings are the property of the conditional vendees and are solely and properly taxable only as against the vendees and holders thereof.

(f) Any claim which the prosecutor may have for moneys due and owing on account of the cash registers sold under the conditional bills of sale as hereinbefore set forth is a debt, the situs of which resides in the State of New York, the place of the making of the contract and the place where payment thereon is due and owing and as such is not properly and legally taxable in New Jersey.

Reasons.

(g) The arbitrary assessment against your prosecutor for the sum of $10,000.00 alleged to represent the interests of your prosecutor in and to the cash registers sold by your prosecutor in the County of Essex and State of New Jersey is erroneous and arrived at without calculation on a reasonable basis for such a determination, and without regard to the actual amounts due, owing and unpaid on the various cash registers sold throughout the said County. Such an arbitrary assessment is unjust and unreasonable, without any reference to the actual sum or amounts due and owing on each and every cash register sold by your prosecutor and alleged to be a proper subject of taxation in this case, and taxation based upon such an arbitrary and unreasonable assessment is unlawful.

That the decision of the State Board of Taxes and Assessment of the State of New Jersey is in divers other respects illegal, unjust and oppressive, and should be set aside and for nothing holden.

BLANCHARD & CAREY,
Attorneys for Relator.

Notice of Argument.

(Filed Aug. 25, 1930)

NEW JERSEY SUPREME COURT.

REMINGTON CASH REGISTER CO., INC., Prosecutor, vs. STATE BOARD OF TAXES AND ASSESSMENT OF NEW JERSEY, Defendant.	On Certiorari.

To: THE CITY OF NEWARK and the STATE BOARD OF TAXES AND ASSESSMENT:

SIRS:

TAKE NOTICE of the argument of the issues joined in this cause before the Supreme Court of New Jersey, to be held at the State House, in the City of Trenton and State of New Jersey, on the first Tuesday of October next, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Yours respectfully,

BLANCHARD & CAREY,
Attorneys for Relator.

Dated: August 11, 1930.

Notice of Argument.

I hereby acknowledge due and legal service of a copy of the within Notice of Argument on this 13th day of August, 1930.

WILLIAM A. STEVENS,
Attorney General of the
State of New Jersey.

I hereby acknowledge due and legal service of a copy of the within Notice of Argument on this 11th day of August, 1930.

FRANK A. BOETTNER,
Corporation Counsel of
the City of Newark.

By LOUIS A. PAST,
Asst. Corporation Counsel.

Opinion.

NEW JERSEY SUPREME COURT,

No. 218, October Term, 1930.

Remington Cash Register Company,
Prosecutor-Appellant,

vs.

State Board of Taxes and Assessments,
Respondent-Appellee.

Argued October 7, 1930: decided November 24, 1930.

On Certiorari.

Before—*Justices* Campbell and Bodine.

For Prosecutor, Robert Carey, Jr.
For Respondent, Louis A. Fast.

Per Curiam:

Certain cash registers sold by the prosecutor under conditional bills of sale to various purchasers in the City of Newark were assessed for taxes to the conditional vendors by the taxing authorities of the City.

The amount of the assessment is not in dispute. Upon appeal, the County Board of Taxation, and, the State Board of Taxes and Assessments, affirmed the assessment.

Opinion.

It was urged before such Boards, and here, that the sales, being conditional, the title was in the vendees subject to being divested for non-payment of the installments of consideration and that the transactions were analogous to those of a chattel mortgage, the vendees being the owners, who might under the terms of the tax act, require exemption to the extent of the mortgage debt.

We think neither of these grounds is tenable. Taking up the latter ground first, the party assessed has not taken advantage of such provision of the act and therefore is not entitled to the benefit thereof. Nor may the prosecutor succeed upon the first ground. Upon and under its conditional bills of sale it specifically reserved title and ownership in itself.

Under Chapter 236, P. L. 1918 all property shall be assessed to the owners thereof and "all tangible personal property shall be assessed in and for the taxing district where such property is found."

Pursuant to such requirements of the statute the assessment in question was made, and we think, properly.

If there be need for any proof of this the conditional sales agreements contain it, inasmuch as they provide—"Undersigned, (purchaser) agrees to pay all taxes on the register, and in event of default to re-imburse you for all taxes paid on same by you."

The assessment will be affirmed and the writ dismissed with costs.

Rule for Judgment.

NEW JERSEY SUPREME COURT,

No. 218, October Term, 1930.

Remington Cash Register Company, Prosecutor-Appellant, vs. State Board of Taxes and Assessments, Respondent-Appellee.	On Certiorari.

The above entitled cause having been argued on October 7th, 1930, at a regular term of the Supreme Court by Frank A. Boettner, Corporation Counsel of the City of Newark, and Louis A. Fast, Assistant Corporation Counsel, for the respondent, and Robert Carey, Jr., for the prosecutor, and the Court having considered the arguments and having filed its opinion on November 24, 1930, where it held that the order and judgment of the State Board of Taxes and Assessments filed March 25, 1930, sustaining the assessment by the City of Newark against the prosecutor herein should be affirmed:

Now therefore, it is, on this 12th day of December, 1930,

Ordered that the writ of certiorari heretofore issued in this cause be and the same is hereby dismissed, and the order and judgment of the State

Rule for Judgment.

Board of Taxes and Assessments brought before this Court on that writ for review be and the same is hereby affirmed.

.....

Rule actually entered this 12th day of December, 1930, on motion of

FRANK A. BOETTNER,
Attorney for Respondent.

Notice of Appeal.

NEW JERSEY SUPREME COURT,

No. 218—October Term, 1930.

REMINGTON CASH REGISTER CO., INC.,
Prosecutor-Appellant,

vs.

STATE BOARD OF TAXES AND ASSESSMENTS,
Respondent-Appellee.

To Frank A. Boettner, Esq., Attorney for the City of Newark, and William A. Stevens, Esq., Attorney-General of the State of New Jersey:

PLEASE TAKE NOTICE that the prosecutor, Remington Cash Register Co., Inc., appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following grounds:

1. The Supreme Court in its decision erred in deciding that the Remington Cash Register Co., Inc., were the owners of Remington Cash Registers assessed for the purpose of taxation by the City of Newark and which assessment is the basis of this appeal.

2. The Supreme Court in its decision erred in deciding that the assessment by the City of Newark on the cash registers sold by the Remington Cash Register Co., Inc., on conditional bills of sale

was a proper and valid assessment against the Remington Cash Register Co., Inc., as conditional vendors.

3. The Supreme Court in its decision erred in determining that for the purpose of taxation the conditional contracts executed by the Remington Cash Register Company as conditional vendors had the effect of reserving to the Remington Cash Register Co., Inc. a taxable interest in the cash registers so sold.

4. The Supreme Court in its decision erred in deciding that the terms and clauses of the contract of conditional sale relative to the right of the conditional vendor to pay taxes in default of such payment by the conditional vendee operated to render the Remington Cash Register Co., Inc. primarily liable for taxation thereupon, on account of any alleged interest which the Remington Cash Register Co., Inc., as conditional vendors, might have in the article so sold.

5. The Supreme Court in its decision erred in deciding that the conditional vendor and not the conditional vendee was the owner of the taxable interest in the property of the cash registers sold under the conditional sales contracts.

BLANCHARD & CAREY,
Attorneys for Prosecutor.

Service of the within Notice of Appeal is hereby acknowledged this 30 day of Dec. 1930.

FRANK A. BOETTNER,
Corporation Counsel.

WILLIAM A. STEVENS,
Attorney General.

Notice of Argument.

NEW JERSEY COURT OF ERRORS AND APPEALS.

REMINGTON CASH REGISTER CO., INC.,
Prosecutor-Appellant,

vs.

STATE BOARD OF TAXES AND ASSESSMENTS, AND THE CITY OF NEWARK,
Respondent-Appellee.

To:

FRANK A. BOETTNER, Esq., Attorney for the City of Newark, and WILLIAM A. STEVENS, Esq., Attorney-General of the State of New Jersey:

SIRS:

TAKE NOTICE of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals, to be held at the State House, in the City of Trenton, State of New Jersey, on the third Tuesday of January, next, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Yours respectfully,

BLANCHARD & CAREY,
Attorneys for Prosecutor.

Dated: Dec. 30th, 1930.

Service of the within Notice of Argument is hereby acknowledged this 30 day of Dec. 1930.

FRANK A. BOETTNER,
Corporation Counsel.

WILLIAM A. STEVENS,
Attorney General.

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New Jersey Court of Errors and Appeals

REMINGTON CASH REGISTER COMPANY, INC., Prosecutor-Appellant, vs. STATE BOARD OF TAXES AND ASSESSMENTS OF THE STATE OF NEW JERSEY, Defendant-Appellee.	On Appeal.

BRIEF OF PROSECUTOR.

This matter is brought before this Court on an Appeal from a judgment of the Supreme Court, entered pursuant to decision of that Court, rendered November 22, 1930, affirming the tax assessment of the City of Newark, upon property of the prosecutor, appellant herein, and dismissing a Writ of Certiorari, pursuant to which the order of the State Board of Taxes and Assessments, affirming the said assessment, was brought before the Supreme Court for review.

Statement of Facts.

The Remington Cash Register Company, Inc., your prosecutor, is a corporation organized and existing under the general corporation law of the State of New York, and on December 6, 1922, duly qualified under the corporation laws of the State of New Jersey to transact business as a foreign corporation within the said State. Pursuant to such authority, your prosecutor maintains a place of

business in the City of Newark. Since your prosecutor duly qualified to transact business in the State of New Jersey, it has sold in the County of Essex, in said State, cash registers under conditional sales contracts, executed and consummated in the State of New York, at the Company's home office at Ilion. All such contracts are, however, filed in accordance with the laws of the State of New Jersey in the office of the County Clerk of the County of Essex. Under these conditional contracts of sale, your prosecutor retains as security a legal title in the cash registers so sold, valid only to secure your prosecutor against periodical payments required to be made to your prosecutor by the purchasers of such cash registers. All such payments are made to the local representative of your prosecutor and regularly transmitted by him to New York, without him making any use of such funds in any way.

On October 1, 1928, the taxing authorities of the City of Newark assessed your prosecutor in the sum of $10,000 which sum was alleged to represent the value of certain cash registers sold by your prosecutor in the City of Newark under conditional bills of sale, duly filed as above stated. In making this assessment against your prosecutor, it was contended by the taxing officials of the City of Newark that by virtue of Chapter 236 of the Laws of 1918, of the State of New Jersey, the interest of your prosecutor in cash registers sold, as aforesaid, constituted such property as was subject to the tax imposed thereby. The statute provides:

> "All property, real and personal, within the jurisdiction of this State, not expressly exempted by this act or excluded from its operation, shall be subject to taxation annually under this act at its true value, and shall be valued by the assessors of the respective taxing dis-

tricts. Property omitted by the assessors may be assessed as hereinafter provided. All property shall be assessed to the owners thereof with reference to the amount owned on the first day of October in each year, and the persons so assessed for personal property shall be personally liable for the taxes thereon." (Article 2, Par. 202.)

"The tax on all tangible personal property in this State and on all taxable personal property of non-residents of this State shall be assessed in and for the taxing district where such property is found."

Your prosecutor paid the tax so levied against it under protest and brought the matter of the propriety of such assessment on for hearing before the County Board of Taxation, which Board ruled that the assessment so made was proper and denied your prosecutor's request that the said assessment be set aside. An appeal from the ruling of the said Board was taken to the State Board of Taxes and Assessments, which latter Board, by memorandum opinion and judgment filed March 25, 1930, sustained the assessment and denied your prosecutor the relief sought in its appeal. A Writ of Certiorari was issued out of the Supreme Court directed to the State Board of Taxes and Assessments as a result of which proceedings before that Board were brought before the Supreme Court of the State of New Jersey and a hearing held thereon. The Supreme Court affirmed the assessment and dismissed the Writ by decision rendered November 22, 1930. Upon this decision an order was entered on December 12, 1930.

Your prosecutor now respectfully submits that the Supreme Court of New Jersey erred in rendering this judgment.

Points.

The judgment of the Supreme Court entered on the 12th day of December, 1930, pursuant to the decision of said Court rendered November 22, 1930, is erroneous for the following reasons:

1. Your prosecutor is not, by virtue of the reservation of security title, the owner, within the meaning of the tax law, of cash registers sold under conditional sales contracts and all cash registers so sold are the property of and properly taxable, at their full value, to the conditional vendee.

2. In all such conditional sales the interest of your prosecutor is merely that of a creditor, and all such credits are, for tax purposes, intangible personalty, having a taxable situs in the State of New York, your prosecutor's State of domicile, and are not, therefore, properly and legally taxable by the State of New Jersey.

Argument.

Your prosecutor is not, by virtue of the reservation of security title, the owner, within the meaning of the Tax Law, of cash registers sold under conditional sales contracts and all cash registers so sold are the property of and properly taxable, at their full value, to the conditional vendee.

A. The law (Chap. 236 of the Laws of 1918 of the State of New Jersey) under which the assessment has been levied provides, in part, that,

> "All property shall be assessed to the owners thereof"

and that

> "The tax on all tangible personal property shall be assessed in and for the taxing district where such property is found."

With respect to the first quoted part of the said law, it is to be noted that under the conditional sales contract used by your prosecutor, no claim to possession is made, nor thereunder has your prosecutor any right to possession unless and until the purchaser is in default in accordance with the terms of such contract. All cash registers so sold are delivered to and are the property of the purchaser, the actual passing of nominal title being postponed merely until the purchase price is fully paid. The reservation of such title is nothing more than a form of collateral security to protect your prosecutor as a creditor of the purchaser. Your prosecutor's interest is therefore purely conditional and qualified and bears none of the attributes of true ownership (Williston on Sales, Par. 579). Professor Williston states:

> "The beneficial interest in the property so far as it is not inconsistent with the security of the seller, is vested in the buyer."

The assessment statutes do not take into account qualified and conditional estates in property and with respect to the duty of and liability to assessment for taxation they make no reference to legal and equitable or general and special owners, although the Legislature must have realized that such distinguishable ownerships exist. Nor is it to be presumed that the Legislature intends that the same property is to be assessed against two persons as the property of each, although one may have the legal and the other an equitable title thereto. Therefore, when a statute requires that property be assessed to the owner it means the general and beneficial owner—that is, the person whose interest is primarily one of possession and enjoyment in contemplation of an ultimate ownership and not the person whose interest by way of

nominal title is primarily in the nature of security for the purpose of the enforcement of a pecuniary claim, and which does not contemplate the use or enjoyment of the property as such (*State* v. *White Furniture Co.*, 206 Ala. 575; *Jordan* v. *Baggett*, 37 Georgia App. 537). The White Furniture Company case is in point on this argument and the statement of the case made by the Supreme Court of Alabama, in denying a writ of certiorari, was as follows:

> "By writ of certiorari to review the ruling of the Court of Appeals in this case, holding that when personal property is sold on such terms as to constitute a conditional sale—that is, with a reservation of the legal title in the vendor until all of the purchase money is paid and an option in the vendor upon the vendee's default in its payment to either retake the property or enforce the payment of the debt—it is the property of the vendee within the meaning of the Tax Laws and cannot be assessed as the property of the vendor so as to require him to pay the taxes thereon."

The provisions of the Taxing Law of the State of Alabama is in all essential respects identical to that of the State of New Jersey as regards those provisions relative to this issue. We respectfully urge upon this Court that the carefully considered and well reasoned opinion of the highest Court of the State of Alabama should be equally applicable to the issue here presented.

The nature of a conditional sale is essentially similar to that of a chattel mortgage. This fact is well established by the decision of the Supreme Court of this State in the case of (*Bartley* vs. *Lee*, 87 N. J. L. 19). In that case a question arose as to whether the installation of heating apparatus by the plaintiff in the defendant's home, the plaintiff

reserving title thereto until the defendant had paid for same, constituted an actual transfer of title or merely an executory contract with the sole remedy in the plaintiff by way of action for breach thereof. Justice Swayze in a decision to which we believe it will be impossible to take exceptions, stated

> "The theory of the defendant is that as the title did not pass, although the heating apparatus was in his house, the only remedy of the plaintiff was for breach of an executory contract. Whether this is to be regarded as a working contract or a contract of sale strictly so called, is of no importance. Assuming, in the defendant's favor, that it was a contract of sale, the law is settled adversely to his contention. It is dealt with by Williston at section 579 of his treatise on Sales and is within the rule of section 63 of the Sales Act. Comp. Stat., p. 4662. It is also the logical result of our decision in (American Soda Fountain Co. v. Vaughn, 69 N. J. L. 582). As Professor Williston says: 'No satisfactory solution of the rights of the parties in such a transaction can be found without observing that the essential character of the transaction is the same as that of an absolute sale with a mortgage back."

The law as to the taxability of a mortgagee's interest is therefore clearly relevant. This decision definitely establishes that, in this State, a conditional sale must in fact be regarded as an absolute sale with a mortgage back. It is not disputed that the principles of taxation when applied to chattels, subject to mortgages, impose the tax upon the mortgagor and not on the mortgagee.

> "The conclusion seems obvious that the mortgagor and not the mortgagee is to be regarded as the owner of the property mortgaged for the purposes of taxation" (Waltham Bank v. Waltham, 51 Mass. 334).

> "It is stated in 37 Cyc. 791, 'An owner of land who has encumbered the same by a mortgage or other lien does not cease to be the owner for purposes of taxation, and the taxes are properly assessed and charged to him, not to the mortgagee or lienor. The same rule applies to a pledge of personal property or a chattel mortgage, it being proper to assess and charge the tax to the pledgor or mortgagor and not to the pledgee or mortgagee'."

The above principle has been more extensively applied in cases involving real property. There is no distinction in principle between the cases involving real property and those involving personal property; for the purposes of taxation equitable ownership of realty and personalty are analogous (*State* v. *White Furniture Company, supra*). These cases clearly hold, (1) that when a grantor in a deed purporting to convey land retains the vendor's lien, the legal and paramount title remaining in the vendor, the vendee has title of the property against everyone except the vendor and, as between them, it is the duty of the vendee to pay all taxes and, therefore, for the purposes of taxation, he is considered the owner of the land, and (2) that a vendee in possession under an executory contract of sale is the person liable to be taxed as the owner (*Bowls* v. *Oklahoma City,* 24 Okla. 579; 24 L. R. A. (N. S.) 1299 and note collecting many authorities; *Harvey* v. *Provident Inv. Co.,* 156 S. W. 1172; *U. S. Shipping Board Emergency Fleet* v. *Delaware County, Pa.,* 17 Fed. 2nd 40). In the *U. S. Shipping Board* case the Court let prevail the argument that "the taxable character of property is to be referred to the status of the real rather than that of the nominal owner."

It is apparent that the cases involving realty carry out the elementary and well established prin-

ciple of law that a conditional vendee holds good title against everyone except his vendor. To hold otherwise would, because of this fundamental principal, be to overrule some of our most important and enlightening decisions that at the present time form the basis of established business principles.

Not only do the decisions uphold the position of your prosecutor, but the New Jersey statute, by its very language imports a legislative intent to tax the person in possession with claim to ownership. Article 111, paragraph 303 of Chapter 236 of the Laws of 1918, provides that the assessor, "after making the valuation of the personal property for which any person shall be assessed", shall "deduct from such valuation all bona fide debts from such persons to creditors residing in the State." The statute clearly contemplates the case of a conditional vendee by permitting such a vendee, after having returned all personal property at its full value, to deduct the remaining amount due thereon, or, in the phraseology of the law, any bona fide debts owing by him, thus taxing the property at its full value by assessing the resident creditor's accounts receivable. Further proof that this is the proper and intended construction of the statute, is found in the fact that the taxpayer is prohibited from deducting debts due by him to a non-resident creditor, thereby rendering assessable to such taxpayer property conditionally purchased at its full value, the Legislature obviously realizing that the non-resident creditor could not be taxed on the unpaid portion of the purchase price of the property conditionally sold. Were not this the intent of the Legislature and if the argument of the defendant is to prevail, double taxation would result, for any conditional sale by your prosecutor subjects, by virtue of the language of the law, such purchaser to a tax on cash registers so sold at their full value, while

your prosecutor would be taxed on the unpaid portion of the sale price, thus taxing the same property twice at a figure almost double its taxable value. Such result would be unconstitutional under the laws of the State of New Jersey and of the United States, thereby rendering the statute void. The law favors constitutionality; and where a statute can be so construed such construction should prevail.

With respect to the statement contained in the decision of the Supreme Court rendered herein relating to the provision of the Tax Law which permits mortgagors to avail themselves of a deduction in the amount of the mortgage debt, we can only respectfully suggest that the Court must have misconceived the status of your prosecutor in this action. The Court said that the party assessed could not have the relief prayed for as it has not taken advantage of the exemption provision of the Act. The party assessed, the Remington Cash Register Company, your prosecutor, is not however, the mortgagor, but the conditional vendor and in effect the mortgagee. Thus it will appear that your prosecutor is not given this privilege of exemption under the Tax Law, and consequently the Supreme Court decision is formulated upon a false premise.

If the Supreme Court had recognized the fact that your prosecutor is the conditional vendor, then it could not have possibly denied on the ground above referred to the relief sought by your prosecutor, since the statutory exemption is available only to conditional vendee or mortgagors as we have indicated in the earlier portion of our argument. Nor under this recognition could the relief sought by your prosecutor have been denied, although the statutory exemption is unavailable to the conditional vendees of cash registers by virtue of the fact that your prosecutor is a non-resident of New Jer-

sey. Under such circumstances, the statute requires that the property be assessed at its undiminished value to the conditional vendees as owners thereof.

In seeking further proof in support of its decision, the Supreme Court points out in the last paragraph of its opinion that such may be found in the Conditional Sales Contract under the provision which provides "Undersigned — (purchaser) — agrees to pay all taxes on the register and in default to reimburse you for all taxes paid by you." To rely upon this provision as determining the rights of your prosecutor, is to hold that the applicability of the Legislative Act is subject to the restrictions imposed by the parties in their contract relating to the taxable party. In other words, had not the sales contract contained a provision of this kind the proof would have been unavailing. Such a narrow rule capable of circumvention does not depict the true intention of the legislature nor approach the apparent scope of the statute. As has already been shown it is widely recognized that the purpose of such a contractual provision is merely to protect the party holding the lien free from loss of security for the debt.

Every real estate mortgage contains a provision giving the mortgagee the right to pay the tax if the mortgagor defaults. In fact, it is difficult to conceive any general form of standard agreement similar in nature to mortgages, conditional sales, contracts and the like, where the element of taxation is involved, which does not give this right to the party who in the first instance is not called upon to meet the taxing obligation. To maintain that the existence of such a provision in such a contract has the effect claimed for it by the Supreme Court decision, would make the Taw Law practically unworkable, and have the effect of transposing liability from the party upon whom the tax law imposes responsibil-

ity to a third person not within the contemplation of the law, and not intended to be held liable thereunder.

Since, therefore, it is apparent that the law makes the conditional vendee the taxable owner, the only theory upon which a tax may possibly be imposed against your prosecutor without resulting in double taxation is that the unpaid portions of the purchase price of registers sold under conditional sales contract are, as accounts receivable or credits, property of your prosecutor within the jurisdiction of the state. To this point to which the following argument is devoted, we will not indulge in any considerable detail, as the Taxing Authorities of the City of Newark have definitely stated in their brief to the Supreme Court that "it is not the position of the City of Newark that it desires to tax book accounts or balances due on conditional sales contracts", and the Supreme Court has made no reference to this as a ground in support of its decision.

In all such conditional sales the interest of your prosecutor is merely that of a creditor, and all such credits are, for tax purposes, intangible personalty, having a taxable situs in the State of New York, your prosecutor's state of domicile, and are not, therefore, properly and legally taxable by the State of New Jersey.

Chapter 236 of the Laws of 1918 of the State of New Jersey provides in part that, "all property, real and personal, within the jurisdiction" of the State shall be taxable. It is needless to say that from this language there is a condition precedent to the taxability of property; viz, that, the same be within the jurisdictional limits of the State. The situs or taxable locality of personal property varies in accordance with the character of such property, inasmuch as tangible personalty acquires a taxable situs in the place in which it is actually located,

while intangible personalty is not capable of having a taxable situs aside from the place at which its owner resides. This is an accepted principle and decisions in support thereof would be superfluous.

The interest of your prosecutor in each sale of cash registers under conditional contracts are in character credits (*Reat* v. *The People,* 201 Ill. 469; *Jack* v. *Walker,* 88 Fed. 576).

Credits, as intangible personal property exist not by and of themselves, but by virtue of the persons in whose favor they may be enforced. In view of this dependent characteristic of intangible personalty there has been established the well known rule of law that such personalty has a taxable situs only at the domicile of the owner (37 Cyc. 955, in cases cited: *Pyle* v. *Brenneman,* 122 Fed. 787; *Goldard* v. *The People,* 106 Ill. 25).

In the *Pyle* case, the Court in determining the taxability of intangible property, states at 788:

> "Personal property consisting of mortgages and debts generally has no situs independent of the domicile of the owner. The general rule is that debts follow the person of the creditor and are to be taxed at his domicile (Am. & Eng. Enc. Law, Volume 25, page 146). A non-resident creditor of a state cannot be said to be, in virtue of a debt which a resident owes him, owner of property within its limits. The credit is not within the State's jurisdiction and has no value to the debtor and is not property within the State but property of the creditor, taxable at his place of residence. For the purposes of taxation a debt has its situs at the residence of the creditor and may be taxed there" (Kirland v. Hotchkiss, 100 U. S. 491)."

A domicile of a corporation is the place at which its principal or home office is located and for the purposes of taxation it is at such place that the credits for intangible property are taxable. The

fact that your prosecutor maintains an office and is qualified to conduct business as a foreign corporation within the State of New Jersey does not fix its legal residence there in the sense of establishing a domicile for the purposes of taxation (37 Cyc. 964; *Boston Investment Company* v. *City of Boston,* 158 Mass. 461).

To take any case out of the application of the general rule, there must be some authorization empowering the local representative to handle or control the credits and not a mere naked custody for collection purposes as in the present case.

> "This rule (meaning the business situs principle) does not apply, however, where the agent has no control over the investment but the securities are placed in his hands merely for convenience or for the purpose of remittance and collection only" (37 Cyc., p. 803).

The local representative of your prosecutor is empowered only to collect the sums due and all such collections are transmitted regularly to the New York office. All maintenance charges of the local office of your prosecutor in the City of Newark are paid through and by the home office at Ilion, New York.

The nature of business conducted by the Newark representative of your prosecutor is the mere extention of credit on sales, subject to acceptance or rejection in New York, the regular installments of purchase price on registers conditionally sold being payable to the local agent for transmission to the home office of your prosecutor. It has been held that such business does not involve enough of the element of permanency of location and use of the credits to give them a business situs for the purpose of taxation (*Vicksburg* v. *Armour Packing Company,* 24 South 224).

> "The general rule as to the situs of invisible and intangible personal property—as notes, bonds, etc.—is that it follows the domicile of the owner, and it is held to be taxable at such domicile. But it is an exception to the general rule that, where such credits acquire a business situs different from that of the domicile of the owner, then they may be taxed at such business situs. The question as to what constitutes a business situs is, to us, a difficult one; but as we gather the meaning of the cases on the subject, we take a business situs to be connected with the idea of more or less of permanency of location of such credits, or with a purpose to incorporate them when collected into the mass of property of the State."

In concluding this brief of your prosecutor it is desired to call to the Court's attention that the credits of the Remington Cash Register Company arising out of conditional sales in the State of New Jersey are subject to taxation by the State of New York; and under the New York tax law they are allocated to New York in the computation of the franchise tax payable to New York. If such credits were to be taxed by and under the laws of New Jersey, again double taxation would result. In this connection, it has been said in the case of *Buck* v. *Beach,* 206 U. S. 392, at page 408:

> "Our decision in this case has no tendency to aid the owner of taxable property in any effort to avoid or evade proper or legitimate taxation. It does, however, tend to prevent the taxation in one state of property in the shape of debts not existing there and which, if so taxed, which make double taxation almost sure, which is certainly not to be desired and ought, whenever possible to be prevented."

If the decision of the Supreme Court from which this appeal is taken be considered from the point

of view of the taxability of the property interest in cash registers, it is submitted that the earlier portion of this argument might demonstrate the error in that conclusion. If, as the alternative, the decision was sought to be sustained on the ground of the taxability of credits, we submit that the latter portion of this argument has demonstrated that that contention is erroneous. Thus, from any possible view it is submitted the decision of the Supreme Court and the order entered thereupon should not be sustained.

WHEREFORE, your prosecutor respectfully requests that the judgment of the Supreme Court be reversed and set aside.

BLANCHARD & CAREY,
Attorneys for Prosecutor.

ROBERT CAREY, JR.,
Of Counsel.

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

New Jersey Court of Errors and Appeals

REMINGTON CASH REGISTER COMPANY, INC.,
Prosecutor-Appellant,

vs.

STATE BOARD OF TAXES AND ASSESSMENTS OF THE STATE OF NEW JERSEY, and the CITY OF NEWARK,
Defendants-Appellees.

On Certiorari.

BRIEF OF DEFENDANT THE CITY OF NEWARK.

Facts.

The Remington Cash Register Company, Inc., the prosecutor, is a foreign corporation, authorized by the laws of the State of New Jersey to transact business in our State.

The prosecutor has sold a great many cash registers to residents of the City of Newark under conditional sales contracts. Under these conditional sales contracts the Remington Cash Register Company, Inc., retains a legal title in these machines until payment in full has been made by the customers.

The taxing authorities of the City of Newark have placed an assessment on cash registers so sold against the Remington Cash Register Company, Inc., contending that under the laws of the State of New Jersey, the assessment was to be levied against the legal owners of all personal property found in this City. Under the pro-

visions of the laws of 1918, as amended by P. L. 1920, page 561:

> "The tax on all tangible personal property in this State and on all taxable personal property of non-residents of this State shall be assessed in and for the taxing district where such property is found * * *."

The question of the amount of the assessment is not in dispute, the only question is whether the assessment on the cash registers sold under conditional sales contracts should be levied against the Remington Cash Register Company, Inc., or against the customers of the Remington Cash Register Co., Inc.

POINTS.

The State Board of Taxes and Assessments was justified in holding that the assessment should be against the Remington Cash Register Company, Inc.

It is contended by counsel for the prosecutor that the assessment should not be chargeable to it because no claim to possession is made, and that under the conditional sales contracts the prosecutor has no right to possession until and unless the purchaser is in default, in accordance with the terms of said contract.

In P. L. 1918, page 874, it is the duty of the collector—

> "forthwith, after the first day of December, to enforce payment of all taxes on personal property, and poll taxes and dog taxes by distress and sale of any of the goods and chattels of the delinquent in the county; * * *"

Let us assume that A, an imaginary customer of the Remington Cash Register Company,

Inc., defaulted in the payment of his taxes, and that this same customer had defaulted in the terms of his contract with the Remington Cash Register Company, Inc., and the Register Company, under the terms of its contract, had taken possession of the register and shipped it to Illeon, New York—how would the collector of taxes of the City of Newark be in a position to enforce the payment of the taxes, and make the distress authorized by the statute?

The taxing laws of our State are very clear on the subject. We may assess only the tangible personal property in this State, and on all taxable personal property of non-residents in this State. There seems to be no limitation in our statutes. It is required thereby to assess the owner of the property. The registers are sold on the instalment plan, with the condition that the title to the registers shall remain in the vendor until the last payments are made, whereupon the title automatically passes to the vendee, possession having passed to the vendee on the date of the conditional sale, and as the State Board of Taxes and Assessments says in its memorandum

> "in each case the company is unquestionably the owner of the property until the last payment is made."

Counsel for the prosecutor contends that when the statute requires that property be assessed to the owner, it means the general and beneficial owner—that is, the person whose interest is primarily one of possession and enjoyment in contemplation of an ultimate ownership and not the person whose interest by way of nominal title is primarily in the nature of security for the purpose of the enforcement of a pecuniary claim, and which does not contemplate the use or en-

joyment of the property as such; and in substantiating that contention, counsel cites the case of *State* v. *White Furniture Co.*, 206 Ala. 575. This interpretation of law is not the interpretation of the courts of our State. We cannot conceive how the courts in this State would hold that the assessment should be made against the conditional vendee under the tax law, and yet hold that under other circumstances that the vendee is not the owner of the property sold under conditional sales agreement, such as would be the case in the event of the suppositous Mr. A. referred to in this memorandum.

We find no fault with the interpretation of the Supreme Court of this State in *Bartley* v. *Lee,* 87 N. J. L., page 19. We fail to find how this decision in any way strengthens the prosecutor's argument. It is, of course, right that the vendor may sue and recover the balance of the purchase price for the apparatus, where title was reserved in the vendor until fully paid, and we quite agree with our friends when they say that taxes are imposed on chattel mortgagors and not on the mortgagees, and this is because of the provision of our law which makes it mandatory to assess the taxes on all tangible personal property in this State against the owner. The mortgagor of the chattel is concededly the owner of the personal property—not the mortgagee.

It is our contention that the second part of the argument of the prosecutor has no merit in the issue before the Court. My friend refers to the provisions of Chapter 236 of the Laws of 1918, which provide that

> "after making the valuation of the personal property for which any person shall be assessed"

the assessor may

> "deduct from such valuation all bona fide debts from such persons to creditors residing in the State, * * * but no such deductions shall be made unless the debtor shall make a claim therefor in writing, under oath, and therein set forth the debts owing by him, when incurred, to whom owing, and where the creditors are * * * provided, however, that no deduction for debts shall be allowed from the assessed value on any tangible goods or chattels in which the value inheres in and is supported by the thing or article itself."

There is nothing in the provisions of the statute which would permit a taxpayer to deduct the amount due a conditional sales vendor from the amount of the assessment. On the other hand, the statute says that:

> "No mortgage on personal property, or on both personal and real property, or the debts secured by such mortgage, shall be assessed for taxation unless a deduction therefor shall have been claimed by the owner of such mortgaged property and allowed by the assessor."

If it were within the contemplation of the legislature to allow a deduction to the conditional sales vendor, the legislature would have said so, and would not have spoken only of mortgaged property, if it had in mind conditional sales contracts also.

We want it to be made perfectly clear that our assessment is based on tangible goods and chattels, to wit, cash registers, and that no deduction for debts shall be allowed from the assessed value of any goods and chattels in which the value inheres in and is supported by the article itself.

It is not the position of the City of Newark that it desires to tax book accounts or balances due on conditional sales contracts.

Our friends in their brief seem to be under the impression that the Supreme Court did not recognize the fact that the Remington Cash Register Company, Inc. is the conditional vendor. A perusal of their opinion indicates clearly that that point was very well recognized by them, and that they approved the assessment because it was their construction that the prosecutor retained ownership in the registers until paid for in full, and that therefore they were responsible under the act, which makes the owner responsible for tax assessments. We are not particularly concerned in the fact that the Supreme Court pointed out in the last paragraph of its opinion that the purchaser agreed to pay all taxes on the register, and in default to reimburse the prosecutor for all taxes paid by it. We do not believe that the Supreme Court relied upon that provision of the contract in making its decision. The Court merely referred to that paragraph in passing.

Our friends referred to a real estate mortgage and also to the laws relating to taxes on real property. We desire to call the Court's attention to the fact that the law relating to taxes on real estate is entirely different from that relating to personal taxes. Point is made of the possibility of double taxation, and again we desire to reiterate our position that Newark taxing authorities made no assessment on the accounts, but made its assessment on the registers—the physical personal property. There seems to be no question that if these registers are paid for that then they are assessable, so that if there is any point to the argument that there is double tax-

ation, then that point should be raised in that jurisdiction, which is assessing the book accounts.

We contend further that there is nothing in the records to show that the Remington Cash Register Company, Inc. is paying anybody any taxes because of the accounts with Newark purchasers of cash registers, sold on conditions of contracts by the prosecutor. We contend further that the only registers that are assessed are those that are actually in the City of Newark, and not outside of its jurisdictional limits.

Our courts have held, in the case of *Broeck* v. *Jersey City*, 44 N. J. L. 156, that the owners of personal property at the time of the assessment were liable for the tax thereon, and in the case of *State* v. *Ross*, 23 N. J. L. 517 it was held that the personal chattels of non-residents are to be taxed in townships where they are found.

It is perfectly clear that the title to these cash registers are in the Remington Cash Register Company, Inc., and that the taxes must be assessed against the owners of personal property in the city where the same may be located, and that, therefore, the findings of the State Board of Taxes and Assessments, of the State of New Jersey as approved by our Supreme Court should be sustained, and the appeal dismissed.

Respectfully submitted,

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New Jersey Court of Errors and Appeals.

ON APPEAL.

REMINGTON CASH REGISTER COMPANY, INC.,
Prosecutor-Appellant,

—VS.—

STATE BOARD OF TAXES AND ASSESSMENTS OF THE STATE OF NEW JERSEY,
Defendant-Appellee.

May Term, 1931.
No. 61.

BRIEF OF AMICI CURIAE.

THE INTEREST OF THE AMICI CURIAE IN THE OUTCOME OF THIS APPEAL.

The facts are undisputed and the question presented is sharply defined:

Is a Tax on Personal Property Properly Assessable to the Conditional Vendor, Rather than to the Conditional Vendee, of a Chattel, under Laws of 1918, Chapter 236, Article II, Par. 202, Which Provides that the Tax Shall Be Assessed to the "Owner" Thereof?

The undersigned *amici curiae,* submitting this brief pursuant to leave of this Honorable Court granted May 19, 1931, are deeply interested in the outcome of this appeal because of their representation of clients who are engaged in financing the

retail sale, under conditional sale agreements, of many different articles of commercial and domestic use. Such financing, covering almost every conceivable product of industry, from small units such as vacuum cleaners and washing machines through automobiles to heavy industrial machinery and equipment, is vitally necessary to the maintenance of the productive industry of the country, the movement of the nation's manufactured goods from producer to consumer, and the continued employment at a fair return, particularly in these days, of the labor and capital engaged in the country's production.

While it is realized that economic argument, considered by itself, can not and should not shift the incidence of a tax from the place where the statute casts it, nevertheless, if the statute has quite apparently been erroneously construed, it is the duty, as well as the right, of those who are affected by such construction to bring their position to the attention of this Honorable Court so that the burden of the tax may be placed where the law fixes it and where, both as a matter of fair construction and from an economic standpoint, it should fall.

The Facts.

The facts here involved are simple and may be stated within a narrow compass:

Remington Cash Register Co., Inc., sold cash registers at retail to residents of the State of New Jersey under the usual form of conditional sale agreement (pp. 19-23), providing for payment of the purchase price in installments with the reservation of a security title in the seller. During the period of payment, the cash registers at all

times remained in the possession of the purchasers, who exercised complete dominion over them, used them in their business and in general enjoyed all the benefits of ownership.

The tax authorities assessed a personal property tax for the year 1929 against Remington Cash Register Co., Inc., upon cash registers sold by it in the above manner to various purchasers in the City of Newark, basing the amount of the assessment *not* upon the balance due to the Remington company from its customers (p. 18, ll. 11-15), but *upon the value of the cash registers themselves* (p. 17, ll. 36-39; p. 18, ll. 1-2).

The Essex County Board of Taxation sustained the assessment.

The State Board of Taxes and Assessments dismissed the petition for a reduction of the assessment (pp. 4-5) upon the ground that the statute imposes the tax upon the "owners" of chattels and that the Remington company was the "owner" of the cash registers in question (p. 8, ll. 37-39; p. 9, ll. 18-23).

On certiorari (pp. 24-26), the Supreme Court affirmed the rulings below, with a short *per curiam* opinion (pp. 29-30), which will be fully analyzed later (*infra*, Point III). Briefly summarized, the Supreme Court based its holding (a) upon the reservation of title by the Remington company pending full payment for the cash registers (p. 30, ll. 17-19) and (b) upon the provision in the conditional sale agreement requiring the purchasers to pay all taxes upon the property and to reimburse the Remington company for taxes paid by it (p. 30, ll. 27-32). This appeal followed.

POINT I.

Although the question has never been decided in New Jersey, the courts of every other state to which the problem has been presented have squarely held, under similar statutes, that the tax is assessable to the conditional *vendee* rather than to the conditional *vendor*.

The Supreme Court cited no authority either in support of or opposed to its decision. Diligent research fails to disclose any adjudications in this State bearing on the point at issue, which must therefore be regarded as a problem of first impression here. Accordingly, the pertinent holdings of the appellate tribunals of other states may be given at least persuasive force. *Swift* v. *Tyson* (1842), 16 Peters 1.

In only five other states has this precise situation been presented. It is significant that in *each* instance it has been held that the *conditional vendee* is the party properly taxable where the statute by its terms imposes the tax upon the *owner* of the chattel.

1. The *Alabama* Statute (Revenue Act of 1919, Sec. 44) provides that the personal property tax must be paid by "* * * every person * * *" upon "all property of which he was the *owner* * * *." In *State* v. *White Furniture Co.* (1921), 206 Ala. 575, 90 So. 896, the Alabama Supreme Court held that under this statute the *conditional vendee* in possession of the property must pay the tax. That Court said:

> "It is not to be presumed that the Legislature intends that the same property is to

be assessed against two persons, as the property of each, although one may have the legal and the other an equitable title thereto. * * * So, when a statute requires that property be assessed to the *owner*, we think it means the *general and beneficial* owner—that is, the person whose interest is primarily one of possession and enjoyment in contemplation of an ultimate absolute ownership—and not the person whose interest is primarily in the enforcement of a collateral pecuniary claim, and does not contemplate the use or enjoyment of the property as such. * * * A conditional vendor's title, before default in payment by the vendee * * * is a special property, and * * * the general and beneficial ownership is in the vendee * * *."

2. The *Indiana* Statute (Ind. Stat., Sec. 14050) provides that "all personal property shall be assessed to the *owner* * * *." In *In re Spurgeon* (1919), 72 Ind. App. 580, it was held that a conditional vendor of a chattel is *not* taxable as the owner, but that he is taxable only upon the balance due him under the conditional sale agreement, as a credit.

3. The *Michigan* Statute (1 Comp. Laws, Sec. 3401) provides that "all personal property * * * shall be assessed to the *owner* * * *." In *City of Marquette* v. *Iron & Land Co.* (1903), 132 Mich. 130, 92 N. W. 934, it was held that *him* in the case of both realty and personalty the *conditional vendee* is the owner for tax purposes, while the conditional vendor is taxable only upon the credit represented by the balance due under the agree-

ment. That Court wrote, at page 132 of 132 Mich.:

> "By the contracts under consideration * * * the equitable title * * * is at once transferred to the vendee. From the time these contracts are made, the vendor holds the legal title only as trustee for the vendee. * * * The vendor has, in effect, exchanged his property for the unconditional obligation of the vendee, the performance of which is secured by the retention of the legal title."

4. The *Ohio* Statute (General Code of Ohio, Sec. 5370) provides that "each person * * * shall list the personal property of which he is the *owner* * * *." In *Singer Sewing Machine Co.* v. *Cooper* (1920), 263 Fed. 994, the United States District Court for the District of Ohio squarely held that the machines in the possession of a vendee under a conditional sale agreement are taxable as the *vendee's* property. The Court wrote, at page 997:

> "It follows that the title retained by the plaintiff was a mere security title * * * that the purchaser acquired an interest in the chattel, and that this interest was, as against all the world except the vendor, *ownership.*"

5. The *Utah* Statute (Compiled Laws, Sec. 5876) provides that "the assessor must * * * assess such property to the person by whom it was *owned* * * *". In *Stillman* v. *Lynch* (1920), 56 Utah 540, 129 Pac. 272, it was again specifically held that the conditional *vendee* must pay the tax as the owner of the property, while the conditional

vendor is taxable only on the balance due. That Court wrote, at page 551 of 56 Utah:

> "The note would be taxable if the merchant [seller] was the owner of it on the first day of the next year, and the *merchandise* would be assessable at that date to the *purchaser*. This clearly is not double taxation. Double taxation means taxing the same property twice. The merchandise is one thing; the note given by the purchaser is another."

A closely allied issue is presented where the property sought to be taxed is realty rather than personalty. Both on principle and authority (*City of Marquette* v. *Iron & Land Co., supra*), no logical difference exists, in respect of taxability, between chattels subject to a conditional sale agreement and real property sold under an analogous arrangement. Here again the New Jersey courts have apparently never been called upon to rule, and the authorities elsewhere are meagre. However, five other states have considered the problem and have *unanimously* held, just as in the case of chattels, that the burden of taxation should be imposed upon the conditional vendee rather than upon the conditional vendor.

1. In *Griffin* v. *Board of Review* (1900), 184 Ill. 275, 56 N. E. 397, the Illinois Court held that a vendor of real property who retains title thereto as security (a direct parallel to a conditional sale agreement of a chattel) is taxable only upon the amount due him under the contract, as a credit, and not upon the property itself. The Court said, at page 280 of 184 Ill.:

> "The retention of the title by the vendor

> may be regarded as but a mode adopted to secure the payment of the full purchase price. * * * A debt secured by mortgage, and the land mortgaged to secure the debt, are both subject to taxation. * * * Taxation levied upon both of said properties is not double taxation."

2. The Iowa Supreme Court laid down the same rule in *Perrine* v. *Jacobs* (1884), 64 Iowa 79.

3. In *City of Marquette* v. *Iron & Land Co., supra,* it was held in *Michigan,* both as to realty and personalty, that a conditional vendor need pay tax only upon the balance due him under the agreement of conditional sale, and not upon the property itself.

4. The same rule obtains in *Minnesota,* under the holding in *State* v. *Rand* (1888), 39 Minn. 502.

5. The *Missouri* Statute (Laws of 1881, p. 178) provided that "every person *owning* * * * property * * * shall be liable for taxes thereon * * *". In *Anderson* v. *Harwood* (1891), 47 Mo. App. 660, the *vendee* of real property in possession under an agreement of conditional sale was held to be the *owner* for tax purposes.

Accordingly, we take it as uniformly established, in every State which has considered the problem, that under a statute imposing a tax either upon *property* or upon the ***owner*** of property, a conditional vendee in possession of the property is the party to whom the tax is properly assessed, while the conditional vendor is taxable merely under a separate statute imposing a tax

upon credits, and then only to the extent of the balance due him under the conditional sale agreement. The holding below in the case at bar thus stands completely isolated and unique—a fact which, while not necessarily of itself requiring a reversal, nevertheless warrants a searching scrutiny and reconsideration of the reasoning by which the decision was reached and of the principles which, we respectfully submit, should have been applied by the Supreme Court to lead it to a contrary determination.

POINT II.

As a matter of principle, it is uniformly held, both in this State and elsewhere, that the conditional vendee is in law and in fact the owner of the property for all purposes, except solely for the purpose of securing payment of the balance of the purchase price.

The reason why all courts faced with the problem here involved have held that the conditional vendee is the owner for tax purposes is not hard to find. Where a chattel is sold under a conditional sale agreement, it is delivered to the vendee, who thereafter has *complete dominion, control and beneficial use.* The conditional vendor is left merely with a claim against the vendee for the balance of the purchase price, secured by the retention of a naked legal title. In all other respects, the conditional vendor has no further interest in the chattel.

If ownership be properly regarded as an aggregate of incidents, both advantageous and burdensome, it cannot be disputed that after the deliv-

ery of the chattel under a conditional sale agreement the conditional vendee is its *real* owner for all practical purposes. It has been said that "a purchaser under a conditional sale is the *equitable owner*" of the property. *Carolina R. R. Co.* v. *Unaka* (1914), 130 Tenn. 354. The vendor's interest is correspondingly reduced to "a mere security title". *Singer Sewing Machine Co.* v. *Cooper,* 263 Fed., at page 997.

In this State, the courts have always recognized that a contract of conditional sale creates such a divided ownership in the chattel, the vendee becoming the practical and factual owner, while the vendor retains only a bare security title.

In *American Soda Fountain Co.* v. *Vaughn* (1903), 69 N. J. L. 582, the Supreme Court, in holding that the risk of loss by fire falls upon the conditional vendee, declared that "the title was retained by the plaintiff *merely as security* for the unpaid purchase money" (69 N. J. L., at p. 584).

In *Kirch* v. *LaTourette* (1918), 91 N. J. L. 35, 36, the Supreme Court clearly enunciated the divided ownership doctrine thus:

> "The contract contemplates a *double ownership* similar to the double ownership of mortgagor and mortgagee—(1) the ownership of the vendee subject to the claim for unpaid purchase money, and (2) the ownership of the vendor *as security* for the payment of the unpaid purchase money."

In other jurisdictions the divided ownership

principle is equally well established. See, for example:

Bailey v. *Baker* (1915), 239 U. S. 268;
Murray v. *McDonald* (1927), 203 Iowa 418;
Worcester v. *Mader* (1920), 236 Mass. 435;
Van Derveer v. *Canzono* (1923) 206 App. Div. (N. Y.) 130;
Brown v. *Woody* (1925), 98 W. Va. 512;
Mlodzik v. *Ackerman Oil Co.* (1926), 191 Wis. 233.

Ownership of the chattel, however, is far from being *equally* divided between the parties. *Every attribute of ownership, whether beneficial or burdensome, is universally attached to the conditional vendee.* The conditional vendor is always held to possess but a single incident of ownership—his security title—and it is important to note that even in this respect the conditional vendor's interest is primarily directed toward the payment of the balance due him. He is not really concerned with the property itself except in so far as it assures his regular receipt of the installment payments.

Judicial and legislative sanction for this view of the relationship between the parties to a conditional sale agreement is abundant, both in this State and in other jurisdictions. In addition to the grant of possession, dominion, and enjoyment to the conditional vendee by the terms of the agreement itself, the courts hold that in every instance where a benefit is to be conferred or a burden imposed by reason of the ownership of a chattel, it falls to

the lot of the conditional vendee. Without extended discussion, a few such instances may be pointed out:

A.

BENEFITS OF OWNERSHIP ENJOYED BY THE CONDITIONAL VENDEE.

1. The conditional vendee has the usual possessory remedies against third parties who take the chattel from him or injure it while in his possession.

Smith v. *Louisville,* 208 Ala. 440;
Brown v. *New Haven,* 92 Conn. 252;
Downey v. *Bay State,* 225 Mass. 281;
Angell v. *Lewistown,* 72 Mont. 345;
Carter v. *Black,* 102 Misc. 680 (N. Y.).

2. The conditional vendor cannot take the chattel from the vendee before default without being liable in conversion.

Carvell v. *Weaver,* 54 Cal. App. 734;
Commercial Credit v. *Miron,* 108 Conn. 524;
Besche v. *Brady,* 139 Md. 582;
Reinkey v. *Findley,* 147 Minn. 161;
Richardson v. *Great Western,* 109 Wash. 324.

3. The conditional vendee, without the consent of the vendor, can become absolute owner of the chattel merely by completing payment.

Staunton v. *Smith,* 65 Atl. 593 (Del.);
Tweedie v. *Clark,* 114 App. Div. 296 (N. Y.);

Tufts v. *Griffin,* 107 N. Car. 47;
White v. *Union,* 270 Pa. 514;
Duplex v. *Public,* 41 S. Dak. 523.

4. Even before payment in full is made, the conditional vendee can transfer or encumber his interest.

Fairbanks v. *Parker,* 167 Ark. 654;
Davies v. *Blenkiron,* 71 Cal. App. 690;
Cable v. *McElhoe,* 58 Ind. App. 637;
Dame v. *Hanson,* 212 Mass. 124;
Karalis v. *Agnew,* 111 Minn. 522.

5. The interest of the conditional vendee passes by succession upon his death.

Mathusek v. *Weld,* 94 Misc. 282 (N. Y.);
Dold v. *Potter,* 79 Pa. Super. 112.

6. The conditional vendee has an insurable interest in the chattel.

Sturgeon v. *Hanover,* 112 Kan. 206;
Baker v. *Northern,* 214 Mich. 540;
Vigliotti v. *Home Ins. Co.,* 206 App. Div. 398 (N. Y.);
Drumbolus v. *Home Ins. Co.,* 37 Ont. L. R. 465.

7. The chance of gain through increase in the value of the chattel belongs to the conditional vendee.

Anderson v. *Leverette,* 116 Ga. 732;
Frank v. *Batten,* 49 Hun 91 (N. Y.).

8. Even after defaulting in payment, the conditional vendee has an equity of redemption.

N. J. Conditional Sales Act, Section 182-104;
Jenkins v. *Blackstone,* 216 App. Div. 583 (N. Y.).

9. If the recording act be not complied with, the conditional vendee can give perfect title to a third party, and his creditors, by attachment, can acquire a lien superior to that of the vendor.

Brown v. *Christian,* 97 N. J. L. 56;
Cashman v. *Lewis,* 26 Ariz. 95;
Holley v. *Haile,* 188 App. Div. 798 (N. Y.);
Anchor v. *Penn.,* 292 Pa. 86.

10. Under a statute giving the "owner" of a machine the right to file a lien for work done by it, the conditional vendee, and not the vendor, is the party entitled to file the lien.

Dahlund v. *Lorentzen,* 30 N. Dak. 275.

11. Under a statute providing that an insurance company is not liable for loss of property owned by one other than the assured, a conditional vendee assured is entitled to recover on the policy.

Drumbolus v. *Home Ins. Co.,* 37 Ont. L. R. 465.

B.

BURDENS OF OWNERSHIP IMPOSED UPON THE CONDITIONAL VENDEE.

1. Under automobile registration statutes, the conditional vendee, and not the vendor, must

obtain registration and is subject to liability for injuries to third parties.

Brown v. *New Haven,* 92 Conn. 252;
Temple v. *Middlesex,* 241 Mass. 124;
Lennon v. *Acceptance Corp.,* 48 R. I. 363.

2. The risk of loss or injury to the chattel falls upon the conditional vendee. Such is the declaration of the Commissioners on Uniform State Laws, now part of the statute law of this State, codifying the common law on this point.

New Jersey Conditional Sales Act, Sections 182-113;
American Soda Fountain Co. v. *Vaughn,* 69 N. J. L. 582;
Collerd v. *Tulley,* 78 N. J. Eq. 557.

3. With the exception of the holding here under review, it is *universally* held that a personal property tax falls upon the conditional vendee rather than upon the conditional vendor, where the tax statute expressly imposes the tax upon the owner of the property.

Cases cited, Point I, *supra.*

By the overwhelming weight of authority, therefore, it is established that from every aspect of legal and practical consequence, the conditional vendee is properly and solely to be denominated the *owner* of the chattel. Counsel for the Tax Board and the City of Newark have contended that because the conditional vendor retains a security title to the chattel, he is therefore its owner, laying much stress upon the difference in legal effect between a conditional sale and a

chattel mortgage. However, such supposed distinction has been expressly repudiated by the courts of this State.

In *Bartley* v. *Lee* (1915), 87 N. J. L. 19, the Supreme Court, discussing the relationship of conditional vendor and vendee, stated, at page 20:

> "As Professor Williston says: 'No satisfactory solution of the rights of the parties in such a transaction can be found without observing that the essential character of the transaction is *the same as that of an absolute sale with a mortgage back*'."

This statement is undoubtedly sound. Whether a chattel be delivered by the manufacturer to the customer under a conditional sale agreement or under a chattel mortgage arrangement, the purpose and legal effect of both transactions is identical—namely, the manufacturer is extending credit to the purchaser, delivering the article to him, and exacting a measure of security for the payment of the purchase price. In either case, we submit that both in a practical sense and by the weight of authority the purchaser at once becomes the owner of the chattel.

It follows that a personal property tax levied by the State to the "owners" of chattels, the control and beneficial use of which is enjoyed by the conditional purchaser within the jurisdiction of the State and under the protection of its laws, should be assessed to the purchaser who is clothed with all the incidents of ownership, and not to the seller who holds a bare, raw security title. *New Jersey C. R. Co.* v. *Jersey City,* 70 N. J. L. 81, 56 Atl. 239.

POINT III.

The opinion of the Supreme Court analyzed and considered.

In its opinion affirming the assessment (pp. 29-30), the Supreme Court based its ruling upon two grounds:

> A. The reservation by the Remington company of security title in the cash registers; and
>
> B. The provision in the conditional sale agreement requiring the purchasers to pay all taxes upon the registers and to reimburse the Remington company for all taxes paid by it.

A.

To the argument of the Remington company that in construing the meaning of the word "owners" in the tax law, regard should be had to the practical and factual nature of the situation, rather than to the situs of technical title to the property, the Supreme Court returned this reply:

> "Upon and under its conditional bills of sale it [Remington] specifically reserved title and ownership in itself" (p. 30, ll. 17-19).

We respectfully submit that the Legislature, when it used the word "owners" in the statute, could not have intended such a narrow meaning to be applied. If it had so intended, it would have imposed the tax expressly upon the holders

of legal title or of record title. But it is significant that in selecting the wording of the statute, its authors deliberately refrained from the use of far more precise terms of art available to them—such as "owner of record" or "holder of legal title"—and chose instead the broad, generic word "owners" as most fully expressive of their legislative intent. Why?

It was because what was intended to be taxed was precisely ownership, as defined above (Point II, *supra*), rather than bare legal title. The theory underlying the imposition of a tax of this sort is that the property is physically within the jurisdiction of the State and that its possession and beneficial use are enjoyed and secured under and by the protection and sanction of the government of the State. In return, the State's expenses should be borne by the individuals who alone profit thereby—in the case at bar, the purchasers of the cash registers. If it be said that this construction of the word "owners" in the tax statute is sheer speculation as to legislative intent, it must be remembered that in every other State in which the problem has been raised the courts have adopted the same view (Point I, *supra*). It is not speculation to assume that the legislature, in the use of a word, had in mind the interpretation universally placed upon it.

The Supreme Court, on the other hand, cited no authority in support of its holding—as indeed there is none—being content with deciding that although the Remington company reserved to itself only a naked security title garbed in none of the incidents which, taken together, make up ownership, it was nevertheless the owner of the cash registers and properly taxable. We submit that this ruling is clearly erroneous, because it fails (p. 30, l. 18) to draw the distinction between title and owner-

ship that is demanded both by the weight of authority and by the evident purpose of the legislators in imposing the tax upon owners rather than upon holders of title.

B.

As "proof" (p. 30, l. 27) of the correctness of its decision, the Supreme Court referred to the provision in the conditional sale agreement requiring the purchaser to pay all taxes and to reimburse the Remington company in the event that it should be assessed (p. 30, ll. 27-32). We submit that this term of the agreement has absolutely no bearing upon the problem here presented.

The question at bar is strictly one of statutory construction. The Court is called upon to decide where the legislators intended the tax to fall. The fact that, as between the parties, it was agreed that one of them should ultimately bear the burden, cannot possibly affect the meaning of the tax statute. If it did, it is easy to think of situations in which a private agreement might be used to evade and nullify a statute entirely, so as to accomplish, for example, an illegal result expressly forbidden by the statute.

The argument of the Supreme Court amounts to this: that although its holding imposing the tax upon the Remington company may be erroneous, nevertheless the agreement of sale permits the Remington company in turn to recover the tax from its customers, so that eventually the burden will fall upon them. In other words, the Court relied upon the agreement of the parties to the conditional sale to insure the ultimate casting of the tax burden upon the persons intended by the Legislature to be charged with it. But suppose

the conditional sale agreement contained no such provision? Surely that fortuitous fact could not change the permanent meaning of a statute or alter a rule of law applying, not only to the instant case, but to all subsequent controversies involving the same statute.

CONCLUSION.

We respectfully urge that the ruling in this case should have been derived, not by inference from the stipulation of the parties to the agreement, but from the general principles of law and statutory construction which we have demonstrated above to be applicable thereto, and that the application of those settled principles should lead this Honorable Court to reverse and set aside the judgment of the Supreme Court.

Respectfully submitted,

FURST & FURST,
Amici Curiae.

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Of Counsel.

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New Jersey Court of Errors and Appeals

REMINGTON CASH REGISTER CO., INC., Relator-Appellant, *vs.* STATE BOARD OF TAXES AND ASSESSMENTS OF THE STATE OF NEW JERSEY, AND THE CITY OF NEWARK, Respondents-Appellees.	On Appeal.

BRIEF OF *AMICI CURIAE.*

Preliminary Statement.

The undersigned *amici curiae* respectfully submit this brief in support of the position of the Relator-Appellant, pursuant to leave granted by this Honorable Court on the 19th day of May, 1931.

Statement of Facts.

Remington Cash Register Co., Inc., Relator-Appellant herein, was and is a New York corporation, duly licensed to do business in the State of New Jersey. As stipulated in the record (R. 17), it "sold cash registers to various people in the City of Newark under conditional sales contracts, all of which were duly recorded in the Essex County Register's Office, according to the statutory requirements. Said sales were made pursuant to contracts executed in the State of New York and all payments on account of said con-

tracts were due and owing and payable at the office of said Company in the City, County and State of New York." The conditional sale contracts were of the usual form (R. 19 *et seq.*), and provided that "title" to the chattels described therein was to remain in the conditional vendor, Relator-Appellant, until payment of the price by the conditional vendees,—the instalment buyers (R. 21).

On October 1, 1928, the taxing authorities of the City of Newark assessed Relator-Appellant in the sum of $10,000.00, basing such assessment "on the *value of the registers* sold" by Relator-Appellant in the City of Newark, under conditional sale contracts in the form mentioned above. See R. 17, 18. Such assessment was paid under protest, and was then affirmed by the Essex County Board of Taxation. Relator-Appellant's subsequent appeal to the State Board of Taxes and Assessments was dismissed (R. 8, 9). On certiorari to the Supreme Court (R. 24-26), the assessment was affirmed by decision rendered on the 22nd day of November, 1930. It is set out in full at R. 29, and is reported in 8 N. J. Misc. 875, 152 Atl. 330. The Supreme Court based its decision on the fact that the conditional sale contracts "specifically reserved title and ownership" in Relator-Appellant; that Relator-Appellant was, therefore, the "owner" of the cash registers covered thereby, within Chapter 236, P. L. 1918; and that, consequently, it was subject to assessment therefor as such "owner".

Statutes Involved.

L. 1918, c. 236, p. 848:

> "All property, real and personal, within the jurisdiction of this State, not expressly exempted by this act or excluded from its operation, shall be subject to taxation annually under this act at its true value, and shall be valued by the assessors of the respective taxing districts. Property omitted by the assessors may be assessed as hereinafter provided. All property shall be assessed to the *owners* thereof with reference to the amount *owned* on the first day of October in each year, and the persons so assessed for personal property shall be personally liable for the taxes thereon." (Italics ours.)

L. 1918, c. 236, p. 853, as amended by L. 1920, c. 310, p. 561:

> "The tax on all tangible property in this State and on all taxable personal property of nonresidents of this State shall be assessed in and for the taxing district where such property is found. * * * Personal property in the possession or under the control of any person as trustee, guardian, executor or administrator, shall be assessed in his name as such, * * * or in the name of any one of several joint trustees, guardians, executors or administrators, if the one of them having *actual control or possession* cannot be ascertained by the assessor; * * * Personal property consisting of stocks in trade and materials used in manufacture in this State, which shall include raw materials, fuel, goods in process of manufacture and completed products, shall be estimated at the average of such personalty located in the taxing district during the year preceding the date as of which the assessment is made, or the average for such portion of the year that such property may be in the *possession of the person assessed.*" (Italics ours.)

ARGUMENT.

POINT I.

The statutes themselves plainly show that the Legislature must have intended the assessment upon chattels sold on conditional sale contracts to fall upon the *vendees,* and *not* upon the vendors.

The statutes above quoted are themselves the best evidence that the decision of the Court below is erroneous. They show conclusively that the word "owner" used therein means the person in *possession* or *control* of the property, and not the person who has a mere technical legal security title. Thus, L. 1918, c. 236, p. 853, as amended by L. 1920, c. 310, p. 561, states, in part,

> "* * * Personal property in the *possession* or *under the control* of any person as trustee, guardian, executor or administrator shall be assessed in his name as such, * * * or in the name of any one of several joint trustees, guardians, executors or administrators, if the one of them having ACTUAL CONTROL OR POSSESSION cannot be ascertained * * *. Personal property consisting of stocks in trade and materials * * * shall be estimated at the average of such personalty * * * during the year preceding the date as of which the assessment is made, or the average for such portion of the year that such property may be IN THE POSSESSION OF THE PERSON ASSESSED." (Italics and capitalization ours.)

In the case at Bar, Relator-Appellant delivered the chattels into the possession of the vendees, and, under L. 1919, c. 210, p. 462, such vendees "shall have the right when not in default to retain possession of the goods * * *." The draftsman

of the Uniform Conditional Sales Act states in regard to this provision, in 2A U.L.A. 28,

> "The section states the fundamental rights of the conditional buyer, recognized everywhere, namely, the right to *possession* when not in default * * *.
>
> "* * * It is elementary that the conditional buyer has the right to the *exclusive possession* of the goods, while not in default, though title is still in the seller". (Italics ours.)

The tax statute upon which the assessment was based shows that the word "owner" therein means the class of persons *in possession and actual control* of the property, which, in our case, was the *vendees,*—the persons who *bought* the registers, and *not* Relator-Appellant—the one who *sold* them.

POINT II.

As a matter of statutory construction, the word "owner" must mean the *buyers* under conditional sale contracts, and *not* the sellers.

As stated in State, The Evening Journal Association, Prosecutor, *v.* The State Board of Assessors, *et al.,* 1885, 47 N. J. L. 36, 39,

> "The cardinal rule in the construction of legislative acts is that *words in common use are to be taken in their ordinary signification.*" (Italics ours.)

When a housewife buys a washing-machine, her husband an automobile, and her husband's employer a new power plant to run his factory,—*all* on the "instalment plan",—on conditional sale contracts, does not each deem her and himself the *owner* of the property purchased, and are they all not likewise deemed such by the public at

large? Does each not come within the "ordinary signification" of the word "owner"? We submit that it is a matter of common knowledge and every day human experience that conditional vendees are *always* regarded as the "owners" of the chattels they buy "on time", and, as very well stated at page 40 of the decision last cited,

> "The interpretation of words in their *popular sense* rather than according to their scientific meaning is *peculiarly required in the construction of tax laws,* in the enactment of which the legislature must needs adopt a classification of persons and property for purposes of taxation—a classification determined by the legislative conception of the policy of subjecting certain persons, property, occupations or business to taxation according to popular notions or ideas of the propriety of such taxation. In the construction of such laws the courts will incline strongly towards the *popular signification* of language. In that way the legislative intent is most apt to be reached." (Italics ours.)

Furthermore, as stated in Hoar's "Conditional Sales", 1929, at page 391,

> "Most states recognize the conditional vendee as the *owner* for tax purposes (citing State *v.* White, 90 So. 896, 206 Ala. 575; Brush *v.* New Bedford, 146 N. E. 9, 10, 250 Mass. 543; Singer *v.* Cooper, 263 Fed. 994; Op. Atty. Gen. S. D., 1926, p. 333), although the debt remaining due is taxable to the vendor (citing State *v.* White, 90 So. 896, 206 Ala. 575; Stillman *v.* Lynch, 192 Pa. 273, 56 Utah 540)." (Italics ours.)

See also Hopper *v.* The Executors of John Malleson *et al.,* 1863, 16 N. J. Eq. 382. There, in discussing the meaning of the word "owner" in the Act of 1854, which directed that all lands shall be assessed in the name of the *owner,* the Court held, at p. 387:

> "The phrase owner or owners, was used to denote the *owner* of an estate *in possession* at the time of the assessment, and not a prior owner or the owner of an estate in expectancy, or of any executory or contingent interest, and *the design of the act was to make the interest of such owner only,* and those claiming under him, *liable for the tax assessed.* That this is the true interpretation of the act, is rendered highly probable by *the whole history and policy of our legislation on the subject.*" (Italics ours.)

In the face of the foregoing, it is submitted that the Legislature could hardly have meant the word "owner" to mean the person enjoying physical possession and use of property in *one* tax statute, and the person having merely a bare technical security title, with *no* present right of possession, enjoyment or use, in *another.* By the use of the word "owner" in the statute involved in the case at Bar, our legislators *must* have meant the person having *physical possession* of the property, and making practical use of it.

While the instant case is one of first impression before this Court, we are not without authority from several of our sister states. As far back as 1903 the Supreme Court of Michigan held that a tax assessed against the "owner" of property meant the conditional *vendee,* and *not* the vendor. See City of Marquette *v.* Michigan Iron & Land Co., 132 Mich. 130. And in In re Spurgeon, 1920, 72 Ind. App. 580, under a statute very similar to our own, it was held that *a conditional vendor was NOT taxable as the "owner" of the property sold by him.* The converse of the proposition we advance was found in Singer Sewing Machine Co. *v.* Cooper, 1920, 263 Fed. 994, D. C., S. D. Ohio, where it was held that the conditional *vendee* was the "owner" of property, for personal property tax purposes. For a like ruling in yet another state,

see Stillman *et al.*, etc. *v.* Lynch, etc., 1920, 56 Utah 540. The final and most recent decision found is that of State *v.* White Furniture Co., 1921, 206 Ala. 575, where the court came to exactly the same conclusion which we urge here, namely, that when a tax statute assesses a tax upon the "owner" of personal property, it means the *beneficial owner* thereof,—*not* a conditional *vendor,* who has a mere security title, but the *buyer,* the person who *uses* and *enjoys* it. A careful survey of the reported decisions has revealed no single authority to the contrary, except the opinion of our learned Supreme Court in the case at Bar.

POINT III.

The decisions of this State and all other authorities hold that a conditional vendor has merely a "security title";—and a "security title" does *not* make "ownership" of property.

An illuminating discussion of the relations between the conditional vendor and the conditional vendee is contained in the opinion of Katzenbach, J., in General Motors Acceptance Corp. *v.* Smith, 1925, 101 N. J. L. 154, where it was held by this Honorable Court that the conditional vendor of property retains title merely as *security* for the payment of the balance of the price. See page 157 of the decision, as follows:

> "There are, however, many cases arising where parties who have not sufficient funds to pay the entire price for a motor vehicle desire to purchase one. In these cases, to enable a sale and purchase to be made, the modern method of entering into an agreement to buy and sell is made use of. In this way the party desiring to buy the motor vehicle

> is able to obtain the possession of it for use, and the seller retains *as security* for the payments to be made the title to the motor vehicle. If the payments are not met, the seller, under the terms of the conditional sale agreement, may retake possession of the motor vehicle. This method of sale and purchase has grown with the increased production of motor vehicles. The large manufacturers of motor vehicles have formed to aid their distributors and agents in handling the financial problem growing out of these conditional sales agreements, finance or acceptance corporations, of which the plaintiff in this case is one. The method of purchase and sale under the conditional sale agreement has been in use for many years. * * * ''

In concluding its opinion in the foregoing case, this very Court construed the ''title'' of a conditional vendor as *not* being ''an absolute legal title'' to the property sold by him.

See also American Soda Fountain Co. *v.* Vaughn, 1903, 69 N. J. L. 582, where Swayze, J., in speaking of a conditional vendor's ''title'', stated, at p. 584,

> ''The title was retained by the plaintiff (the conditional vendor) *merely as security* for the unpaid purchase-money. Nothing remained to be done by the plaintiff to perfect the title of the defendant; that title would have become perfect immediately upon payment.'' (Italics ours.)

Another good analysis by our Courts of the relationship between the parties is contained in Kirch *et al. v.* La Tourrette, 1918, 91 N. J. L. 35. It is there recognized that the conditional vendor's technical *security* ''title'' is really nothing more than a *bare lien.* See page 36 of the opinion, where it is held that

> "* * * the contract contemplates a double ownership similar to the double ownership of mortgagor and mortgagee—(1) the ownership of the vendee subject to the claim for unpaid purchase money, and (2) the ownership of the vendor as security for the payment of the unpaid purchase-money. * * * Justice can only be done by enforcing the contract as the parties made it, and allowing the vendor to recover the purchase price, and no more, and to retain his *lien* on the goods therefor, rendering any overplus to the vendee in case of a sale to enforce his lien. To enforce this lien, the vendor is entitled (on default by the vendee) to the possession as the agreement in this case provides, and may secure that possession by an action of replevin." (Italics ours.)

See also *In re* Fulham's Estate, 1922, 96 Vt. 308, 317:

> "The law recognizes that there may be two 'owners' in respect to the same property: One, the nominal owner; the other, the beneficial owner. The former is the legal owner; the latter, the equitable owner. 2 Repal. & Law 916. * * * So, too, in Payne *v.* Sheets, 75 Vt. 335, 55 Atl. 656, in construing V. S. 4626 (G. L. 6443), we recognized the fact that the word 'owner' is used in different senses, saying that it did not always import an absolute owner, and that 'its meaning is often varied according to the connection in which it is used, and is to be understood according to the subject-matter to which it relates.' * * *
>
> "The very most that reasonably could be claimed is that *the owner referred to in this statute is the equitable owner,—the beneficial owner,—and* NOT THE PERSON WHO HOLDS THE LEGAL TITLE." (Italics and capitalization ours.)

In Dahlund *v.* Lorentzen *et al.*, 1914, 30 N. D. 275, 152 N. W. 684, a conditional vendee was held to be the "owner" of a threshing machine, under

a statute which gave an "owner" or lessee of such a machine a lien on grain threshed by him. And in Parker-Harris Co. *v.* Tate, Sheriff, 1916, 135 Tenn. 509, the Court held, at page 521,

> "It has been clearly pointed out by this Court where a sale had been made with title retained in the vendor that 'the possession, use and profits of the property had passed from the vendor to the purchaser; the vendor was not authorized to exercise any act of ownership or control' over the property (Bank *v.* Vandyck, 4 Heisk. [51 Tenn.], 617); * * *."

And in Daugherty *v.* Thomas, 1913, 174 Mich. 371, 375, it was held:

> "We hardly need quote authorities to the effect that *the owner of property is one who has dominion over it, and who has the right to enjoy and do with it as he pleases,* unless he be prevented by some contract or law which restrains his right."

We respectfully refer the Court to Hoar's recent (1929) work on "Conditional Sales", where the author states, at page 5,

> "Conditional sales contracts themselves, and courts and legislatures in discussing them, almost always speak of the retention of *title or property* in the goods by the seller, until the purchaser fulfills the condition; but this is a mere legal fiction, for it is clear that the purchaser possesses all the incidents of title, except the power to pass title to a third party. The seller is not interested in *title;* what he is interested in is *security* for the performance of the conditions, and all that he really regards himself as retaining is a *lien* to secure this performance."

And at page 6:

> "Both the uniform *conditional* sales act and the uniform *sales* act refer to retention of *property.* Does this mean something dif-

> ferent than title? In the case of the *conditional* sales act, it is clear that it does not. The whole *raison d'être* of the act would vanish, if it did. Furthermore, the commissioners' notes use the words 'title' and 'property' interchangeably in discussing the act."

See also Williston's Law of Sales, 1924, vol. 2, section 330, page 771, as follows:

> "In fact the buyer acquires not simply a contract right but a property right. This is due to the fact that the seller does not simply contract that the buyer shall have possession; the seller actually delivers possession, and this possession is delivered not to hold the goods for the seller, but *to use as the buyer's own.* Moreover, the buyer, so long as he is not in default, may maintain his possession and use the property against the world. * * *"

In the case now before this Court, Relator-Appellant held a mere technical *security* title to the cash registers. Physical possession, exclusive control, and actual use were in the *vendees,*—the "buyers" and *real* "owners". The tax, therefore, should have been assessed upon *them,* and *not* upon Relator-Appellant.

POINT IV.

The Supreme Court misapprehended the nature of Relator-Appellant's position as conditional vendor, as well as the effect of the provision in its conditional sale contracts for the payment of taxes by the vendees.

The opinion below (R. 30) states:

> "It was urged * * * that the transactions were analogous to those of a chattel mortgage, the vendees being the owners, who

> might under the terms of the tax act, require exemption to the extent of the mortgage debt.
>
> "* * * the party assessed (Relator-Appellant) has not taken advantage of such provision of the act and therefore is not entitled to the benefit thereof."

We submit that the Supreme Court *must* have overlooked the fact that, in drawing an analogy between a chattel mortgage and a conditional sale contract, the mortgag*or* and the vend*ee,*—the persons in *possession* and enjoying the *beneficial use* of the property, stand on *one* side, and the mortgag*ee* and the vend*or,*—the persons having merely the *lien* or *security title,* on the *other.* See Kirch *et al.* v. La Tourrette, 1918, 91 N. J. L. 35, 36. The Relator-Appellant in the case at Bar is a conditional vend*or,* and so stands in the position of a mortgag*ee.* As such, it is *obvious* that the statute, which affords exemption only to mortgag*ors,* does *not* extend that privilege to Relator-Appellant, who, in effect, is a mortgag*ee.*

The Supreme Court concludes its opinion (R. 30) with the statement that the assessment complained of was correctly made, because Relator-Appellant's conditional sale contracts "provide—'Undersigned, (purchaser) agrees to pay all taxes on the register, and in event of default to reimburse you for all taxes paid on same by you'." This reasoning, in effect, permits the interpretation of *public statutes* by *private persons,* through *private contracts.* This, we submit, is not only plainly unsound, but in direct conflict with previous decisions of the Courts of this State. See State *v.* Blundell, Collector, 1854, 24 N. J. L. 402, 404, where it was held:

> "The fact that the property assessed is leased to tenants, and that the tenants are, by the terms of the lease, bound to pay the taxes and assessments imposed on the property

> during the term, does not affect the rights of the public, as against the owners of the land, in the matter of taxation."

See also New Auditorium Pier Co. *v.* Taxing Dist. etc., 1907, 74 N. J. L. 303, 65 Atl. 855. There, the Mary A. Riddle Company owned certain land in fee, and was assessed therefor. The prosecutor, one of its tenants, had covenanted to pay the taxes assessed against the property, and appealed from the assessment. The Court, in dismissing the appeal, held, at page 305 of 74 N. J. L.,

> "The prosecutor in this case cannot be deemed to be the taxpayer. *His covenant to pay taxes is a personal one.* The tax was rightly levied against the Mary A. Riddle Company, and as to the city the Mary A. Riddle Company was the taxpayer. That company only could * * * appeal from the tax imposed upon the property." (Italics ours.)

POINT V.

Public policy and sound economic principle require that personal property taxes be assessed against the beneficial owners of such property.

By far the great majority of so-called "time sales" are made upon conditional sale contracts in terms very similar, if not exactly like, the instruments used by Relator-Appellant. The volume of such time sales has reached gigantic proportions. It is recognized everywhere that such time sales have enabled not only individual citizens to enjoy a multitude of personal conveniences theretofore denied them, but have also made it possible for whole industries to replace and extend manufacturing and other equipment, and to pay for the same out of earnings. The obvious

consequence of this increased consumption has been a vastly increased production.

It is not to be supposed for an instant that the Legislature intended a personal property tax like the one here involved to be imposed upon and paid for by the manufacturers and sellers,—the conditional vendors, since such an added burden would plainly seriously interfere with and curtail their continued extension of credit on a reasonable basis. On the other hand, it is but rational to presume that the Legislature intended this tax to fall upon the beneficial users of personal property, and so spread among the many.

POINT VI.

It is respectfully submitted that the decision of the Supreme Court be reversed, and the assessment vacated.

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