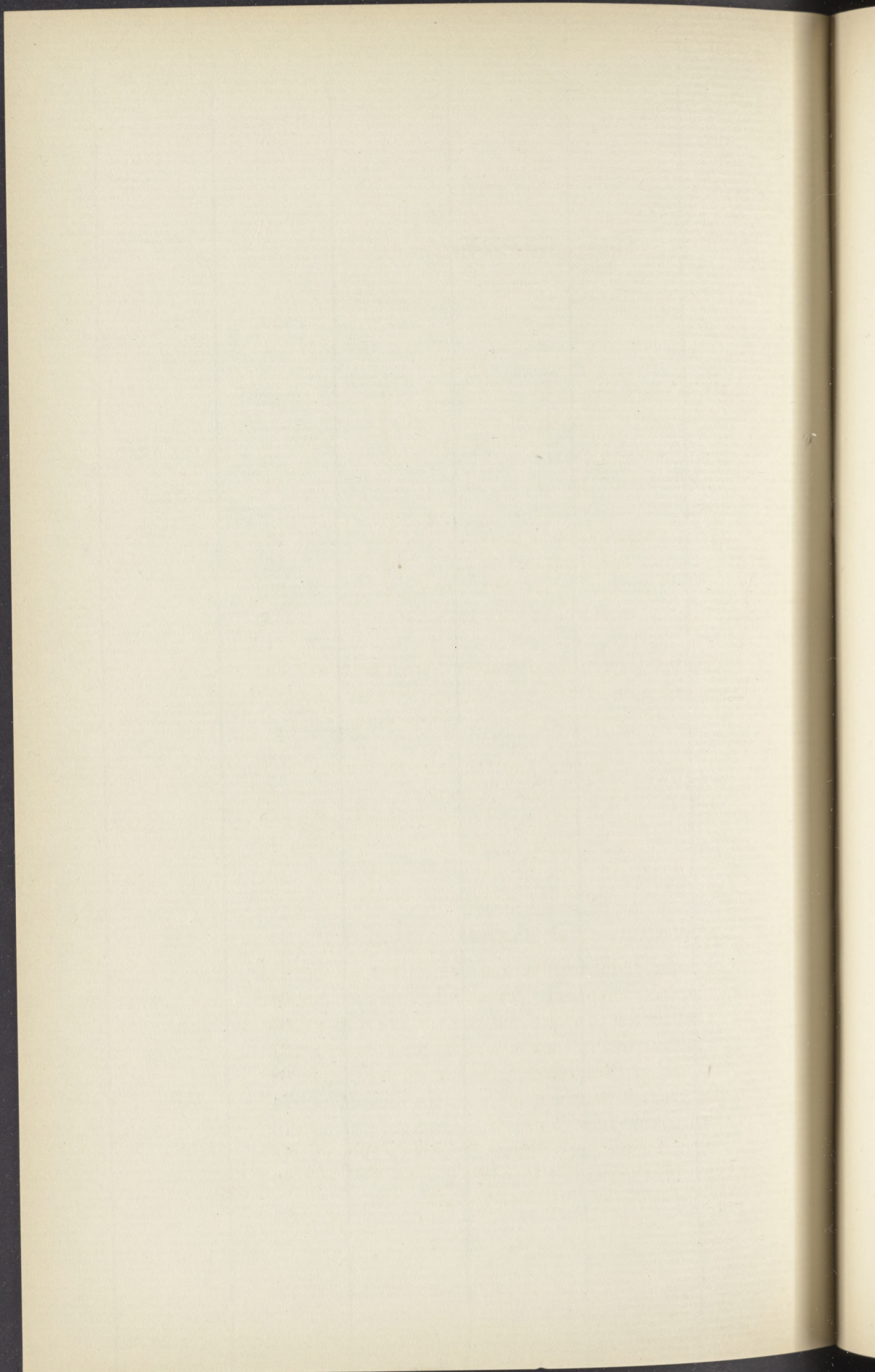


## INDEX.

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	PAGE
Abridgement of Pleadings .....	1
Order Directing Receiver to Sell .....	3
Order Confirming Sale .....	8
Re Wasmuth-Endicott Co.—	
Notice of Appeal .....	10
Petition of Appeal .....	11
Answer to Petition .....	13
Demand Notice .....	14
Petition of Reclamation .....	16
Testimony .....	20
Report of Receiver .....	32
Exceptions to Report .....	37
Order Overruling Receiver .....	39
Re Domestic Electric Co.—	
Notice of Appeal .....	42
Petition of Appeal .....	43
Answer to Petition .....	45
Notice of Motion .....	46
Petition Claiming Chattels .....	47
Stipulation of Facts .....	53
Supplemental Stipulation .....	57
Report of Receiver .....	59
Order Overruling Receiver .....	61
Re Liberty Lighting Fixture Co.—	
Notice of Appeal .....	64
Petition of Appeal .....	65
Answer to Petition .....	67
Proof of Claim .....	68
Report of Receiver .....	74
Order to Show Cause .....	76
Petition on Appeal from Receiver's Report .....	78
Order Overruling Receiver .....	80
Opinion of V. C. Fallon .....	83



**Abridgement of Pleadings.**

**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

ELBERT M. CROWN, trading as CHARLES P. WALKER COMPANY, Complainant,  and  REGNA CONSTRUCTION COMPANY, a corporation, Defendant.	}	10
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The undersigned of counsel for the respective parties herein agree to an abridgement of the State of Case and stipulate the following facts. 20

1. That on June 22, 1928 Elbert M. Crown trading as Charles P. Walker Company filed a bill of complaint in the Court of Chancery against Regna Construction Company praying for the appointment of a Receiver of said corporation on the ground that said corporation was insolvent.

2. That on said June 22, 1928 Warren Dixon Jr. 30 was appointed custodial receiver by the Chancellor on the advice of Vice Chancellor James F. Fielder and an Order to Show Cause was made directing the said creditors and stockholders to show cause why the said Receiver should not be continued and made permanent.

3. On June 28, 1928 said Warren Dixon Jr. was made permanent receiver with the usual powers conferred by the Corporation Act. 40

*Abridgement of Pleadings.*

4. On July 9, 1928 said Receiver filed a petition praying for leave to sell the lands and premises of Regna Construction Company, free and clear of all liens and encumbrances except a first mortgage held by Charles Enders Jr. and Amelia Enders, his wife, for \$8000.00, said encumbrances, liens and equities to attach to the proceeds of said sale. On the filing of which an order to show cause was made on said date directing the parties in interest to show cause why said property should not be sold free and clear of all mortgages, liens and encumbrances except as aforesaid.

10

5. On July 23, 1928 the Receiver was directed to sell the property, a copy of which Order is annexed hereto and made part hereof. Said Receiver sold the property and filed a report thereof, which sale was confirmed by Order of the court dated July 1, 1929, copy of which is annexed hereto and made part hereof.

20

SAMUEL TARTALSKY,  
Of Counsel with Receiver-Appellant.

GREEN & GREEN,  
Of Counsel with Domestic Electric Company.

30

CAREY & LANE,  
Of Counsel with Wasmuth-Endicott Company.

CHAS. RUBENSTEIN,  
Of Counsel with Liberty Lighting Fixture Company.

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**Order Directing Receiver to Sell Real  
Property.**

(Filed July 23, 1928.)

IN CHANCERY OF NEW JERSEY.

Between ELBERT M. CROWN, trading as Chas. P. Walker Shade Co., Complainant,  and  REGNA CONSTRUCTION COMPANY, a corporation, Defendant.	}	On Bill &c.      10 Order Directing Receiver to Sell Real Property.
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It appearing to the court that on the Ninth day of July, 1928, Warren Dixon Jr. the Receiver duly appointed herein filed a petition praying for leave to sell the lands and premises particularly described therein, which premises are hereafter particularly described, free, clear and discharged of all mortgages, and mechanic lien claims, and that on said Ninth day of July, 1928, an Order was made in the above entitled cause requiring said mortgagees and lien claimants to show cause before this court on the Sixteenth day of July, 1928, at the Chancery Chambers, 1 Exchange Pl. Jersey City, at ten o'clock in the forenoon, why an order should not be made directing the Receiver herein to sell the lands and premises hereinafter described, free, clear and discharged of all mortgages, and mechanic lien claims, and why also, whether the said lands and building should be sold either at public or private sale and why the said encumbrances, liens and equities should not attach to the proceeds of

*Order Directing Receiver to Sell Real Property.*

the sale and due proof having been made to the court of the service of the Order to Show Cause heretofore granted herein to each of the creditors and stockholders of the above named defendant at their several and respective post office addresses, with the postage prepaid thereon, as well as by acknowledgment of service upon the solicitors of record for such creditors as appeared by solicitor;

And this matter having come on to be heard on said Sixteenth day of July, 1928, in the presence of Samuel Tartalsky, of Counsel for Warren Dixon Jr. Receiver, aforesaid, and G. Frank Shanley, Solicitor for Consolidated Mortgage Loan Company, now known as Consolidated Securities Company, mortgagee, Morrison, Lloyd & Morrison, Solicitors for Charles Enders Jr. and Amelia Enders, mortgagees, Otto Cooper, Solicitor for Harry C. Leiding and James H. Friele, mortgagee, Martin J. Cummings, Esq. of the firm of Hart & Vanderwart, Solicitors for Tidewater Coal and Supply Co. and Highwood Coal Company, judgment creditors: John H. Sheridan, representing William F. Burke, Solicitor for Antonio Sellito, et als, trading as West New York Stone Works, mechanic lien claimants; Mervin Hertzfeld, Solicitor for Decker Bros. Concrete Products Inc., mechanic lien claimants; Joseph Rolonick, Solicitor for Morris Jaffee and New Jersey Wall Paper Co., mechanic lien claimants, and said G. Frank Shanley Solicitor for Consolidated Securities Company having applied in open court for a continuance of the argument on said Order to Show Cause to July 23, 1928, which application was granted by this court;

And this matter now coming on to be heard on said July 23, 1928, in the presence of Samuel Tar-

*Order Directing Receiver to Sell Real Property.*

talsky of Counsel with Warren Dixon Jr. Receiver, and in the presence of John H. Sheridan, Esq., of the firm of William F. Burke, and Joseph Rolonick, Solicitors, as aforesaid, and Louis R. Kagan, Solicitor for P. Goranson Dumb Waiter Co., mechanic lien claimants;

And it appearing from the petition and proofs heretofore filed herein and from the argument of counsel and the court being of the opinion that the property of said Regna Construction Company, an insolvent corporation, was at the time of the appointment of said Receiver and is at this time encumbered with mortgages or other liens, the legality of which have been brought into question and that the property is of a character materially to deteriorate in value pending the litigation concerning the extent and priority of said liens and that it would be to the best interests of the various creditors to sell the lands and premises and building thereon, together with the appurtenances in and about the same belonging to the above named defendant company and more particularly described in said petition, free, and clear of liens and encumbrances, except a mortgage for \$8,000. held by Charles Enders Jr. and Amelia Enders, his wife, and that the liens and equities of the respective parties shall attach to the proceeds of the said sale; and no cause being shown on the contrary, it is on this Twenty-third day of July, 1928, on motion of SAMUEL TARTALSKY of Counsel with said Warren Dixon Jr. Receiver;

ORDERED, ADJUDGED and DECREED that the said Warren Dixon Jr. Receiver be and he is hereby authorized, empowered and directed to sell free and

*Order Directing Receiver to Sell Real Property.*

clear of all liens and encumbrances except a first mortgage held by Charles Enders Jr. and Amelia Enders, said lands mentioned in said petition and therein described as follows, to wit:—

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

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*Order Directing Receiver to Sell Real Property.*

of a line drawn parallel with Central Avenue at a distance of one hundred (100) feet westerly therefrom.

Together with the appurtenances thereto belonging, free and clear of all liens and encumbrances except the aforesaid mortgage for \$8000.00 with interest thereon, held by Charles Enders Jr. and Amelia Enders, his wife, and municipal liens at public or private sale for the highest and best price that the same will bring in cash, at such time and at such place and under such conditions as to the said Receiver shall seem best, subject, however, to confirmation of such sale by this court, as is by the statute in such case made and provided; 10

And it is further ORDERED and ADJUDGED that the purchase price of the property so sold shall be held by the said Receiver subject to the same liens and equities of all parties interested in the said properties sold as was the said property before sale, to be disposed of as this court shall hereafter direct; 20

AND it is further ORDERED and ADJUDGED by the said court that all further equities of all persons whatsoever in and to the said premises are reserved. 30

E. R. WALKER,  
C.

Respectfully Advised,  
JAMES F. FIELDER,  
V. C.

**Order Confirming Sale.**

(Filed July 1, 1929)

IN CHANCERY OF NEW JERSEY.

68/498.

10	ELBERT M. CROWN, trading as CHARLES P. WALKER COMPANY, Complainant,  and  REGNA CONSTRUCTION Co., a cor- poration, Defendant.	}	On Bill, &c.  Order Confirming Sale.
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20 This matter being opened to the court by Samuel Tartalsky, of Counsel with Receiver of the above named defendant company, and it appearing by the report of said Receiver on file in the office of the clerk of this court that the said receiver has sold the lands and premises of Regna Construction Company situate at Ridgefield Park, Bergen County, New Jersey, together with the appurtenances, for the sum of \$96,500.00, subject and assuming the payment of a mortgage held by Charles Enders and Amelia Enders, his wife, for \$8,000.00 with interest thereon from December 26, 1926, subject also to municipal taxes against the said premises for years 1927 and 1928 amounting approximately to the sum of \$594.72, water taxes amounting approximately to \$20.00; assessment amounting to approximately \$166.80 with interest of approximately \$10.00 thereon and subject also to a snow and ice assessment of \$1.25; that said sum was the highest and best price the same would then

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*Order Confirming Sale.*

bring in cash and proof being made of the mailing of the Order heretofore made in this cause, bearing date the Twenty-first day of September, 1928, directing the stockholders and creditors of the above named defendant company to show cause on the First day of October, 1928, why the said sale should not be confirmed, on which date the hearing on said confirmation was continued and the court having considered the matter and being of the opinion that the said price hereinbefore mentioned is the highest and best price that the said lands and premises would bring; 10

It is, on this first day of July, 1929, on motion of Samuel Tartalsky of Counsel with Receiver ORDERED that said sale be in all things confirmed and that the said Receiver do proceed to make conveyance of the lands and premises of the Regna Construction Company situate at Ridgefield Park, Bergen County, New Jersey, together with the appurtenances thereto belonging, sold by him according to the conditions of sale, and that said Receiver hold the moneys derived therefrom to abide the further order of this Court. 20

E. R. WALKER,  
C. 30

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



**Petition of Appeal, Wasmuth-  
Endicott Co.**

(July 17, 1929)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between

ELBERT M. CROWN,  
Complainant,

and

REGNA CONSTRUCTION Co.,  
Defendant.

On Bill, &c.

Petition of  
Appeal.

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To the Honorable, The Court of Errors and Ap-  
peals in Last Resort in all Causes:

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The petition of Warren Dixon, Jr., Receiver of  
Regna Construction Company an insolvent corpo-  
ration appellatant respectfully shows:

1. That your petitioner finds himself aggrieved  
by an order made in the Court of Chancery made  
by his Honor Edwin Robert Walker, Chancellor of  
the State of New Jersey, bearing date the First  
day of July, 1929, wherein and whereby the report  
of your petitioner as receiver on the claim of Was-  
muth-Endicott Company was overruled.

30

2. And further finds himself aggrieved in that  
the order of the said Chancellor directed your pe-  
titioner to pay said Wasmuth-Endicott Company,  
from the proceeds of sale of the lands and prem-  
ises of the said Regna Construction Co. \$2,501.00  
in preference of mortgages and mechanic lien  
claimants.

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*Petition of Appeal, Wasmuth-Endicott Co.*

And your petitioner humbly appeals from the order of the Chancellor as aforesaid upon the ground that the same is erroneous, for, that, the said order is contrary to law, equity and statutes in such case made and provided and that the receiver's report should have been confirmed and approved and should not have directed the receiver  
10 to pay the said Wasmuth-Endicott Company in preference to said Consolidated Securities Corporation, Harry C. Leidinger, mortgagees and mechanic lien claimants.

Your petitioner therefore prays that the Order of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And your petitioner may have such other  
20 and further relief in the premises as to this honorable court shall seem meet.

SAMUEL TARTALSKY,  
Of Counsel with Warren Dixon, Jr.,  
Receiver-Appellant.

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**Answer to Petition of Appeal, Wasmuth-  
Endicott Co.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between ELBERT M. CROWN, Complainant,  and  REGNA CONSTRUCTION Co., Defendant.	}	On Bill, &c. On Appeal. Answer of Wasmuth- Endicott Company to Petition of Appeal.	10
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The answer of the Wasmuth-Endicott Company, appellee, to the petition of appeal of Warren Dixon, Jr., Receiver of Regna Construction Company, the above-named appellant. 20

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

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

CAREY & LANE,  
Solicitors for and of  
Counsel with Appellee. 40

**Notice.**

IN CHANCERY OF NEW JERSEY.

68/498.

10	Between ELBERT M. CROWN, trading as CHARLES P. WALKER COMPANY, Petitioner,  and  REGNA CONSTRUCTION Co., a cor- poration, Defendant.	}	On Bill, &c. Notice.
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20 To WARREN DIXON, JR., Receiver.

SIR:

TAKE NOTICE that we hereby demand possession of you forthwith of the following:

6—68" Kitchenettes  
 16—#4856 Compacts  
 2—#740 Cabinets  
 8—#3056 Cabinets, four right and four left.  
 8—#48" W. L. Cabinets, four right and four  
 30 left.  
 together with moulding  $\frac{1}{4}$ " round.

now in your possession as receiver for the Regna Construction Company but belonging to the Wasmuth-Endicott Company under the terms of a certain conditional sales agreement dated on or about the first day of November, 1927, wherein the Wasmuth-Endicott Company agreed to sell and the Regna Construction Company agreed to buy the  
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*Notice.*

chattels hereinabove mentioned; title to said chattels by virtue of the terms of said agreement remaining in the Wasmuth-Endicott Company, and by the further terms of said agreement authorizing them to re-take the chattels upon failure to comply with the terms of payment which were 25% of the purchase price, to wit; \$2840.00 on delivery of merchandise, balance to be paid in 60 days. 10

Respectfully yours,

WASMUTH-ENDICOTT COMPANY,  
By CAREY & LANE.

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*Petition in Reclamation, Wasmuth-Endicott Co.*

the said Regna Construction Company agreed to purchase and the Wasmuth-Endicott Company agreed to sell certain chattels, to wit:

- 6—68" Kitchenettes
  - 16—#4856 Compacts
  - 2—#740 Cabinets
  - 8—#3056 Cabinets, four right and four left. 10
  - 8—#48" W. L. Cabinets, four right and four left.
- together with moulding  $\frac{1}{4}$ " round

for the agreed price of \$2840.00, which agreement was executed by the Wasmuth-Endicott Company at its office, Andrews, Indiana, on the 5 day of November, 1927.

5. According to the terms of said agreement, the defendant agreed to pay 25% on the delivery of goods and \$60.00 in ninety (90) days. 20

6. Said written agreement provides as follows:

"It is agreed that title to said goods shall not pass with delivery of the possession thereof as provided herein, but shall remain in Wasmuth-Endicott Company until the entire purchase price thereof is paid."

30

7. Said written agreement further provides that in the event of any default in payment, the seller is authorized to take possession of same. Said written agreement was filed in the office of the Register of Bergen County on the 4th day of November, 1927, and your petitioner further alleges that by the terms of the aforesaid agreement, it is the owner of said chattels and entitled to take immediate possession thereof.

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*Petition in Reclamation, Wasmuth-Endicott Co.*

8. Your petitioner further alleges that due demand has been made upon said Warren Dixon, Jr., receiver, that he deliver up said chattels, but said demand has been refused; wherefore, your petitioner respectfully prays that the said Warren Dixon, Jr., receiver of Regna Construction Company, be ordered to show cause before this Honorable Court at Chancery Chambers, Jersey City, New Jersey, why the said property covered by said agreement should not be declared by this Court to be the property of the petitioner; why the said receiver should not be directed to deliver said property to said petitioner; and why your petitioner should not have such other and further relief as to this Court may seem just and proper.

20

CAREY & LANE,  
Attorneys for Petitioner.

Dated: September 28, 1928.

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STATE OF NEW YORK, }  
 COUNTY OF NEW YORK, } ss.:

J. W. O'HARROW, JR., being duly sworn according to law, upon his oath, deposes and says:

I am the general manager for the Wasmuth-Endicott Company and in charge of the matter of Regna Construction Company. I have read the petition hereto annexed and the things therein contained are true to the best of my knowledge and belief. 10

J. W. O'HARROW, JR.

Subscribed and sworn to before me }  
 this 29th day of September, 1928. }

SOPHIA JAROFF  
 Notary Public New York.  
 (Seal) 20

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**Testimony, Wasmuth-Endicott Co.**

## IN CHANCERY OF NEW JERSEY.

10	Between ELBERT M. CROWN, trading as CHARLES P. WALKER SHADE COMPANY,  Complainant,  and  REGNA CONSTRUCTION COMPANY, Defendant.	}	On Bill, &c. On Order to Show Cause.
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20 TRANSCRIPT OF SHORTHAND NOTES OF TESTIMONY  
 taken in the above stated cause this ninth day of  
 October, 1928, at eleven o'clock in the forenoon,  
 before Warren Dixon, Jr., Receiver of the above  
 named defendant, pursuant to order made in open  
 court on October 1, 1928, on the return of the order  
 to show cause herein, in the presence of Samuel  
 Tartalsky, Esq., Solicitor of the receiver; George  
 Moser, Esq., solicitor for Wasmuth Endicott Com-  
 pany, conditional sales vendor, claimant; G. Frank  
 Shanley, Esq., of Rinaldi & Shanley, solicitors for  
 Consolidated Securities Company, Mortgagee; and  
 30 Otto Cooper, Esq., of the firm of Katz & Cooper,  
 solicitors for the Estate of Harry Leiding, Mortgagee.

(Edward O'Byrne, sworn as stenographer.)

*Julius Steigler. Called by Claimant. Direct.*

*Julius Steigler. Called by Claimant. Cross.*

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

DIRECT EXAMINATION BY MR. MOSER :

Q. You are the salesman for the Wasmuth-Endicott Company? A. I am. 10

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

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

Q. (Showing witness) I show you this paper. Is that the contract that was entered into between your company and the Regna Construction Company? A. That is the original contract. 20

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

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

Mr. Moser: I offer the contract in evidence.  
(Marked Exhibit CSWE-1.)

Q. Has any of the money for this contract been paid? A. No; there has none been paid. 30

CROSS EXAMINATION BY MR. TARTALSKY :

Q. The price of these kitchenette cabinets and the matters set forth in the contract is 2840? A. That is on the contract, yes.

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

*Julius Steigler. Called by Claimant. Cross.*

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

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

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

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

BY MR. MOSER:

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

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

Q. In your establishment? A. Yes.

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

BY MR. TARTALSKY:

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

*Julius Steigler. Called by Claimant. Cross.*

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

(Marked Exhibit CSWE-2.)

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

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

Q. And then did you sign "Wasmuth-Endicott Company, Inc., Kitchenette Equipment Co., J. Steigler"? A. Yes. 10

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

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

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

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

Mr. Moser: I object to that as a conclusion. 20

The contract speaks for itself, and it says that it shall not be accepted until accepted by the home office.

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

Q. And then what did you do with the contract—send it on to Indiana? A. The contract was sent into the home office, yes. 30

Q. Then what happened to it? A. All I know happened, nothing, except to take the usual course—investigation and filed, the regular procedure. I don't hear anything of the order until the delivery comes.

Q. Do you know when this contract was accepted or when this order was accepted? A. Yes; that was accepted, but the date I cannot fix from memory. 40

*Julius Steigler. Called by Claimant. Cross.*

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

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

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

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

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

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

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

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

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

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

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

40 Q. And you knew, of course, when this order was given and accepted, that these articles would be

*Julius Steigler. Called by Claimant. Cross.*

affixed to the building? A. They would be in the usual way; yes.

Q. You contend that although they are affixed to the realty, they can be removed without damage, the only damage being some holes in the plaster?

A. A small nail hole in the wall. That is all.

Q. About how many nail holes in the wall in each kitchen would there be? A. As a rule, there are not more than four. 10

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

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

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

A. There is no motor. The motor is down in the cellar. There is merely a pipe line running in the wall, which then goes through a hole into the refrigerator and into the refrigerating compartment. In that compartment is a coil which has been installed in there by the Frigidaire or Domestic Electric Company. 20

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

Q. The conditional sales contract which you entered into with the Regna Construction Company was filed in the Bergen County Clerk's Office November 14, 1927; is that right? A. I did not personally attend to the filing. 30

BY MR. MOSER:

Q. These nail holes in the wall would be just the same as if the nails were put in the wall to hang pictures? A. Exactly the same thing. 40

*Julius Steigler. Called by Claimant. Cross.*

BY MR. TARTALSKY:

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

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

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

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

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

BY THE RECEIVER:

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

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

BY MR. MOSER:

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

*Julius Steigler. Called by Claimant. Cross.*

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

BY THE RECEIVER:

Q. Are the cabinet and refrigerator separate units? A. No; they are one unit. 10

Mr. Moser: I now offer in evidence certified copy of the conditional bill of sale.

(Marked Exhibit CSWE-3.)

BY MR. TARTALSKY:

Q. It is the intention, of course, that the equipment that you sell should become part of the building, but you contend that it can be removed; is that it? A. I don't know anything about the intention. 20

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

Mr. Moser: I object.

Q. What was your intention?

Mr. Moser: I object. It does not make any difference what his intention was. 30

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

Q. The very fact that you sell it so that it is used by each tenant and the fact that you do look at the plans sometimes and know that it is delivered to the building, from that you know it is intended to go into the building and become part of it, but 40

*Julius Steigler. Called by Claimant. Cross.*

your contention, as I gather it, is that it can be removed without damage to the building?

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

The Receiver: I think he ought to answer.

10

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

Q. It is more than a piece of furniture, in that it is affixed to the building, but your contention being that it can be removed without damage? A. Absolutely; and I only look at it as a piece of furniture.

20

Q. The pipes which are put into the building from the cellar leading so far as the refrigerating system—their purpose is to connect with the refrigerator, is it not? A. Not with the refrigerator; only with their coils in the refrigerator, and the coil is attached to our refrigerator.

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

30

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

Q. To the ice box? A. Yes.

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*William Sliker. Called by Claimant. Direct.*

*William Sliker. Called by Claimant. Cross.*

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

DIRECT EXAMINATION BY MR. MOSER:

Q. You are credit manager of the Wasmuth-Endicott Company in charge of New York? A. Yes. 10

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

Q. Do you know when the contract was accepted by the home office? A. No; I cannot say that. I cannot tell you the exact date it was accepted because that contract was sent to them and they accepted it and I have no way of knowing. They don't always tell me when it has been accepted. 20

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

Q. It is accepted there? A. Yes.

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

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

Q. That was recorded the 14th of November, 1927? A. I don't know. 30

CROSS EXAMINATION BY MR. TARTALSKY:

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

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

*William Sliker. Called by Claimant. Cross.*

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

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

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

Mortgage for \$20,000 held by same mortgagee; dated November 29, 1927; recorded November 30, 1927, in Book 1007, page 260.

Also the following judgments against the Regna Construction Company:

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

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

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

40 Judgment entered in favor of Anthony Halpern and Abraham Stettner, partners trading as New Jersey Sash, Door and Trim Company, on February 21, 1928, for \$1,680.75 damages and \$61.28 costs, and under which, on March 28, 1928, levy was made on other property

*Julius Steigler. Recalled. Cross.*

owned by the corporation in Teaneck, Bergen County, New Jersey, and advertised for sale.

It is also stipulated that mechanics lien claims against the property in Ridgefield Park were filed subsequent to the date of the recording of the conditional bill of sale by J. Rose & Company, the claimant herein, many of which were thereafter reduced to judgment. 10

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

FURTHER CROSS EXAMINATION BY MR. TARTALSKY :

Q. Do I understand that the contract made on October 1st with the Regna Construction Company, and filed October 26, 1927, in the Bergen County Clerk's Office, wherein the purchase price is \$2,055, was cancelled by mutual agreement? A. It was cancelled by mutual agreement; yes. 20

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

Q. The only claim that you make is under the contract that has been offered in evidence here? A. Yes. 30

**Report of Receiver, Wasmuth-  
Endicott Co.**

IN CHANCERY OF NEW JERSEY.

10	Between ELBERT M. CROWN, trading as CHAS. P. WALKER Co., Complainant,  and  REGNA CONSTRUCTION, an insolvent corporation, Defendant.	On Bill &c. Report of Receiver on Claim of Wasmuth- Endicott Company, Conditional Sales Vendor.
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20     In pursuance of an order made by the Chancellor dated June 29, 1928, wherein and whereby, I, the undersigned, Warren Dixon, Jr., was appointed Receiver of the above named insolvent corporation and pursuant also to the direction of Vice Chancellor Lewis made in open court in the Chancery Chambers, Jersey City, on October 1, 1928, I do hereby report that Wasmuth-Endicott Company filed a

30     petition and made claim against the defendant corporation to the title to 6-68 Kitchenettes; 24-#4856 compacts; 2-#740 Cabinets; Moldings and 1/4 Round, installed in a certain apartment house in Ridgefield Park, Bergen County, New Jersey, claiming same under a conditional sales contract made between said claimant and said insolvent corporation, and also claiming that the sum of \$2840. the contract price for said property remained unpaid. In accordance with the direction of Vice Chancellor Lewis, I did on October 9, 1928 take testimony submitted by said claimant which is hereby

40     returned with this report and made part hereof.

*Report of Receiver, Wasmuth-Endicott Co.*

I was attended by Samuel Tartalsky, duly appointed counsel of receiver; George Moser, of the firm of Carey & Lane, Solicitors for Wasmuth-Endicott Company, the claimant, J. Frank Shanley of the firm of Rinaldi & Shanley, Solicitors for Consolidated Securities Corp. mortgagee on the lands and premises; and Otto Cooper, Esq. of the firm of Katz & Cooper, Solicitors for Estate of Henry C. Leidinger, mortgagee on said lands and premises. 10

It appears from the testimony that on November 9, 1927, a conditional sales contract was entered into between said Wasmuth-Endicott Company and Regna Construction Company, the insolvent corporation, whereby said claimant conditionally sold said property mentioned for the sum of \$2840; that said sum is unpaid; that the insolvent corporation was the owner of a certain apartment house known as No. 101 Mt. Vernon Street, Ridgefield Park, Bergen County, New Jersey, and that the property conditionally sold was affixed in and to said premises in the early part of March, 1928. The conditional sales contract was filed in the Bergen County Clerk's Office on November 14, 1927. Under the terms of the contract, the Vendor reserved the title to the property until the price was paid. 20

One Kitchenette was installed in each of the kitchens in said apartment house together with a refrigerator, both consisting of one unit. The kitchenettes were nailed to the walls and the refrigerators are connected to pipes in the wall with a locknut. In each of the refrigerators there is installed frigidaire coils which were sold by another company but the refrigerators sold by claimant were intended to be adapted for the frigidaire coils purchased by defendant. The salesman of claimant testified that the refrigerators installed in the prem- 30 40

*Report of Receiver, Wasmuth-Endicott Co.*

ises are peculiarly fitted for the frigidaire coils and that the installation of any other refrigerators would necessitate considerable alteration in the construction of the fridaire coils and pipes connecting therewith from the wall. The same salesman made the sale while the building was in the course of construction and he saw the plans and that they  
 10 made provision for kitchenette cabinets and refrigerators.

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

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

Counsel for claimant urges that under the cases  
 30 of *Depew v. C. W. Depew & Co.*, 98 Equity 461 and *Koerner v. U. S. Waxed & Coated Paper Co.*, 94 Equity 65, the receiver cannot deny the reservation of title and could not do so even if the conditional sales contract were not filed. Neither of the cases mentioned concerned the sale of fixtures or goods affixed to realty. The former involved a coating machine and the latter Mack automobile trucks. Both cases came within the provisions of Section  
 40 5 of the Conditional Sales Act, which are radically

*Report of Receiver, Wasmuth-Endicott Co.*

different from the provision of Section 7 with which we are here concerned. Under Section 5, provides that the reservation of title is void unless the contract is filed as against a creditor "who acquires by attachment or levy, a lien". The cited cases decide that in cases where there is no such creditor, the receiver cannot claim title. Under Section 7, it is expressly provided that "as against the owner of realty" the reservation shall be void unless the contract or a copy be filed in accordance with the terms and requirements of the statute. In the instant case, the insolvent corporation was the owner of the realty and as against it the reservation of title was void, therefore, the receiver may assert the same right. 10

The section of the statute relied upon is unambiguous. It expressly provides that the reservation of title shall be void *as against the owner of realty*. The words do not admit of any misinterpretation. The statute makes no provision for a situation such as this where the owner of realty is also the conditional vendee. If the legislature intended that the provisions should not apply to an owner of realty who happens to be the conditional vendee, it would or should have so stated. In the wording of the statute there is no limitation, qualification or restriction, as to the particular owner of realty or character of owner of realty against whom the reservation would be void. It obviously follows that *any owner of realty* could resist the reservation of title against claimant if the goods are so affixed as to be severable where the contract is not filed. To hold as claimant urges would require the writing into the statute after the words owner of realty, "except when the owner of the realty is the conditional vendee" or words to that effect. In my opin- 20 30 40

*Report of Receiver, Wasmuth-Endicott Co.*

ion, the remedy lies with the Legislature. Neither the court nor its receiver can construe the statute otherwise in view of the clear, unambiguous and definite phraseology of the act.

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

WARREN DIXON, JR.,  
Receiver.

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For diminution of the record, it is stipulated between counsel, that the pertinent portion of the contract between Wasmuth-Endicott Co. and Regna Construction Co. Exhibits CSWE 3, reads:

“Andrews, Indiana, November 9, 1927.

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

10

A full copy of the contract appears at pages 147 to 152 in State of Case filed in the appeal of Consolidated Securities Corporation, in the cause entitled Elbert M. Crown, trading as Charles P. Walker Co., complainant, and, Regna Construction Co., defendant.

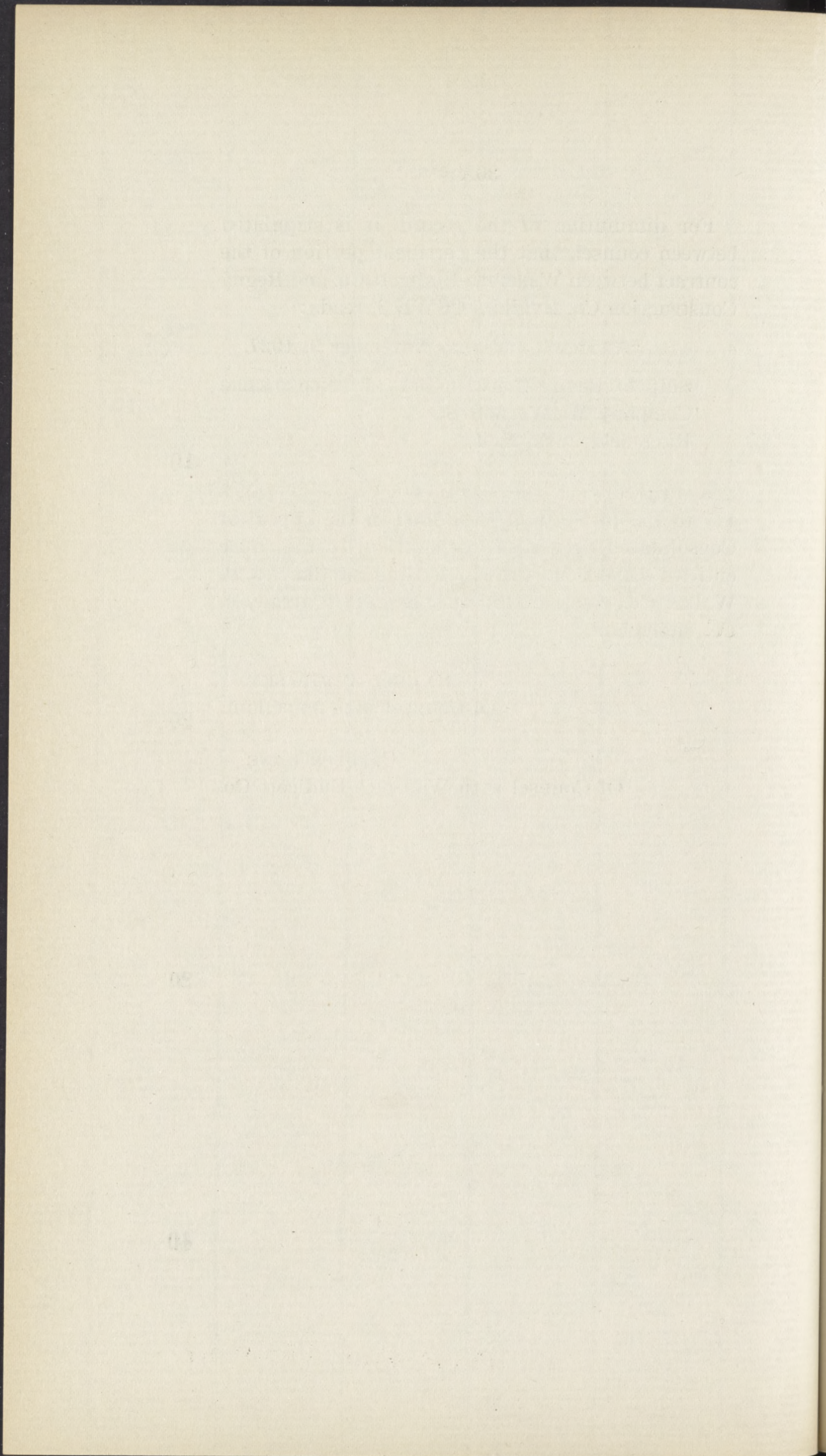
SAMUEL TARTALSKY,  
Of Counsel with Appellant.

20

CAREY & LANE,  
Of Counsel with Wasmuth-Endicott Co.

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*Exceptions to Receiver's Report, Wasmuth-  
Endicott Co.*

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

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

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

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

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

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

**Order Overruling Receiver's Report,  
Wasmuth-Endicott Co.**

IN CHANCERY OF NEW JERSEY.

68/498.

Between

ELBERT M. CROWN, trading as  
CHARLES P. WALKER SHADE Co.,  
Complainant,

and

REGNA CONSTRUCTION COMPANY,  
a corporation,  
Defendant.

On Bill &c.  
Order Over-  
ruling Re-  
ceiver's Re-  
port on  
Claim of  
Wasmuth  
Endicott  
Company.

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It appearing to the court that by Order dated June 28, 1928, Warren Dixon Jr. was appointed Receiver of Regna Construction Company, an insolvent corporation the defendant herein, and that Wasmuth-Endicott Company made claim against the defendant Regna Construction Company to the title to certain kitchenettes and cabinets under a conditional sales contract dated November 9, 1927, filed in the Bergen County Clerk's Office on November 14, 1927, and affixed and installed in a certain building owned by the defendant in the Town of Ridgefield Park, Bergen County, New Jersey in March 1928. The receiver having reported that the consideration of \$2440.00 remained unpaid to the Wasmuth-Endicott Company, but that said Wasmuth-Endicott Company was entitled to payment as a general creditor from the funds of the Regna Construction Company and the receiver reporting that the reservation of title was waived by reason

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*Order Overruling Receiver's Report, Wasmuth-  
Endicott Co.*

of non-compliance with the statute relating to conditional sales; and

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

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

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

It is ORDERED that the Receiver pay Wasmuth-Endicott Company from the proceeds of sale of  
40

*Order Overruling Receiver's Report, Wasmuth-  
Endicott Co.*

said premises the sum of \$2440.00 together with interest in the sum of \$61.00, in preference of said Consolidated Securities Company and Harry C. Leidinger, mortgagees and mechanic lien claimants.

E. R. WALKER,  
C. 10

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

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**Notice of Appeal, Domestic Electric Co.**  
(Filed July 17, 1929.)

IN CHANCERY OF NEW JERSEY.

68/498.

10	Between ELBERT M. CROWN, Complainant,  and  REGNA CONSTRUCTION COMPANY, Defendant.	} On Bills, &c. } Notice of } Appeal.
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20 Warren Dixon Jr., Receiver of Regna Construction Co. hereby appeals to the Court of Errors and Appeals in the last resort in all causes from a certain order made by the Chancellor on the advice of Vice Chancellor Fallon, entered in the above entitled cause on July 1, 1929, wherein and whereby and in accordance with the terms of which the report of your petitioner as receiver on claims of Domestic Electric Company was over-ruled and said Warren Dixon Jr. was directed to pay from the proceeds of sale of the lands and premises of

30 Regna Construction Company the sum of \$2,743.80 to Domestic Electric Company in preference of Consolidated Securities Corporation and Harry C. Leidingger, mortgagees and mechanic lien claimants, and from each part of said Order.

WARREN DIXON JR.

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

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SAMUEL TARTALSKY,  
Of Counsel with Receiver.

**Petition of Appeal, Domestic  
Electric Co.**

(Filed July 17, 1929.)

NEW JERSEY COURT OF ERRORS AND  
AND APPEALS.

Between ELBERT M. CROWN, Complainant,  and  REGNA CONSTRUCTION CO., Defendant.	}	On Bill &c. Petition of Appeal.	10
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To the Honorable, The Court of Errors and Appeals in the Last Resort in all Causes: 20

The petition of Warren Dixon Jr. Receiver of Regna Construction Company an insolvent corporation appellant respectfully shows:

1. That your petitioner finds himself aggrieved by an order made in the Court of Chancery made by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the First day of July, 1929, wherein and whereby the report of your petitioner as receiver on the claim of Domestic Electric Company was over-ruled. 30

2. And further finds himself aggrieved in that the order of the said Chancellor directed your petitioner to pay said Domestic Electric Company from the proceeds of sale of the lands and premises of the said Regna Construction Co. \$2,753.80, in preference of mortgagees and mechanic lien claimants. 40

*Petition of Appeal, Domestic Electric Co.*

And your petitioner humbly appeals from the order of the Chancellor as aforesaid upon the ground that the same is erroneous, for, that, the said order is contrary to law, equity and statutes in such cases made and provided and that the receiver's report should have been confirmed and approved and should not have directed the receiver  
10 to pay the said Domestic Electric Company, in preference to said Consolidated Securities Corporation, Harry C. Leiding, mortgagees and mechanic lien claimants.

Your petitioner therefore prays that the Order of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And your petitioner may have such other and further relief in the premises as to this honorable  
20 court shall seem meet.

SAMUEL TARTALSKY,  
Of Counsel With Warren Dixon Jr.,  
Receiver-Appellant.

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**Answer to Petition of Appeal,  
Domestic Electric Co.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between

ELBERT M. CROWN,  
Complainant,

and

REGNA CONSTRUCTION Co.,  
Defendant.

On Appeal  
from the  
Court of  
Chancery.

10

Answer to  
Petition of  
Appeal.

WARREN DIXON, JR., Receiver-Appellant:  
DOMESTIC ELECTRIC Co., INC., Respondent:

The answer of Domestic Electric Co., Inc., a corporation, the above named respondent, to the petition of appeal of the Receiver, Warren Dixon, Jr., above named appellant. 20

This respondent, nevertheless admits that an order was on July 1, 1929, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order, this respondent begs leave to refer thereto when the same shall be produced. 30

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

GREEN & GREEN,  
Solicitors for and of Counsel with  
Respondent, Domestic Electric Co.,  
Inc. 40

**Notice of Motion.**

IN CHANCERY OF NEW JERSEY.

10	Between ELBERT M. CROWN, trading as CHARLES T. WALKER COMPANY, Complainant,  and  REGNA CONSTRUCTION COMPANY, Defendant.	}	On Bill, &c. On Petition of Domestic Electric Co., Inc. Claim- ing Chattels. Notice.
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To SAMUEL TARTALSKY, Esq.,  
 Counsel for Receiver.

20 SIR:  
 PLEASE TAKE NOTICE, that on Monday, October 1,  
 1928, at 10 o'clock in the forenoon or as soon there-  
 after as counsel can be heard, we will apply to the  
 Chancellor at the Chancery Chambers, Jersey City,  
 New Jersey, for the relief prayed for in the peti-  
 tion annexed hereto and made a part hereof.

Dated, September 28, 1928.

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

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

3. Petitioner's equipment was and is personal property and are not so affixed to the realty as to become part thereof, and the same are easily removable from the building without doing any damage whatsoever to said building or to said equipment.

10

4. Petitioner furnished said goods pursuant to and in accordance with the terms and conditions of said contract, and became entitled to payment aforesaid, less \$360.00, or \$2,690.00. Said contract provided, inter alia, that petitioner does not relinquish its title to equipment described herein and title shall not pass to defendant corporation until the purchase price is paid in full, and until such payment has been made said equipment shall be and remain the property of the petitioner.

20

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

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

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

estate inclusive of its said chattels other than hereinabove stated.

And your petitioner will ever pray, etc.

Dated, September 28, 1928.

DOMESTIC ELECTRIC CO., INC.,  
By C. M. EAKIN,  
Assistant Treasurer.  
Petitioner.

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GREEN & GREEN,  
Solicitors for Petitioner.

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

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

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

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

30

CONSTAN M. EAKIN.

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

FRANK LEWIS,  
Notary Public of New York.

40

**Schedule "A".**

30 Frigidaire cabinets

5 T. F coils

2 "C" Compressors

Duplicate (for customer)  
A-377

Frigidaire Order

10 10/29

Date Oct. 28, 1927.

DOMESTIC ELECTRIC Co., INC.,  
39 West 45th Street, New York.Please enter my order for Frigidaire according  
to the following terms and specifications:

20 Quant.—2, 30, 2.

Model—T-5.

Compressor—C.

Coils—5TF.

AC or DC—

Voltage—

Cycles—

30 Price Installed Except Electric Wiring &  
Plumbing—\$3050.

Complete system of risers &amp; manifolds.

To be delivered on or about January 1st.

*Schedule "A".*

## SHIPPING INSTRUCTIONS (Print these)

To be affixed to Bldg.

Name—Regna Const. Co. R. F. D. No.....  
 Street and Number—93-95 Vernon St.  
 City—Ridgefield Park. County—Bergen. State—  
 N. J.  
 Ship Via—Truck. Phone No. .... 10

## TERMS.

(1) Cash with order (50%)	\$	
(2) Cash when Frigidaire is delivered	847.00	
Cash when Frigidaire is installed	847.00	
Cash when Frigidaire is in operation		
30 days	678.00	
Cash when Frigidaire is in operation		20
60 days	678.00	

THE FOLLOWING CONDITIONS ARE AGREED TO: That the company will guarantee said equipment against defective material or workmanship for one year from date of delivery. That the company agrees to fill this order with all practical dispatch but any delay in so doing from any cause shall not make this company liable in any way nor void this contract. That the DOMESTIC ELECTRIC Co., INC. does not relinquish its title to said equipment and that the title shall not pass to the undersigned purchaser until the purchase price, and all extensions and renewals of same, is paid in full, and that until such payment said equipment shall be and remain the property of the DOMESTIC ELECTRIC Co., INC. That this order is subject to acceptance by the DOMESTIC ELECTRIC Co., INC. at its New York Office,

*Schedule "A".*

and when so accepted constitutes a binding contract which covers all agreements, express or implied, between the undersigned purchaser and said DOMESTIC ELECTRIC Co., INC. That this equipment is and shall remain personal property. That this order shall not be countermanded.

10 Signed—REGNA CONSTRUCTION Co.,  
DOMENICO GIORDANO,  
Billing Address—299 23rd St.,  
West New York.

Attest—J. S. BAER.  
Accepted—March 12, 1928.

DOMESTIC ELECTRIC Co., INC.,  
By C. M. EAKIN,  
20 Asst. Treas.

Geo. M. Brewster—Bogota, N. J.  
Gardner & Meeks—Union City, N. J.  
Junction Mill Works—Jersey City, N. J.  
Mortgage Co.—Fidelity Union—Newark, N. J.  
Mortgage—\$85,000.

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**Stipulation of Facts, Domestic  
Electric Co.**

IN CHANCERY OF NEW JERSEY.

Between ELBERT M. CROWN, trading as CHAS. P. WALKER COMPANY, Complainant,	}	On Bill &c.	10
and  REGNA CONSTRUCTION COMPANY, a corporation, Defendant.		On Petition of Domestic Electric Co. Inc. claim- ing chattels.	

STIPULATION OF FACTS.

It is hereby stipulated by and between GREEN & GREEN, Solicitors for Domestic Electric Co. Inc.; and SAMUEL TARTALSKY, of Counsel with Warren Dixon Jr. Receiver of Regna Construction Company, an insolvent corporation, as follows: 20

1. That Warren Dixon Jr. was on June 22, 1928 appointed Custodial Receiver and on June 28, 1928, appointed Permanent Receiver of Regna Construction Company, an insolvent corporation, by the Chancellor of New Jersey. That said Receiver has duly qualified and is acting as such. 30

2. That the corporation was the owner of a certain 32 family brick apartment known as No. 101 Mount Vernon Street, Ridgefield Park, Bergen County, New Jersey, and that the construction of said building was commenced in the early part of September, 1927. 40

*Stipulation of Facts, Domestic Electric Co.*

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

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

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

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

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

40 (a) January 28, 1928 Tidewater Coal & Supply Co., damages \$1234.12, costs \$53.78, total \$1287.90.

*Stipulation of Facts, Domestic Electric Co.*

(b) March 12, 1928 Highwood Coal Company, in the Bergen County Circuit Court, damages \$2564.16, costs \$65.29, total \$2629.45;

(c) April 3, 1928 Highwood Coal Company, Bergen County Circuit Court, damages \$1311.17, costs \$67.68, total \$1378.85;

(d) April 11, 1928 Building Supply Company of Englewood, New Jersey Inc. in Bergen County Circuit Court, damages \$2,004.19, and costs. 10

The above judgments are general judgments.

(e) June 13, 1928, Decker Bros. Inc. damages \$2787.50 costs \$69.38, total \$2856.88. This is a special judgment against the lands and premises above referred to having been filed by a mechanic lien claimant. 20

(f) August 17, 1928 Junction Milling Co. damages \$5,133.00, costs \$65.53, total \$5198.53. This also is a special judgment having been recovered by the plaintiff who furnished materials in the said building.

There are various lien claims which have been filed in the Bergen County Clerk's Office by persons who have furnished labor and materials in said premises which were not prosecuted further by reason of the restraining order made in this cause. 30

7. The said realty was sold pursuant to order of this court on September 19, 1928, and this matter comes on to be heard at the time application was made for confirmation of the sale, said Domestic Electric Co. Inc. claiming title to said Frigidaire Equipment and the right to the removal thereof unless the sum of \$2690.00 is paid. 40

*Stipulation of Facts, Domestic Electric Co.*

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

Dated, October 1, 1928.

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GREEN & GREEN,  
Sol'rs. for Domestic Electric Co. Inc.

SAMUEL TARTALSKY,  
Of Counsel with Receiver.

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*Supplemental Stipulation, Domestic Electric Co.*

premises on March 30, 1928, and said equipment was completely installed by May 12, 1928.

10 It is further stipulated and agreed that the Consolidated Securities Corporation is the owner and holder of two mortgages affecting said premises. One of said mortgages is dated September 30, 1927 and was recorded in the Bergen County Clerk's Office on October 1, 1927 and was given to secure the sum of \$30,000.00; and the other mortgage is dated November 29, 1927, was recorded on November 30, 1927 in the same Office and was given to secure the sum of \$20,000.00; and that said mortgages were given as security for moneys to be advanced by the mortgagee from time to time in the construction of said building, the first of said mortgage moneys having been advanced on Sep-  
20 tember 30, 1927 and the last of said moneys advanced in February, 1928.

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

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

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

**Report of Receiver, Domestic  
Electric Co.**

IN CHANCERY OF NEW JERSEY.

Between ELBERT M. CROWN, trading as CHARLES P. WALKER COMPANY, Complainant,  vs.  REGNA CONSTRUCTION COMPANY, a corporation, Defendant.	}	On Bill &c. Report of Receiver on Claim of Domestic Electric Co. Inc. Conditional Sales Vendor.	10
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In pursuance of an order made by the Chancellor in the above entitled cause and dated June 28, 1928, by which I was appointed Receiver of Regna Construction Company, I qualified as such receiver, and in accordance with the statute in such case made and provided I received claims of creditors of said insolvent corporation. 20

Domestic Electric Co. Inc. made claim against the corporation to the title to Thirty (30) certain Frigidaire Cabinets; Thirty (30) Coils in said Cabinets and Two (2) Compressors. Annexed hereto and made part hereof is a stipulation of facts entered into between Green & Green, Solicitors for Domestic Electric Co. and Samuel Tartalsky of Counsel with Receiver. It is stipulated that the said goods were sold to the defendant on October 28, 1927 by conditional sales contract duly entered into. The said equipment was sold as personalty but the same was so affixed to the realty as to become part of it, but to be severable without material injury to the freehold. In the contract the title 30 40

*Report of Receiver, Domestic Electric Co.*

was reserved by the Domestic Electric Co. Inc. until the sum of \$2690.00 was paid. No part of said sum was paid.

10 It also appears that it was not until September 28, 1928 that said conditional sales contract was filed in the Bergen County Clerk's Office. This contract was recorded after the said equipment was affixed in said building. Section 7 of the Uniform Conditional Sales Act, 2 Comp. State. 1911-1924, provides that the reservation of title shall be void as against the owner unless a contract or copy thereof be filed in the Office of the Clerk of the county where the realty is situate before the said goods are affixed. Such reservation of title is void as against the owner would likewise be void as against the receiver. I therefore reject the claim of  
20 the Domestic Electric Co. Inc. to the title as against the owner for the reasons stated and I respectfully report that the said Domestic Electric Co. Inc. is only entitled to a claim against the said corporation for \$2690.00 as a general creditor.

Respectfully submitted,

WARREN DIXON, JR.,  
Receiver.

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**Order Overruling Receiver's Report,  
Domestic Electric Co.**

IN CHANCERY OF NEW JERSEY.

68/498.

Between ELBERT M. CROWN, trading as CHARLES P. WALKER SHADE Co., Complainant,  <p style="text-align: center;">and</p> REGNA CONSTRUCTION COMPANY, a corporation, Defendant.	}	On Bill &c.      10 Order Over-Ruling Receiver's Report of Domestic Electric Company.
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It appearing to the court that by Order dated June 28, 1928, Warren Dixon, Jr. was appointed Receiver of Regna Construction Company, an insolvent corporation the defendant herein, and that Domestic Electric Company made claim against the defendant Regna Construction Company to the title to thirty certain Frigidaire Cabinets, Coil and Compressors under a conditional sales contract dated October 28, 1927 which was not filed until after the appointment of the Receiver herein on September 28, 1928 in the Bergen County Clerk's Office and affixed and installed in a certain building owned by the defendant in the Town of Ridgefield Park, Bergen County, New Jersey, May 12, 1928. And the receiver having taken testimony and reported that the consideration of \$2690.00 remained unpaid to the Domestic Electric Company, but that said Domestic Electric Company was entitled to payment as a general creditor from the funds of the Regna

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*Order Overruling Receiver's Report, Domestic  
Electric Co.*

Construction Company and the receiver reporting that the reservation of title was waived by reason of non-compliance with the statute relating to conditional sales; and

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

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

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

*Order Overruling Receiver's Report, Domestic  
Electric Co.*

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

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E. R. WALKER,  
C.

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

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**Notice of Appeal, Liberty Lighting  
Fixture Co.**

(Filed July 17, 1929.)

IN CHANCERY OF NEW JERSEY.

68/498.

10	Between ELBERT M. CROWN, Complainant, and REGNA CONSTRUCTION Co., Defendant.	} On Bill &c. } Notice of } Appeal.
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20 Warren Dixon, Jr., Receiver of Regna Construction Co., hereby appeals to the Court of Errors and Appeals in the last resort in all causes from a certain order made by the Chancellor on the advice of Vice Chancellor Fallon, entered in the above entitled cause on July 1, 1929, wherein and whereby and in accordance with the terms of which the report of your petitioner as receiver on claim of Joseph Neidorff and Samuel Milns, partners trading as Liberty Lighting Fixture Company was overruled and said Warren Dixon, Jr., was directed to pay from the proceeds of sale of the lands and premises of Regna Construction Company the sum of \$1,074.50 to Joseph Neidorff and Samuel Milns, partners trading as Liberty Lighting Fixture Company in preference of Consolidated Securities Corporation and Harry C. Leidinger mortgagees and mechanic lien claimants and from each part of said Order.

WARREN DIXON, JR.

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

SAMUEL TARTALSKY,  
Of Counsel with Receiver.

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**Petition of Appeal, Liberty Lighting  
Fixture Co.**

(Filed July 17, 1929.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between ELBERT M. CROWN, Complainant,  and  REGNA CONSTRUCTION Co., Defendant.	}	On Bill, &c. Petition of Appeal.	10
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To the Honorable, The Court of Errors and Ap-  
peals in the Last Resort in all Causes: 20

The petition of Warren Dixon, Jr., Receiver of  
Regna Construction Company an insolvent corpo-  
ration appellatant respectfully shows:

1. That your petitioner finds himself aggrieved  
by an order made in the Court of Chancery made  
by his Honor Edwin Robert Walker, Chancellor  
of the State of New Jersey, bearing date the First  
day of July, 1929, wherein and whereby the report  
of your petitioner as receiver on the claim of  
Joseph Neidorff and Samuel Milns, partners trad-  
ing as Liberty Lighting Fixture Company was  
overruled. 30

2. And further finds himself aggrieved in that  
the order of the said Chancellor directed your peti-  
tioner to pay said Joseph Neidorff and Samuel  
Milns, partners trading as Liberty Lighting Fix- 40

*Petition of Appeal, Liberty Lighting Fixture Co.*

ture Company, from the proceeds of sale of the lands and premises of the said Regna Construction Co. \$1,074.50, in preference of mortgagees and mechanic lien claimants.

10 And your petitioner humbly appeals from the order of the Chancellor as aforesaid upon the ground that the same is erroneous, for, that, the said order is contrary to law, equity and statutes in such case made and provided and that the receiver's report should have been confirmed and approved and should not have directed the receiver to pay the said Joseph Neidorff and Samuel Milns, partners trading as Liberty Lighting Fixture Company, in preference to said Consolidated Securities Corporation, Harry C. Leidinger, mortgagees and mechanic lien claimants.

20 Your petitioner therefore prays that the Order of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden. And your petitioner may have such other and further relief in the premises as to this Honorable court shall seem meet.

SAMUEL TARTALSKY,  
Of Counsel with Warren Dixon, Jr.,  
Receiver-Appellant.

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**Answer to Petition of Appeal, Liberty  
Lighting Fixture Co.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

<p>Between</p> <p style="text-align: center;">ELBERT M. CROWN, Complainant,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">REGNA CONSTRUCTION Co., Defendant.</p>	}	<p>On Appeal from the Court of Chancery.</p> <p>Answer to Petition of Appeal.</p>	10
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The answer of Joseph Neidorff and Samuel Milnis, partners trading as the Liberty Lighting Fixture Company, to the petition of appeal of Warren Dixon, Jr. Receiver of Regna Construction Co. an insolvent corporation, the appellant aforesaid, respectfully show that:

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

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

These appellees are further advised and believe that the said appellant is not the proper party to attack the said order aforesaid, and has no standing in this matter in this Court, and they pray that the appellant's petition be dismissed with costs to be taxed in favor of these appellees.

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



**Schedule "1".**

KNOW ALL MEN BY THESE PRESENTS, that the LIBERTY LIGHTING FIXTURE COMPANY, having its principal office at No. 760 Broadway, in the City of Bayonne, County of Hudson, and State of New Jersey, hereinafter called the Seller, doth covenant and agree with Regna Construction Company of No. 229-23rd Street in the City of West New York County of Hudson and State of New Jersey, hereinafter called the Purchaser, that the seller will, in consideration of the sum of \$1050.00 to be paid as hereinafter stated, furnish and install the fixtures listed in the following schedule in the building known and designated, as, being located in Ridgefield Park, Bergen Co. N. J., which property is on the southerly side of Mount Vernon Street, 100 feet west from the southwesterly corner of said street with Euclid Avenue, being 80.2 feet in front and rear more or less by 101 feet in depth on each side more or less, in the City of Ridgefield Park, County of Bergen and State of New Jersey with the understanding that the same are to be installed and affixed to the realty so as to be severable without material injury to the freehold and not to be regarded as a permanent part thereof.

The consideration is to be paid as follows :

\$525.00 on delivery of electrical fixtures to premises. 30

\$525.00 60 days after completion of all work.

It is agreed that the said fixtures are to remain the property of the said Liberty Lighting Fixture Company until the entire consideration as above set forth is paid, and if default be made in payment or the goods and chattels herein described are removed, sold or attempted to be removed the seller may take actual possession thereof and the pur-

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*Schedule "I".*

10 chaser authorizes and empowers the seller to enter and carry away the same wherever the same may be, hereby waiving any action or cause of action for such entry, seizure or removal and disclaiming any interest or resistance thereto. The seller may at their election regard the property as sold un-  
 10 conditionally and file a mechanics lien or pursue any other remedy for the collection of the within consideration.

IN WITNESS WHEREOF the seller and purchaser have hereunto set their respective signatures, this 26th day of March, 1928.

Witness:

N. FRANKEL.

20 Seller: LIBERTY LIGHTING FIXTURE COMPANY  
 By JOSEPH NEIDORFF (LS)

Purchaser: REGNA CONSTRUCTION Co.,  
 a N. J. Corporation  
 Dominico Giordiano (LS)  
 Pres.

Fred Regna Treas (LS)

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*Schedule "I".*

## SCHEDULE.

1 Dining Room, 5K 6105 Puritan.	
42 Bedroom, 2 40K (2PS) 8000 Ivory Poly.	
32 Kitchen, 1K 4/8 Plain.	
32 Private Hall, 1 31K (1PS) 2000 U. M. Rosette.	10
132 Brackets L. R., 2K 1940 Gold Poly.	
32 Brackets Bath R., 1 P.S. 1/2 round Gen Box.	
4 Brackets N. H., 2 P.S. 9552 Midwest.	
2 Ceiling M.J., 3K 3303 Cap Bronze.	
2 Statutes, L P.S. Marble.	
2 Brackets Vest, 2 P.S. 9552 Midwest.	
10 Cellar, 1 key Cord Drop.	
2 Brackets Out, 1K Newell Posts.	20

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## Schedule "2".

## IN CHANCERY OF NEW JERSEY.

10	Between ELBERT M. CROWN, trading as CHAS. P. WALKER SHADE Co., Complainant,  and  REGNA CONSTRUCTION COMPANY, a corporation, Defendant.	}	On Bill &c. Affidavit.
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STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.:

20 JOSEPH NEIDORFF, of full age, being duly sworn according to law deposes and says:

1. I am one of the partners of Joseph Neidorff and Samuel Milnis, trading as LIBERTY LIGHTING FIXTURE COMPANY.

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

40 3. All of the materials mentioned in the Conditional Bill of Sale aforesaid were delivered to the premises described therein on or about April 14th, 1928. Under the terms of the Conditional Bill of Sale, the sum of \$525.00 became due and payable

*Schedule "2".*

on the date of delivery. The said sum of \$525.00 was not paid or any part thereof.

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

5. The entire contract price, to wit, the sum of \$1050.00 is still due and unpaid, besides lawful interest thereon to the date hereof amounting to the sum of \$24.50 making the total of \$1074.50, justly due and owing by the Regna Construction Company to the Liberty Lighting Fixture Company. 20

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

JOSEPH NEIDORFF.

Sworn to and subscribed before me this 20th day of September, 1928.

ANNA RUBENSTEIN,  
A Notary Public of N. J.

**Report of Receiver, Liberty Lighting  
Fixture Co.**

IN CHANCERY OF NEW JERSEY.

10	<p>Between ELBERT M. CROWN, trading as CHARLES P. WALKER COMPANY, Complainat,</p> <p style="text-align: center;">vs.</p> <p>REGNA CONSTRUCTION COMPANY, a corporation, Defendant.</p>	<p>On Bill, &amp;c. Report of Receiver on Claim of Liberty Lighting Fixture Co. Conditional Sales Vendor.</p>
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20 In pursuance of an order made by the Chancellor in the above entitled cause and dated June 28, 1928, by which I was appointed Receiver of Regna Construction Company, I qualified as such receiver, and in accordance with the statute in such case made and provided I received claims of creditors of said insolvent corporation.

30 Annexed hereto and made part hereof is a proof of claim by Liberty Lighting Fixture Co. The said Liberty Lighting Fixture Co. by contract dated March 6, 1928 and filed in the Bergen County Clerk's Office sold certain electrical fixtures to Regna Construction Company for the sum of \$1050.00; said contract was filed with the Clerk of Bergen County on March 30, 1928. Proof of claim also establishes that the said fixtures were installed on or about April 14, 1928. The conditional sales contract as filed provided "that the same are to be installed and affixed to the realty so as to be severable without material injury to the freehold". It

40 further provided "*the seller may at their election*

*Report of Receiver, Liberty Lighting Fixture Co.*

*regard the property as sold unconditionally and file a mechanic's lien or pursue any other remedy for the collection of the within consideration".* The consideration of \$1050. not having been paid the Liberty Lighting Fixture Co. does not demand the return of the goods nor claim title thereto, but on the contrary, insists upon payment from the funds in the hands of the receiver as a preferred creditor. 10

Obviously, the claimant has elected to treat the sale as an unconditional sale in accordance with the terms of its agreement. I, therefore, respectfully report that the title to the goods passes to the corporation and to the receiver thereof, and said Liberty Lighting Fixture Company is entitled to the sum of \$1050.00 together with \$24.50 interest, making a total of \$1074.50, as against the corporation, as a general creditor. 20

Respectfully submitted,

WARREN DIXON, JR.,  
Receiver.

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**Order to Show Cause, Liberty Lighting  
Fixture Co.**

IN CHANCERY OF NEW JERSEY.

10	Between ELBERT M. CROWN, trading as CHARLES P. WALKER COMPANY, Complainant,	}	68-498.
	and		On Bill, &c.
	REGNA CONSTRUCTION Co., a corporation, Defendant.	}	Order to Show Cause.

20      Upon reading and filing the duly verified petition of Joseph Neidorff and Samuel Milnis, partners, trading as Liberty Lighting Fixture Company, and good cause appearing, it is on the 29th day of October, 1928, on application of Louis Rubenstein, Solicitor for the said Joseph Neidorff and Samuel Milnis, partners, trading as Liberty Lighting Fixture Company,

30      ORDERED that Warren Dixon, Jr., the receiver appointed in this cause, show cause before the Chancellor at Chancery Chambers, One Exchange Place, Jersey City, New Jersey, on Monday the 5th day of November, 1928, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made reversing the action of the said receiver in refusing to admit the petitioners' claim as preferred claim, as requested in the petitioners' proof of claim, and directing the said receiver to admit the said claim as preferred claim, as requested by the petitioners' proof of

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*Order to Show Cause, Liberty Lighting Fixture Co.*

claim, in accordance to the statute in such case made and provided, and it is further

ORDERED that a copy of the petition and order to show cause in this matter certified by the Solicitor for the petitioners herein to be a true copy be a true copy be served upon the said receiver or his solicitor within three days of the date hereof. 10

E. R. WALKER,  
C.

Respectfully advised,  
JNO. J. FALLON,  
V. C.

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**Appeal from Receiver's Report, Liberty  
Lighting Fixture Co.**

IN CHANCERY OF NEW JERSEY.

10	Between ELBERT M. CROWN, trading as CHARLES P. WALKER COMPANY, Complainant,  and  REGNA CONSTRUCTION Co., a corporation, Defendant.	68-498. On Bill, &c. Appeal from Deter- mination of Receiver. Petition.
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20 To the Honorable EDWIN ROBERT WALKER, Chan-  
 cellor of the State of New Jersey:

30 The petition of Joseph Neidorff and Samuel  
 Milnis, partners, trading as Liberty Lighting Fix-  
 ture Company, of the City of Bayonne, County of  
 Hudson and State of New Jersey, respectfully show,  
 that your petitioners, being a creditor of the said  
 Regna Construction Co., a corporation of New Jer-  
 sey, in the amount of \$1050.00 besides lawful in-  
 terest thereon, did heretofore and within due time  
 presented their claim to Warren Dixon, Jr., the  
 receiver appointed in this cause, for allowance as a  
 preferred claim as therein stated, a copy of which  
 claim is hereto annexed as Schedule "A" and made  
 part hereof; that the same was presented in due  
 form, properly proved and substantiated by legal  
 evidence, and submitted to said receiver, and that  
 said receiver disallowed this claim as a preferred  
 claim as requested by your petitioners by his re-  
 port and letter dated October 12th, 1928, addressed  
 40 to Louis Rubenstein, Solicitor for petitioners, a

*Appeal from Receiver's Report, Liberty Lighting  
Fixture Co.*

copy of which report and letter is hereto annexed as Schedule "B" and "C" respectively and made part hereof. And your petitioners conceive that they are aggrieved by said refusal of said receiver, and insist that, &c. And your petitioners respectfully appeals from said determination of said receiver disallowing as aforesaid, to this Honorable Court, and pray that the same may be reversed, and such order made in the premises as shall be agreeable to equity and good conscience. And your petitioners will ever pray, &c. 10

LOUIS RUBENSTEIN,  
Solicitor for Petitioners, Joseph  
Neidorff and Samuel Milnis,  
trading as Liberty Lighting  
Fixture Co. 20

COUNTY OF HUDSON, }  
STATE OF NEW JERSEY, } ss.:

LOUIS RUBENSTEIN, being duly sworn, according to law, on his oath says, that he is the Solicitor for the petitioners herein; that he has read the petition and knows the contents thereof, and that the same is true, to the best of his knowledge, information and belief. 30

LOUIS RUBENSTEIN.

Sworn and subscribed to before me }  
this 22nd day of October, 1928. }

ANNA RUBENSTEIN,  
A Notary Public of N. J. 40

**Order Overruling Receiver's Report,  
Liberty Lighting Fixture Co.**

IN CHANCERY OF NEW JERSEY.

68/498.

10	<p>Between ELBERT M. CROWN, trading as CHARLES P. WALKER SHADE Co., Complainant,</p> <p style="text-align: center;">and</p> <p>REGNA CONSTRUCTION COMPANY, a corporation, Defendant.</p>	<p>On Bill, &amp;c. Order Overruling Receiver's Report on Claim of Liberty Lighting Fixture Co.</p>
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20       It appearing to the court that by Order dated  
June 28, 1928, Warren Dixon, Jr., was appointed  
Receiver of Regna Construction Company, an in-  
solvent corporation the defendant herein, and that  
Joseph Neidorff and Samuel Milns, partners trad-  
ing as Liberty Lighting Fixture Co. filed a proof  
of claim with receiver claiming payment from the  
funds in the hands of receiver as a preferred cred-  
itor by reason of a conditional sales contract, ac-  
30       cording to the terms of which the said Liberty  
Lighting Fixture Co. sold certain electrical fixtures  
to Regna Construction Company, the defendant  
herein, for the sum of \$1050.00, which electrical  
fixtures were installed in a certain building owned  
by the defendant in the Town of Ridgefield Park,  
Bergen County, New Jersey. The said receiver  
having reported that the claimant had elected to  
treat the sale as an unconditional sale, and re-  
ported that the said Liberty Lighting Fixture Co.

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*Order Overruling Receiver's Report, Liberty  
Lighting Fixture Co.*

was entitled to the balance of the sum of \$1050.00 together with interest as a general creditor; and

It further appearing that the said lands and premises of the said Regna Construction Company are encumbered with two mortgages held by the Consolidated Securities Company one in the sum of \$30,000.00 dated September 30, 1927, recorded October 1, 1927; another for \$20,000.00 dated November 29, 1927, recorded November 30, 1927, and encumbered with a further mortgage held by Harry C. Leidinger dated August 31, 1927, recorded on November 30, 1927, which mortgage was postponed to the lien of the aforesaid mortgage of the Consolidated Securities Company; and it further appearing that there are various judgments against the lands and premises of the defendant corporation based upon mechanic lien claims. 10 20

And the said Liberty Lighting Fixture Co. having appealed to this court from the determination and decision of the said receiver and the matter having been argued before this court by Samuel Tartalsky of Counsel with Receiver and Rinaldi & Shanley, Solicitors for and of Counsel with Consolidated Securities Co. and Louis Rubenstein, Solicitor for and of Counsel with Liberty Lighting Fixture Company and the court having considered the matter and filed its opinion; 30

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

It is ORDERED that the Receiver pay Liberty Lighting Fixture Co. from the proceeds of sale of 40

*Order Overruling Receiver's Report, Liberty  
Lighting Fixture Co.*

said premises the sum of \$1050.00 together with interest in the sum of \$24.50, in preference of said Consolidated Securities Company and Harry C. Leidinger, mortgagees and mechanic lien claimants.

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E. R. WALKER,  
C.

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

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**Opinion.**

## IN CHANCERY OF NEW JERSEY.

68/498.

Between ELBERT M. CROWN, trading as CHARLES T. WALKER COMPANY, Complainant,  and  REGNA CONSTRUCTION COMPANY, Defendant.	On Bill, &c. On Receiver's Report of Sale of Property, Application for Confirma- tion of Sale, Objections Thereto, Etc.	10
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## CONCLUSIONS.

1. The Receiver of an insolvent corporation sold a 32 family brick apartment house free and clear of all liens and encumbrances except a mortgage of \$8,000., and municipal liens. The property was subject to various other liens and encumbrances. The order for sale provides that the moneys realized be subject to the same liens and equities of all parties in interest as was the property before the sale. Objection to confirmation of the sale was made by counsel representing parties who sold to the corporation refrigerators, kitchenettes, gas ranges, and lighting fixtures, under contracts reserving the seller's title to the goods until purchase price paid, the gist of the objection being that vendors cannot be divested of their reserved title to the goods, and title thereto be vested in the purchaser from the receiver. Counsel conceded that the goods were severable from the realty without material injury to the freehold, and that vend-

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*Opinion.*

ors claims are based upon section 7 of the Uniform Conditional Sales Act, P. L. 1919, p. 461. The Consolidated Securities Corporation, as mortgagee, claims to be a *subsequent purchaser* of the realty for value and without notice of the vendors reserved title to the goods conditionally sold, and that its mortgages are a lien upon the vendors said goods, as part of the realty. *Held*, upon the facts disclosed, and the law applicable thereto, that said mortgagee is not a *subsequent purchaser* of the realty of the Regna Construction Company, as against the reserved title of the vendors to the goods which are the subject-matter of the conditional sale contracts affixed to the realty so as to become part thereof, but severable without material injury to the freehold. *Held*, also, that the receiver has no right to said goods in default of payment of purchase price therefor.

2. A filed conditional sale contract, referring to goods furnished thereunder, recites—"Shipped to Regna Construction Company, Mt. Vernon Street, Ridgefield Park, N. J." Such recital does not comply with the statutory requisite of "briefly describing the realty", but such non-compliance is inconsequential in the matter *sub judice*.

3. A conditional sale contract describes goods as "Twenty-six (26) ranges as had #822". A filed instrument purporting to be a copy of such contract describes the goods as "26 #822 A. B. gas ranges". The variance is unsubstantial. The Uniform Conditional Sales Act, *supra*, does not require or lay down any particular manner in which the chattel is to be described. *Huber v. Cloud*, 130 Atl. Rep. 562; 102, N. J. L. 181.

*Opinion.*

4. A filed contract reads in part—"The seller may at their election regard the property as sold unconditionally and file a mechanic's lien, or pursue any other remedy for the collection of the within consideration". Receiver's claim that the vendors should be regarded as having elected to treat the transaction as an unconditional sale, is not sustained by the proofs. 10

5. The Uniform Conditional Sales Act, *supra*, alters the fixture rule—established as a general rule of law prior to its enactment—wherein the intent of the parties to a conditional sale contract was regarded as the paramount test as to whether chattels affixed to realty so as to become party thereof should remain personalty or not. As stated in *General Motors Acceptance Corporation v. Smith*, 101 N. J. L. 154—"This act stands by itself". 20

6. When the legislature frames a new and general rule covering an entire subject-matter, all earlier and different rules touching the same matter are to be discarded in favor of such later rule.

7. The first part of section 7 of the Uniform Conditional Sales Act, *supra*, is inapplicable to the matter *sub judice* because it applies to a case in which goods conditionally sold are *not* severable from the realty to which affixed without material injury to the freehold. 30

8. Under part two of section 7 of the aforesaid act, if the goods are so affixed to the realty at the time of sale or subsequently as to become part thereof, but severable without material injury to the freehold, the reservation of title is void after 40

*Opinion.*

the goods are so affixed *only* as against *subsequent purchasers* of the realty \* \* \* unless the contract, or a copy thereof \* \* \* shall be filed *before* such purchase \* \* \*. A *mortgagee* is classified as a *purchaser* by section 1 of said act.

10      9. Under part three of section 7 of the aforesaid act, the seller's reservation of title is void as against the "owner" of the realty \* \* \* unless the contract, or a copy thereof, \* \* \* shall be filed *before* the goods are affixed \* \* \* in cases where the goods are sold to and affixed by a contractor or some one other than the owner himself.

20      10. The receiver herein is not vested with title to the goods which are the subject-matter of conditional sale contracts, as against the vendors, even though in one or more instances the vendors have not strictly complied with the requirements of section 7 of the Uniform Conditional Sales Act, *supra*.

30      11. In the matter *sub judice* the receiver holds the property which came to his possession by the same right and title as the Regna Construction Company. Said company not having acquired title to the goods, it could not resist the claims of the vendors, and consequently the receiver cannot do so.

12. Receiver's claim that he should be regarded as the "owner" of realty within the purview of the third part of section 7 of the Uniform Conditional Sales Act, *supra*, is untenable as against the vendors.

40      13. The third part of section 7 of the Uniform Conditional Sales Act, *supra*, ostensibly was in-

*Opinion.*

tended to apply to the case of a sale of goods to a contractor to be affixed to realty owned by a person other than such contractor. In the case *sub judice* the goods were sold directly to the Regna Construction Company—the “owner” of the realty.

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Messrs. O'BRIEN & TARTALSKY, Solicitors for Complainant. 10

Mr. SAMUEL TARTALSKY, Counsel for Receiver.

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

Mr. LOUIS RUBENSTEIN, Solicitor for Joseph Neidorff and Samuel Milnis, partners trading as Liberty Lighting Fixture Company. 20

Messrs. MEISTERMAN & KATCHEN, Solicitors for J. Rose & Company, Inc.

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

Messrs. RINALDI & SHANLEY, Solicitors for Consolidated Securities Corporation.

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FALLON, V. C. 30

This matter is before the court on the petition of the receiver appointed herein for confirmation of the sale by him of a 32 family brick apartment house known as No. 101 Mt. Vernon Street, Ridgefield Park, N. J. for \$96,500., free and clear of all liens and encumbrances except a mortgage for \$8,000. held by Charles Enders, Jr. and Amelia 40

*Opinion.*

Enders, his wife, and municipal liens. The order for sale provides that the moneys realized be subject to the same liens and equities of all parties in interest as was the property before the sale. Objection to confirmation was made by counsel representing parties who sold to Regna Construction Company, the insolvent corporation for which the receiver was appointed, refrigerators, kitchenettes, gas ranges, and lighting fixtures, under conditional sale contracts wherein the seller's reserved title to the goods until the purchase price was paid therefor. The gist of the objection is that such conditional sale vendors cannot be divested of their reserved title to the goods which they furnished to the Regna Construction Company, and title thereto be vested in the purchaser from the receiver. A contract of Domestic Electric Co. Inc., for refrigerators, bears date October 28, 1927, but was not filed until September 28, 1928. The goods were affixed to the realty May 12, 1928. A contract of Wasmuth-Endicott Company, for kitchenettes, bears date November 9, 1927, and was filed November 14, 1927. The goods were affixed to the realty in March 1928. The filed contract, referring to the goods furnished thereunder, recites: "Shipped to Regna Construction Company, Mt. Vernon Street, Ridgefield Park, N. J." Though such recital does not, in my judgment, comply with the statutory requisite of "briefly describing the realty", the non-compliance is inconsequential in the matter *sub judice*. A contract of J. Rose & Company, for gas ranges, bears date December 23, 1927. The goods were delivered to the apartment house April 4, 1928, and while it does not appear when they were affixed to the realty, the fact is they are affixed thereto. An instrument purporting to be a copy of such contract was filed

*Opinion.*

March 22, 1928. The contract describes the goods as: "Twenty-six (26) ranges as had #822". The instrument filed reads: "26 #822 A. B. gas ranges." Although the instrument filed is not a true copy of the contract, I regard the variance as unsubstantial. The Uniform Conditional Sales Act (P. L. 1919 p. 461) does not require or lay down any particular manner in which the chattel is to be described. 10

*Huber v. Clark*, 130 Atl. Rep. 562. A contract of Joseph Neidorff and Samuel Milnis, partners trading as Liberty Lighting Fixture Company, for lighting fixtures, bears date March 6, 1928, and was filed March 30, 1928. The goods were affixed to the realty in April 1928. The filed contract reads in part: "The seller may at their election regard the property as sold unconditionally and file a mechanic's lien, or pursue any other remedy for the collection of the within consideration." The receiver claims said vendors should be regarded as having elected to treat the transaction as an unconditional sale. I do not find anything in the proofs to warrant such claim. Screens were furnished to the Regna Construction Company, and affixed to the realty so as to become part thereof, but severable without material injury to the freehold, under a conditional sale contract reserving to the vendor title thereto until the purchase price was paid therefor. While said vendor has not made objection to the confirmation of the sale of the realty to which, as aforesaid, his goods are affixed, his rights must nevertheless be observed. It was conceded by counsel for the vendors and for the receiver, and I find the fact to be, that the goods which were the subject matter of the conditional sale contracts were affixed to the realty so as to become part thereof, but severable without material injury to the free- 20 30 40

*Opinion.*

hold. Counsel conceded also that the claims of the vendors are based upon section 7 of the Uniform Conditional Sales Act, *supra*, which for the purpose of clarity and convenience is hereinafter set forth in three parts:

10 If the goods are so affixed to realty, at the time of a conditional sale or subsequently as to become a part thereof and not to be severable wholly or in any portion without material injury to the freehold, the reservation of property as to any portion not so severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation.

20 If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof, but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office where a deed of the realty would be recorded or registered to affect such realty.

30 As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof, but to be severable without material injury to the freehold, unless the conditional sale contract, or a copy thereof, together with a state-  
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*Opinion.*

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

The aforesaid act alters the fixture rule—established as a general rule of law prior to its enactment, wherein the intent of the parties to a conditional sale contract was regarded as the paramount test as to whether chattels affixed to realty so as to become part thereof should remain personally or not. In *Harrington's Sons Co. v. Jersey City*, 78 N. J. L. 610, it is said that when the legislature frames a new and general rule covering an entire subject-matter, all earlier and different rules touching the same matter are to be discarded in favor of such later rule. In *General Motors Acceptance Corporation v. Smith*, 101 N. J. L. 164, the court, referring to the Uniform Conditional Sales Act, *supra*, said—"This act stands by itself".

The first part of section 7 of the aforesaid act is inapplicable to the matter *sub judice* because it applies to a case in which goods conditionally sold are *not* severable from the realty to which affixed, without material injury to the freehold. Under part two, if the seller's goods are severable without material injury to the freehold, the reservation of title is void after the goods are so affixed *only* as against *subsequent purchasers* of the realty \* \* \* unless the contract, or a copy thereof, \* \* \* shall be filed *before* such purchase \* \* \*. Under part three, the seller's reservation of title to goods is void *only* as against the "owner" of the realty \* \* \* unless the contract, or a copy thereof, \* \* \* shall be filed *before* the goods are affixed \* \* \*.

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*Opinion.*

In the case *sub judice* the vendors goods were conditionally sold directly to the Regna Construction Company the owner of the realty.

10 The receiver is not vested with title to the goods which are the subject-matter of the contracts aforesaid, as against the vendors, even though in one or more instances the vendors have not strictly complied with the requirements of section 7 aforesaid. He holds the property coming into his possession by the same right and title as the Regna Construction Company. Said company not having acquired title to the goods could not resist the claims of the vendors, and consequently the receiver cannot do so. The receiver claims he should be regarded as the "owner" of the realty within the purview of the third part of section 7 of the aforesaid act, and  
 20 relies upon section 68 of the General Corporation Act (Revision of 1896) which provides—"All the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto." He refers also to *Freeholders of Middlesex Co. v. State Bank at New Brunswick*, 29 N. J. Eq. 268, aff'd in 30 N. J. Eq. 311, wherein it was  
 30 held that on the appointment of a receiver of an insolvent corporation title to its property is divested by force of law, and such divestiture is perfect and absolute. I regard the statutory provision and cited case aforesaid as inapplicable to the matter *sub judice*, and the receiver's claim untenable as against the vendors. The third part of section 7 of the Uniform Conditional Sales Act, *supra*, ostensibly was intended to apply to the case of a  
 40 sale of goods to a *contractor* to be affixed to real

*Opinion.*

property owned by a person other than such contractor. The commissioners who framed said act, referring to the third part of section 7, said—"A separate sentence has also been inserted to cover the peculiar case of the sale of goods to a contractor to be affixed by him to the real property of another, in other words, the case of the validity of the conditional sale of a fixture as against the 'owner' of the realty." See *Uniform Laws Annotated*, 2 U. L. A. at page 13, and 2a U. L. A. page 106, section 70. See also, *Kohler v. Brasun*, 249 N. Y. 224, 164 N. E. 31, wherein the New York Court of Appeals considered the third sentence of section 67 of the New York Personal Property Law, which is substantially the same as the third part of section 7 of our Uniform Conditional Sales Act, *supra*. 10

The Consolidated Securities Corporation, as mortgagee, claim to be a *subsequent purchaser* of the aforesaid realty for value and without notice of the reserved title of the vendors to the goods conditionally sold, and that its mortgages are a lien upon the vendors said goods, as part of the realty. One of the mortgages of said corporation (\$30,000) is dated September 30, 1927, and was recorded October 1, 1927. The other (\$20,000) is dated November 29, 1927, and was recorded November 30, 1927. The Regna Construction Company executed a purchase-money mortgage for \$9,500. to Harry C. Leidinger, dated August 31, 1927, recorded on the same date. Said mortgage was postponed to the lien of the aforesaid mortgages of Consolidated Securities Corporation. "Purchaser", as defined in section 1 of our Uniform Conditional Sales Act, *supra*, includes *mortgagee*. Said mortgagee is not a *subsequent purchaser* of the realty of the Regna Construction Company as 20 30 40

*Opinion.*

10 against the reserved title of the above named vendors to the goods which are the subject-matter of the conditional sale contracts affixed to the realty so as to become part thereof but severable without material injury to the freehold. It appears that judgments based on mechanic's lien claims and otherwise, mechanic's lien claims for work done upon and materials furnished to the realty aforesaid, and general claims for a considerable sum of money owing by the Regna Construction Company, remain unsatisfied. Whatever rights and priorities may be claimed therefor, they are subordinate to the liens of the mortgagees aforesaid, and to the rights of the above named conditional sale vendors in and to the goods which are the subject-matter of the sale contracts.

20 If the sale's price aforesaid (\$96,500) is sufficient to meet the administration expenses herein, moneys due to the aforesaid conditional sale vendors, and satisfy the aforesaid mortgages of Consolidated Securities Corporation and Harry C. Leidinger, I will advise an order confirming the referee's sale; otherwise I will direct a resale of the property unless the purchasers are willing to make payment, in addition to their bid of \$96,500., the purchase price of the goods conditionally sold, as aforesaid, upon the  
30 vendors joining with the receiver in transferring to the purchasers title thereto.

Dated, Hoboken, N. J., May 18, 1929.

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## New Jersey Court of Errors and Appeals

ON APPEAL FROM CHANCERY.

Between

ELBERT M. CROWN, trading as  
Charles P. Walker Company,  
Complainant,

and

REGNA CONSTRUCTION COMPANY,  
Defendants.

On Appeal  
by Receiver.

### BRIEF FOR RECEIVER APPELLANT.

The appellant is Warren Dixon, Jr., Receiver, appointed by the Court of Chancery of Regna Construction Company, an insolvent corporation, and the appellees are Wasmuth-Endicott Co., Domestic Electric Co., and Liberty Lighting Fixture Co., conditional vendors of fixtures sold by them to the said insolvent corporation.

The appellant finds himself aggrieved by three certain orders made by the Chancellor on the advice of Vice-Chancellor Fallon, each of which overrule the appellant's report on the claims made by the respective appellees and direct appellant to pay the said appellees the sums due them on their conditional sales contracts, in preference of mortgages, mechanic's lien claimants and all other creditors, except administration expenses. Each conditional sale will be treated separately, since the situation of one varies from that of the other.

### The Facts.

On June 22, 1928, complainant filed a bill of complaint in the Court of Chancery against Regna Construction Company charging that the said corporation was insolvent and praying for the appointment of a receiver. On said date, Warren Dixon, Jr., the appellant, was appointed Custodial Receiver and an order was made, returnable June 28, 1928, to show cause why the receiver should not be continued and made permanent. On the return date of the order to show cause, it appearing that the corporation was insolvent, and no objection being made, the appellant was made permanent receiver with the usual powers conferred by the Corporation Act.

The principal asset of the corporation was the fee title to premises No. 101 Mt. Vernon Street (Township of Overpeck), Ridgefield Park, Bergen County, New Jersey, subject to liens hereinafter detailed, consisting of a plot of land approximately 80 feet in width and about 100 feet in depth, upon which was erected a 5-story, 32-family, brick apartment building, modernly equipped, among other things, with kitchenette cabinets conditionally sold by Wasmuth-Endicott Co., appellee; electrical frigidaire, conditionally sold by Domestic Electric Co., and electric lighting fixtures conditionally sold by Liberty Lighting Co., appellee.

On July 9, 1928, appellant, as receiver, filed a petition under Section 81 of the Corporation Act praying for leave to sell the said lands and premises, free and clear of all liens and encumbrances, except a certain first purchase money land mortgage for \$8,000, held by Enders, not brought into dispute. The liens, encumbrances and equities of the parties interested to attach to the proceeds of sale. On the filing of said petition, an order to show

cause was made, and on July 23, 1928, the appellant was authorized, empowered and directed to sell the said lands and premises together with the appurtenances thereto belonging, free and clear of all liens and encumbrances, except the aforesaid first mortgage; the purchase price of the property to be held by the said receiver, subject to the same liens and equities of all parties interested in the property sold as was the property before sale, all further equities of all persons whatsoever being reserved; subject, of course, to the confirmation by the court (Case, pp. 3-7).

The appellant, in accordance with the terms of the order of sale and pursuant to law, advertised the said premises for sale, and on September 19, 1928, at public sale, said property was sold by the receiver for the sum of \$96,500, subject to the aforesaid first purchase money mortgage and municipal liens and assessments; subject to confirmation by the court on October 1, 1928.

The appellees, conditional vendors, objected to the confirmation of the said sale. Appellees, Wasmuth-Endicott Co. and Domestic Electric Co., filed petitions praying for the return by the receiver of the goods conditionally sold by them, or payment in full from the proceeds of sale. Appellee, Liberty Lighting Fixture Company, filed a proof of claim, insisting upon payment as a preferred creditor. In compliance with the court's direction, testimony was taken by the appellant and reports were filed on each of the claims of appellees. Appellant reported that the appellees' reservations of title were void and waived, and that they were entitled to payment only as general creditors. From the Receiver's reports, appellees appealed. Arguments were had before Vice-Chancellor Fallon, whose opinion is found at pages 83 to 94 of the Case, reversing appellant's reports, and orders were entered in

each case directing appellant to pay appellees in full in preference to all mortgagees, mechanic's lien claimants and others, except administration expenses, from which orders this appeal is taken.

The price bid being the highest and best obtainable for the property, the Court confirmed the sale (Case, pp. 8, 9), and payment to the appellees is, therefore, to be made from the proceeds of sale.

This cause is of far-reaching importance in the law. The situations here involved are of first impression in this court. There is involved a construction of Section 7 of the Uniform Conditional Sale Act; the priorities, if any, of conditional vendors of fixtures over prior mortgages of record, or over subsequent mortgages of record, or over mechanic's lien claimants; and, the effect upon conditional vendors of fixtures for failing to comply with the provisions of the Uniform Conditional Sales Act.

For the Court's assistance, the following is a chronological table of the liens and encumbrances against the premises in question, insofar as the issues in the case are concerned, and the dates of the filing of the conditional sales contracts, viz.:

(1) Mortgage for \$9,500, held by Harry C. Leidinger, dated August 31, 1927, and recorded the same day in Bergen County Clerk's Office. This was a second purchase money land mortgage and was subordinated to the construction mortgages hereafter set out.

(2) Mortgage for \$30,000, held by Consolidated Securities Corporation, dated September 30, 1927, and recorded October 1, 1927. This was a construction or advance money mortgage.

(3) Conditional Sales Contract of Wasmuth-Endicott Co., dated November 9, 1927, and filed November 14, 1927.

(4) Mortgage for \$20,000, held by Consolidated Securities Corporation, dated November

29, 1927, and recorded November 30, 1927. This was an additional construction or advance money mortgage.

(5) In the interval, between foregoing and following items, various general judgments entered in New Jersey Supreme Court and Bergen County Circuit Court against insolvent corporation.

(6) Conditional Sales Contract of Liberty Lighting Fixture Company dated March 6, 1928, and filed March 30, 1928.

(7) In the interval between foregoing and following, numerous mechanic's lien claims filed against the premises.

(8) On June 22, 1928, bill of complaint filed and receiver appointed.

(9) On September 19, 1928, property sold by receiver.

(10) Conditional sales contract of Domestic Electric Company, dated October 28, 1927, filed September 28, 1928.

In addition to the foregoing there were numerous claims filed with the receiver by persons who performed work or furnished materials to the premises and who are entitled to mechanics' liens. There are also general creditors.

#### **Facts Re Claim of Wasmuth- Endicott Co.**

This appellee filed a petition claiming title to certain kitchenettes, cabinets, compacts and moulding sold to Regna Construction Company for the sum of \$2,840.00, upon condition that title was reserved in the vendor until payment of the purchase price. The contract is dated November 9, 1927, filed in the Bergen County Clerk's Office November 14, 1927, and the goods were affixed to the realty in the early

part of March, 1928. Testimony was taken by the receiver pursuant to direction of the court (Case, pp. 20 to 31), which established the following facts contained in receiver's report (Case, pp. 32 to 36). The kitchenettes were nailed to the walls and the cabinets were connected to pipes in the wall with a locknut. In these cabinets were installed frigidaire coils, sold by Domestic Electric Co. The receiver found that the goods sold by the Wasmuth-Endicott Co. were affixed to the realty, so as to become part thereof, but were severable without material injury to the freehold.

The Uniform Conditional Sales Act requires that the contract contain a statement signed by the seller briefly describing the realty. This contract contained no description of the realty. All the contract stated in this regard were shipping instructions, which were as follows: "Ship to Regna Construction Company, Mt. Vernon St., Ridgefield Park, N. J." (Case, p. 36A). The receiver reported that because of the non-compliance with the provisions of the statute, the reservation of title was void, and that the Wasmuth-Endicott Co. was entitled to payment only as a general creditor in the sum of \$2,840.00. The Court, in its opinion (Case, p. 88, line 28), agreed with the receiver that the recital did not comply with the statutory requisite, but that such non-compliance was inconsequential, and hence overruled the receiver's report and directed payment to Wasmuth-Endicott Co. in preference of the mortgagees and mechanic's lien claimants, as appears by the order (Case, pp. 39 to 41).

#### **Facts Re Claim of Domestic Electric Co.**

This appellee filed a petition claiming title to certain frigidaire cabinets, coils and compressors sold to Regna Construction Company for the sum

of \$2,690, upon condition that the title was reserved in the vendor until payment of the purchase price. The situation here must be treated as though the contract had not been filed, for though the contract was dated October 28, 1927, and the goods completely installed by May 12, 1928, and the receiver appointed herein on June 22, 1928, the said conditional sales contract was not filed in the Bergen County Clerk's Office until September 28, 1928. Stipulations of fact were entered into herein (Case, pp. 53 to 58), and the receiver reported (Case, pp. 59, 60) that the goods sold were affixed to the realty so as to become part of it, but severable without material injury to the freehold. The receiver reported that the reservation of title was void because of the failure of the vendor to file the contract in the Bergen County Clerk's Office before the goods were affixed as required by the Conditional Sales Act. On appeal from the receiver's report, the court ruled that the reservation of title was valid and directed payment to Domestic Electric Co. in preference of the mortgagees and mechanic's lien claimants as appears by the order (Case, pp. 61-63).

#### **Facts Re Claim of Liberty Lighting Fixture Co.**

This appellee did not claim the title to fixtures sold to Regna Construction Company, but filed a proof of claim with the receiver insisting upon payment from the proceeds of sale of the property in preference "to all mortgages on said premises, mechanic's lien creditors, judgment creditors and all other liens on said premises" (Case, pp. 68 to 73). It appears from the proof of claim that by contract dated March 6, 1928, and filed in the Bergen County Clerk's Office on March 30, 1928, this vendor conditionally sold to Regna Construction Company cer-

tain electrical fixtures for the sum of \$1,050.00, which were installed in the premises on or about April 14, 1928. The conditional sales contract as filed provided "that the same are to be installed and affixed to the realty so as to be severable without material injury to the freehold." It further provided (Case, p. 70, line 5), "The seller may at their election regard the property as sold unconditionally and file a mechanic's lien or pursue any other remedy for the collection of the within consideration." The receiver, in his report (Case, pp. 74-75), determined that since the Liberty Lighting Fixture Company did not demand the return of the goods nor claim title thereto but, on the contrary, insisted upon payment from the funds in the hands of the receiver as a preferred creditor, that the claimant had elected to treat the sale as an unconditional sale in accordance with the terms of its agreement, and that, therefore, the title to the goods passed to the corporation and to the receiver thereof; the said vendor being entitled to payment as a general creditor. The court, in its opinion, said that it did not find anything in the proof warranting the determination by the receiver that it had elected to treat the transaction as an unconditional sale, and overruled the receiver's report and directed payment to Liberty Lighting Fixture Co. in preference of the mortgagees and mechanic's lien claimants as appears by the order (Case, pp. 80 to 82).

## THE LAW.

### POINT ONE.

**The receiver was the owner of the property and as against him the reservations of title were void.**

Section 7 of the Uniform Conditional Sales Act, 2 Comp. Stat. 1911-1924 Supp., Secs. 183-93, pages 3130-3131, for the purpose of clarity is set forth in three parts and provides as follows:

“If the goods are so fixed to realty, at the time of a conditional sale or subsequently as to become a part thereof and not to be severable wholly or in any portion without material injury to the freehold, the reservation of property as to any portion not so severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation.

If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof, but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office where a deed of the realty would be recorded or registered to affect such realty.

As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof, but to be severable without material injury to the freehold, unless the conditional sale con-

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

The facts in each instance being that the goods were affixed to the realty so as to become part thereof, but to be severable without material injury to the freehold, the first portion of the aforementioned statute is inapplicable. As the court in its opinion (Case, p. 91) pointed out, the enactment by the legislature of the Uniform Conditional Sales Act alters the fixture rule established prior to its enactment. In *General Motors v. Smith*, 101 N. J. L. 154, Mr. Justice Katzenbach, speaking for this court, said: "This act stands by itself."

It is to be observed that the second portion of Section 7 protects only subsequent purchasers and as defined in Section 1 of the act includes "mortgagee".

The third part of the act provides that the reservation of title shall be void "as against the owner of realty \* \* \* unless the conditional sales contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty \* \* \* shall be filed before they are affixed, in the office where a deed would be recorded or registered to affect such realty".

Perforce of Section 68 of the Corporation Act, 2 Comp. Stat. 1644, the receiver of an insolvent corporation becomes the owner of the real and personal property of the insolvent corporation.

In *Freeholder Middlesex County v. State Bank*, 29 N. J. Eq. 268, affirmed by this court in 30 N. J. Eq. 311, it is said:

"Title is divested by force of law, and such divestiture is perfect and absolute."

The receiver is also the representative of the creditors and stockholders.

*Graham v. Spielmann*, 50 N. J. E. 120,  
affirmed p. 796;  
*Winpfheimer v. Perrine*, 67 N. J. E. 597;  
*Falenau v. Reliance*, 74 N. J. E. 325.

The creditors of Regna Construction Company consist of mortgagees, mechanic's lien claimants, judgment creditors and general creditors. Appellant contends that since the appellees failed to comply with the provisions of Section 7 of the aforementioned act the reservations of title are void as against him, for he is the owner of the realty and the third portion of Section 7 expressly provides that the reservation of title shall be void as against the owner of realty if conditional vendors fail to comply with the provisions thereof.

The portion of the statute herein involved in language which is clear, unambiguous, definite and certain states that the reservation of title shall be void against the owner of realty without limitation, restriction or qualification as to the particular owner of realty or character of owner of realty. The phraseology used is not susceptible of misinterpretation or construction other than as written. It obviously follows that the reservation of title is void as against *any owner of realty* in the event of non-compliance with the statute.

The Vice-Chancellor in his opinion (Case, bottom pp. 92-93) said:

"The third part of section 7 of the Uniform Conditional Sales Act, *supra*, ostensibly was intended to apply to the case of a sale of goods to a *contractor* to be affixed to real property owned by a person other than such contractor. The commissioners who framed said act, referring to the third part of section 7, said—'A

separate sentence has also been inserted to cover the peculiar case of the sale of goods to a contractor to be affixed by him to the real property of another, in other words, the case of the validity of the conditional sale of a fixture as against the "owner" of the realty."

It is respectfully submitted that the court erred in construing the portion of the statute under consideration. To hold as the court decided would require the writing into the statute after the words "owner of realty," "except when the owner of realty is the conditional vendee," or words to that effect. If such an exception was intended by our legislature, it should have so provided. The court can only construe the statute as written, in view of the unambiguity and clarity of its provisions. The statute can only be construed as clearly indicated, viz., that the claim of title is void as against the owner. Any remedy to alter this interpretation lies with the legislature. The comment of the commissioners who drafted the act is of no force for several reasons; first, if the statute as drafted had a peculiar significance the peculiarity should have been obviated at once in order to avoid misinterpretation; and, second, it is to be assumed that our legislature saw or knew of the comment of the commissioners and in spite of such knowledge made no exception or qualification to the character of owner of realty. Not having done so, it is reasonable to infer that no exception to "owner of realty" was intended by our legislators in the event of disregard of the provisions of the act.

It must be admitted that appellee Wasmuth-Endicott Co. did not comply with the requirements of the act, for its contract did not contain "a statement signed by the seller briefly describing the realty". All that the contract contained were shipping instructions. The Court found as a fact that

the statute was not complied with, but ruled that the non-compliance was inconsequential.

The policy of the law and the obvious intention of the legislature in requiring a contract to be filed "in the office where a deed of the realty would be recorded or registered to affect such realty" was that claims against property shall appear on record so that all may in this way be informed as to the alleged rights of the one affixing goods to realty. Hence, the requirement for a description of the realty.

Section 10 of the Act, 2 Comp. 1911-1924 Supp. Sec. 182-96, page 3131, requires the county clerk to keep a separate book in which he shall enter the names of the seller and buyer, the date of the contract, description of the goods, etc. We respectfully contend that that Section of the act refers and is intended to apply to sales of personal property having no connection with realty. As matters now stand the contract of one conditionally selling goods affixed to realty is filed in the same book as are contracts for the sale of automobiles, pianos, vacuum cleaners and other articles of personal property.

In the case of *Jackson v. Houghton Engineering Co.*, 7 Adv. Rep. 558; 145 Atl. 465, Mr. Justice Parker, speaking for the Supreme Court with relation to the very matter under consideration as I interpret it, decided that to be a claim against realty a conditional sales contract should be filed as a building contract. He said:

"It is plain that, when a paper is filed as a conditional sales contract, it will appear upon the registry of the country clerk kept in accordance with the provisions of this statute, and nowhere else; and, to hold that such a filing of such a paper is notice to laborers, subcontractors and materialmen that a building contract

has been filed in the office of the clerk, and that they must look to the building fund for payment of their claims, strikes us as out of question. It might just as well be said that, if a paper were filed in the county clerk's office as a bill of particulars in a pending law suit, it would operate as a filed building contract."

We respectfully contend that it was the intention of the legislature and it is a proper construction of the act to hold that one dealing in the sale of goods intended to become part of a building should file such contract with a description of the realty so as to apprise all interested in the property. Such a contract should either be filed as a building contract as declared by Mr. Justice Parker in *Jackson v. Houghton Engineering Co., supra*, or as a mortgage.

The appellee Wasmuth-Endicott Co. having filed a contract which contained no description of the realty, its reservation of title was void as against the receiver who was the owner of the realty. The receiver's report should have been confirmed. The Court of Chancery erred in reversing it.

We recognize that under ordinary circumstances the contract between the parties is valid even though unrecorded and that the receiver stands in the shoes of the purchaser. This rule has no application to the instant proposition because the statute provides that the reservation of title shall be void as against the owner of the realty. The receiver, as the owner of the realty of the insolvent corporation is, therefore, in a position by virtue of the statute, to resist the claim of the conditional vendor for non-compliance with the statute.

The facts involved in the claim of Domestic Electric Company are to be regarded as though the contract was unfiled. The contract was dated October 28, 1927, the goods completely installed by

May 12, 1928, the receiver appointed on June 22, 1928, the property sold by the receiver on September 19, 1928, and the conditional sales contract was not filed in the Bergen County Clerk's Office until September 28, 1928. The statute provides that as against the owner of the realty the reservation of the property in the goods shall be void unless the conditional sales contract *shall be filed before the goods are affixed*. The appellee, Domestic Electric Co., failed to comply with this provision of the statute and did not file its contract until more than a year after the goods were affixed.

The receiver reported (Case, pp. 59-60) that because of the non-compliance with the statute, the reservation of title was void as against the owner of the realty. The Vice-Chancellor reversed the receiver's ruling and directed the receiver to pay Domestic Electric Co. the money due it in preference of mortgagees and all of the creditors. If the decision and interpretation of the Court of Chancery is to be relied upon, claims against realty might frequently be found to exist against which no vigilance could guard, no diligence protect. Our records would be fallacious guides, and when we had gained all the information they could give, we would remain in doubt as to claims against realty. It is much better to leave those who have ventured to rely upon a disregard of our recording and filing acts to suffer than those who have resorted to the public records. The law cannot protect the claims of those who take no care of themselves. It requires no citation of authority that a chattel mortgagee who fails to set forth in the affidavit of consideration the necessary requisites, or fails to record, waives or forfeits the protection which the Chattel Mortgage Act confers upon those who comply with the law. It likewise requires no citation of authority that one entitled to a mechanic's lien claim who

fails to comply with the strict provisions of the statute in the filing and enforcement thereof, waives and forfeits any protection he otherwise would have. Why should a conditional sales vendor who disregards the requirements of the law be preferred over creditors of an insolvent corporation whose mortgages are of record and whose mechanic's lien claims are filed?

Appellees may rely upon the cases of *Depew v. Depew Co.*, decided by Vice-Chancellor Backes, 98 Eq. 461; *Koerner v. U. S. Waxed Co.*, 94 Eq. 655, decided by Vice-Chancellor Foster, which decided that an unfiled conditional bill of sale is enforceable against a receiver of an insolvent corporation in the absence of lien creditors. These cases concerned the sales of automobiles and come under the provisions of Section 5 of the Conditional Sales Act, which section relates purely to personal property. That section is for the benefit of those who acquire "by attachment or levy, a lien upon the goods." It gives no protection to any other person. Section 7 differs in that it expressly makes the reservation void against owner of real estate if the law is not complied with.

It may be pointed out that the receiver does not assert that the contracts are invalid, the claimants are entitled to be paid as general creditors, into which class they fall by reason of their failure to comply with the law. Only the reservation of title is void because of non-compliance with the act. It is respectfully submitted that the Court of Chancery erred in overruling the receiver's report in declaring the reservation of title of Wasmuth-Endicott Co. and Domestic Electric Co. void.

**POINT TWO.**

**The reservations of title of Wasmuth-Endicott Co. and Domestic Electric Co. are void as against the subsequent mortgage.**

The second portion of Section 7 provides that the reservation of property shall be void if the goods are affixed as against subsequent purchasers (mortgagees) of the realty for value and without notice of the conditional seller's title, unless the conditional sales contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase (mortgage) in the office where a deed of the realty would be recorded or registered to affect such realty.

One of the mortgagees of the property was Consolidated Securities Corporation which made two mortgage loans to the Regna Construction Company. These were construction loans, the moneys intended to be secured by them being advanced as the building progressed. Its first mortgage for \$30,000. was dated September 30, 1927, and recorded October 1, 1927. Its second mortgage was for \$20,000. dated November 29, 1927, and recorded November 30, 1927. Before the recording of the latter mortgage for \$20,000., on November 9, 1927, Wasmuth-Endicott Co. entered into its contract for the sale of its goods to Regna Construction Company, the insolvent corporation, which contract was filed November 14, 1927. This mortgage was, therefore, a subsequent purchaser within the meaning of the act. As we heretofore pointed out, this

conditional sales contract did not contain a statement signed by the seller briefly describing the realty. Hence, the reservation of title was void and the Court of Chancery erred in declaring otherwise.

The conditional sales contract of Domestic Electric Co. was dated November 28, 1927. This date was prior to the execution and recording of the mortgage held by Consolidated Securities Company dated November 29, 1927, and recorded November 30, 1927. The contract of Domestic Electric Co. was not filed until September 28, 1928, ten months after the recording of this mortgage of the Consolidated Securities Company. Assuredly, in this instance, too, this mortgagee was a subsequent purchaser within the meaning of the Uniform Conditional Sales Act. The contract of the Domestic Electric Company was not filed "before such purchase (mortgage) in the office where a deed of the realty would be recorded." We respectfully submit that the reservation of title of both Domestic Electric Co. and Wasmuth-Endicott Co. were void because of their failure to comply with the provisions of the statute referred to. If these reservations of title are void against the mortgagee, a creditor of the corporation, they are also void against the receiver. The reservations of title having been waived because of non-compliance with the statute the conditional vendors were not entitled to payment from the proceeds of sale in preference of the mortgagees and mechanic's lien claimants. The Court erred in so ruling.

The court below in its opinion (Case, p. 93) cited the case of *Koehler v. Brasum*, 249 N. Y. 224, 164 N. E. 31. We respectfully submit that that case squarely upholds the contention of appellant. In that case, one Slaughter contracted to sell a small hotel to one Wieliezki. The contract was assigned

by Wieliezki to others and eventually to one Jurewicz. While in possession Jurewicz purchased a power and light plant from plaintiff upon a conditional sales contract, according to the terms of which title was reserved until full payment. The court found that this plant was so affixed to the realty as to become part of it, but was severable without material injury to the freehold. The conditional sales contract was not filed. Jurewicz defaulted in payment for the light and power plant and also on his contract for the purchase of the real estate. Slaughter foreclosed on the land contract and defendant purchased the premises at the sale and the sheriff delivered a deed. Plaintiff and defendant each claimed title to this plant, one by virtue of the reservation in the conditional bill of sale; the other by virtue of the conveyance by the sheriff. The court quoted from Section 67 of its Personal Property Law, which is identical with the second portion of our Section 7 of the Uniform Sales Act and said that this section is designed for a double purpose. It protects buyers of real estate and equally operates as a protection to the conditional vendor. The court said:

“The statute informs the vendee of the land concerning his rights and duties. If he searches the offices where land titles are recorded, he may find documents describing the fixture, its conditional owner and the circumstances under which it happens to be attached to the realty. If no such documents have been placed on file, the statute assures him that he may confidently purchase the fixture either as part of the realty or as a chattel belonging to the vendor of the realty. If the seller of this personal property files a copy of the conditional bill of sale and the brief statement as directed by the statute, his rights, likewise, are fully guarded. Section 67 provides a fair method of protection to all.

The facts found by the trial court and affirmed by the appellate division bring this case within the operation of Section 67. The goods were affixed to the realty so as to become a part of it but were severable without material injury to the freehold; defendant purchased the realty for value and without notice of the conditional seller's title; neither was the conditional sales contract, or a copy nor a statement describing the realty filed in the office where deeds of realty would be recorded. Not a single element of fact is lacking to satisfy the statute and thus to render void the reservation of title in the conditional bill of sale."

The Court of Appeals reversed the Appellate Division, which gave a judgment in favor of plaintiff, and thereby affirmed the judgment of the trial court which denied plaintiff's title.

Applying the decision of *Koehler v. Brasum*, the reservations of title of the Wasmuth-Endicott Co. and Domestic Electric Co. are void because of the failure to comply with the statute. See also:

*Cohen v. 1166 Fulton Ave. Corp.*, 251 N. Y. 166 N. E. 792.

We respectfully submit that the Court of Chancery erred in overruling the receiver's report and in directing payment in preference to the mortgagees.

**POINT THREE.****The Liberty Lighting Fixture Company is not entitled to payment as a preferred creditor.**

As stated in the report of the receiver (Case, pp. 74-75), this claimant sold certain electrical fixtures under conditional sales contract dated March 6, 1928, and filed in the Bergen County Clerk's Office on March 30, 1928. The goods were affixed to the property on or about April 14, 1928. The conditional sales contract expressly provided as follows:

"the seller may at their election regard the property as sold unconditionally and file a mechanic's lien claim or pursue any other remedy for the collection of the within consideration" (Case, p. 70).

The claimant did not demand the return of the goods nor claim title thereto. No mechanic's lien claim was filed. In fact, the time for the filing thereof had long expired. On or about September 20, 1928, claimant merely filed a proof of claim with the receiver (Case, pp. 68-73), insisting upon payment from the proceeds of sale "in preference to all mortgages on the said premises, mechanic's lien creditors, judgment creditors and all other liens on the said premises." The receiver determined that Liberty Lighting Fixture Co. was not entitled to payment as a preferred creditor but as a general creditor. There is no authority in the law to the effect that a conditional sales vendor is a preferred creditor over mortgagees, mechanic's lien claimants and judgment creditors. The Corporation Act mentions who are preferred creditors of an insolvent corporation and conditional sales

vendors are not among them. Neither is there any statute which gives a conditional sales vendor a preferred claim over mortgagees, mechanic's lien claimants and judgment creditors. All that a conditional vendor is entitled to, as we understand the law, is to the return of the goods if the statute is complied with, or to enforce the seller's lien in accordance with the provisions of the Conditional Sales Act. Moreover, these claimants did not file a mechanic's lien claim, which they had a right to do under the authority of *Otis Elevator Co. v. Stafford*, 95 N. J. L. 79, which decided that the reservation of title under a valid conditional sales contract is not a waiver of a right to file a mechanic's lien.

We submit that had this claimant been vigilant, it might have filed a mechanic's lien claim or insisted upon the return of its goods. It did neither. The very terms of the conditional sales contract, hereinbefore quoted, provided that the seller could elect to treat the property as sold unconditionally and file a mechanic's lien or pursue any other remedy for the collection of the price. Claimant did not claim return of the goods nor file a mechanic's lien. It did, however, treat the sale as an unconditional sale. It elected to ask for a preference, which the receiver denied.

A contract of conditional sale does not create a lien on or interest in real property. It is not an encumbrance. The conditional sales statute could not and does not make it a lien or encumbrance. The statute merely provides for the reservation of title. There is no authority anywhere in our law which makes a conditional sales vendor a lienor or encumbrancer upon realty.

*East N. Y. Electric Co. v. Petmalund Realty Co.*, 243 N. Y. 477, 154 N. Y. 530.

The Court of Chancery overruled the receiver (Case, p. 89), saying:

"The receiver claims said vendors should be regarded as having elected to treat the transaction as an unconditional sale. I do not find anything in the proofs to warrant such claim."

We respectfully submit that the proof of claim filed by the claimant, and its failure to assert a reservation of title or to enforce a mechanic's lien, furnishes the proof. It is respectfully submitted that the court erred in overruling the receiver's report and in directing appellant to pay to Liberty Lighting Fixture Co. the balance of its contract in preference of mortgagees and mechanic's lien claimants.

#### **POINT FOUR.**

##### **Conditional sales vendors who do not comply with law should not be preferred over mechanic's lien claims**

The facts outlined disclose that numerous mechanic's lien claims have been filed against the property. Others entitled to mechanic's lien claims filed proofs thereof with the receiver. The proceeds of sale will be held by the receiver subject to the same equities as existed before the sale. These persons rendered and performed work and labor and furnished materials in the erection and construction of the building upon the land. The Mechanic's Lien Act gives persons in this class the right to payment from the proceeds of sale pro rata. All other things being equal, no priorities exist among mechanic's lien claimants. They are subject only to any prior valid existing encumbrances. One who sells goods

which are affixed to realty furnishes no more to the building than a laborer or one who sells brick, lumber or other materials which go to make a structure. One should not be preferred over the other. In any event, a conditional sales vendor who does not comply with the statute under which he seeks protection, should not be permitted to remove the goods nor should he be entitled to payment in preference of others. The corresponding right is not granted to a mechanic's lien claimant who should fail to proceed in the enforcement of his lien under the Mechanic's Lien Act. To say the least, such preferences are inequitable.

This situation presents itself. A conditional vendor sells refrigerators to an owner. Another individual performs the labor in affixing the refrigerators to the building. Under the ruling of the court below, even though the conditional vendor did not comply with the statute, he is entitled to payment from the proceeds of sale over the laborer who performed the work in the affixation thereof. We do not believe that this can be law. It certainly is not equity. In *Jackson v. Houghton Engineering Co.*, *supra*, Mr. Justice Parker decided that a conditional sales contract, which was not filed as a building contract, did not take priority over mechanic's liens. We believe that Justice Parker's opinion is to be followed.

We desire to direct the attention of the court in consideration of this problem that the law must keep abreast of the changes in social conditions. We must look at the facts as they are. Today, people live in apartments. Some of these, as we all know, are massive affairs, housing hundreds of families, and extend entire blocks. They are equipped with modern improvements. Science has revolutionized the art of living: electric lighting fixtures, electric ice boxes and cabinets are now common in

apartments. The tenants do not furnish these things. They are considered a part of the realty, and so treated by every owner and by the tenants. No tenant carries away any of these things when leaving. It would be startling to contend that these could be removed to the prejudice of the rights of prior and subsequent mortgagees or mechanic's lien claimants.

In view of all the circumstances it is respectfully submitted that the Court of Chancery erred in overruling the receiver's report. It is contended that the appellees Wasmuth-Endicott Co., Domestic Electric Co., and Liberty Lighting Fixture Co., waived their reservation of title. They are not entitled to payment in preference of mortgagees, mechanic's lien claimants and other creditors. The orders of the Court of Chancery, which so direct, should be reversed.

SAMUEL TARTALSKY,  
Of Counsel, with Warren Dixon,  
Jr., Receiver, Appellant.



8/89

**New Jersey Court of Errors and Appeals**

Between

ELBERT M. CROWN, trading as  
Charles P. Walker Co.,  
Complainant,

and

REGNA CONSTRUCTION COMPANY,  
Defendant.

On Appeal  
from  
Chancery  
Cases Nos.  
87, 88, 89.

**BRIEF OF WARREN DIXON JR.,  
RECEIVER-APPELLANT IN REPLY  
TO BRIEF OF DOMESTIC ELECTRIC  
CO. INC.**

This brief is in reply to Point One of the brief of Domestic Electric Co., appellee, which challenges the right of the appellant, as receiver, to prosecute this appeal. We direct the attention of the Court to the fact that this appeal was allowed by the Court of Chancery. The permission was given in open court and an order was made by the Chancellor on the advice of Vice Chancellor Fallon on July 1, 1929, in the presence of counsel for the respective parties hereto, including counsel for Domestic Electric Co., who now question the authority of the receiver to appeal.

In order to assist this Court in arriving at a decision of the important problems involved in this cause and also to save the expense of a voluminous record, appellant printed only those orders that are germane to the issues presented. Having no reason to anticipate an attack upon appellant's right to conduct this appeal, it being raised for the first

time in the brief of appellee, Domestic Electric Co., the order referred to does not appear in the State of Case. It is, however, set forth in full in the record in Case No. 117 now before this Court which may be argued with this case. The order appears at page 196 of that State of the Case. After reciting the appearances, it reads:

“It is Ordered that Warren Dixon, Jr., Receiver herein set aside from the proceeds of sale of the property of Regna Construction Co. the sum of \$7,279.30, which sum shall be kept in a separate fund to await the determination of the Court of Errors and Appeals on an appeal concerning the said conditional sales, and in the event of the decision by said Court of Errors and Appeals distribution of said fund shall be made in accordance therewith.”

The writer has been unable to find any case in this State wherein the precise question was raised. In the case of *Cook v. Anderson Food Co.*, 55 Atlantic 1042 (not officially reported) Vice Chancellor Grey granted the receiver of an insolvent corporation the right to appeal. Under the peculiar circumstances of that case, a large number of unsecured creditors who had a dispute with a creditor who was both a secured and unsecured creditor, solicited the receiver to appeal. The Court granted the permission, requiring those who requested the receiver to appeal to secure him against expense. The fact that in this case the Court of Chancery did not as a condition precedent require the creditors to pay the costs, does not in anywise detract from the power of the Court to authorize an appeal. The appellant is an officer of the Court of Chancery. What the Court orders or authorizes, he may perform.

## THE LAW.

**The claims of appellees are antagonistic to all of the creditors of the insolvent estate and the receiver has the right to appeal.**

The receiver represents the Court and the creditors. The powers conferred upon him by the Corporation Act are very broad. He may institute suits and may be sued only with permission of the Court. It is his duty to protect and preserve the assets of the estate for the benefit of all concerned. The appellees, who are conditional vendors, are not parties to the suit. They do not claim to be creditors of the estate. Their claims are decidedly antagonistic to all interested in the insolvent estate. They came into Court on petitions claiming the title to goods in the possession of the receiver. They asserted the right to remove those goods over the objection, claim or interest of each and every person interested in the insolvent estate. They urged the right to dismantle and take away the goods from the building of the insolvent corporation in which they were affixed, with absolute disregard of the rights of prior and subsequent mortgagees, mechanics lien claimants and general creditors. They insisted upon the exercise of the right of removal to the diminution and detriment of the entire estate which the receiver represented.

The very case of *Bosworth v. Terminal Railroad Association*, 174 U. S. 182; 43 L. Ed. 941, cited by appellee, expressly decides that in a situation such as here presented, the receiver may appeal. Mr. Justice Brewer, said:

“First. A receiver may defend, both in the Court appointing him and by appeal, the estate in his possession against all claims which

are antagonistic to the rights of both parties to the suit. For instance, he may thus contest a claim for taxes, because if valid they are superior to the rights of both parties; in a case like the present, superior to the rights of mortgagor and mortgagee."

So, in the case at bar, the receiver has the right to appeal for if the claims of the appellees are valid, they are superior to the rights of everyone interested in the insolvent estate.

In Volume 1 of Clark on Receivers (2nd Ed.), Sec. 605, page 825, the rule is found:

"Right of Receiver to Appeal.—A receiver's duty is to conserve the estate as a whole for its distribution by the Court among those who shall be adjudged to be entitled to receive it. \* \* \* He also has the right to defend the estate against claims asserted against it. This duty of the receiver carries with it the right and duty in case of doubtful claims to take the judgment of the Court of last resort, all subject to the approval of the appointing Court. \* \* \* It has been stated that the right and duty to carry a case up by a receiver should be limited in its exercise to those cases in which the estate as a whole is interested to enforce a right or to defend against a claim asserted.

In respect to many matters a receiver has no absolute right of appeal, while in respect to others his right to appeal may not be gainsaid. \* \* \* The receiver may with the approval of the appointing Court appeal from an order establishing a claim against the estate or denying a claim against the estate, because such an order is a final order and affects substantial rights.

\* \* \* \* \*

The question of whether or not an appeal should be prosecuted is one to be determined by the circumstances of the case and whether or not in all probability the assets of the estate would be increased or diminished by such

an appeal. If the appointing Court allows such an appeal such allowance is peculiarly in the discretion of the appointing Court and the appeal from an appointing Court's allowance of an appeal cannot be taken. \* \* \*

A receiver may in certain cases appeal from an order or judgment or decree made by the appointing Court to which he alone is answerable.

(a) Order Disbursing Assets Appealable by Receiver.—A receiver has a right to appeal from an order disbursing funds, which order is adverse to the parties to the suit, because the receiver represents the entire estate and he indirectly represents the interests of all persons interested in the estate. (Kavanaugh v. Bank of America, 239 Ill. 404, 406, 88 N. E. 171; Felton v. Ackerman, 61 Fed. 225; Lee v. Keppel & Co., 295 Fed. 23.) A receiver may defend, both in the Court appointing him and by appeal, the estate in his possession against all claims which are antagonistic to the rights of both parties to the suit. (Bosworth v. Terminal Ry. Ass'n, *supra.*)”

To the same effect, see, 3 Corpus Juris, page 653, Sec. 522, and note in L. R. A. 1915D, page 802.

The fact that Consolidated Securities Corporation, one of the mortgagees of the property of the insolvent corporation, took an appeal from the same orders from which the receiver appealed, does not impair or affect the right of this appellant to appeal. It was aggrieved by the orders mentioned and by two other orders and is prosecuting its appeal from its viewpoint, while the receiver is prosecuting his appeal for the benefit of the entire estate. It is quite possible that the reservations of title may be determined to be valid against said Consolidated Securities Corporation and invalid against receiver who represents not alone the mortgagee, but the entire estate which includes among others,

mechanics lien claimants. Furthermore, the receiver perfected his appeal on July 17th, 1929, while the Consolidated Securities Corporation did not file its notice of appeal until August 7, 1929. How could the receiver have known that the mortgagee would appeal? In the interests of justice and economy, and to relieve an already overburdened Court from unnecessary appeals, it is eminently proper for a receiver to appeal. For, thus, the Court has the matter presented by one appellant in one state of the case. Otherwise, every creditor aggrieved, and there are upwards of fifty, would be required to appeal. Moreover, so far as the expense is concerned, all creditors being affected, the costs would be borne by the entire estate and hence the burden upon each creditor will be comparatively small. The successful prosecution of this appeal by appellant will result in the increase of the entire estate to the benefit of all parties interested.

**It is respectfully submitted that the receiver had the right and performed his duty in presenting this matter to this court.**

SAMUEL TARTALSKY,  
Of Counsel with Receiver-Appellant.

THE STATE OF CALIFORNIA, COUNTY OF [illegible]

BEFORE ME, the undersigned authority, on this [illegible] day of [illegible] 19[illegible]

known to me to be the [illegible] of the [illegible]

and acknowledged to me that he executed the foregoing instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this [illegible] day of [illegible] 19[illegible]

Notary Public for the State of California

[illegible]

[illegible]

[illegible]

[illegible]

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[illegible]

[illegible]

[illegible]

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8-89.

New Jersey Court of Errors and Appeals.

On Appeal of Receiver from Court of Chancery.

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BETWEEN

ELBERT M. CROWN, trading as  
Charles P. Walker Company,  
*Complainant,*

—and—

REGNA CONSTRUCTION COMPANY,  
*Defendant.*

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**BRIEF OF RESPONDENT, DOMESTIC  
ELECTRIC CO., INC.**

GREEN & GREEN, Counsel for Respondent; Harry  
Green, of Counsel.

**POINT I.**

**Receiver-appellant should not prosecute an appeal from an order made concerning relative rights of the parties to the suit by the Court of his appointment.**

This is an appeal by a Receiver appointed by the Chancellor from three orders made by the Court of Chancery concerning conditional sale contracts held by respondents, covering certain fixtures, one of the respondents being the Domestic Electric Co., Inc. (herein called "Conditional Seller"). Said orders overrule and reverse determinations made by the Receiver.

At the very outset a question presents itself why a receiver takes an appeal from an order of the Court of his appointment. This is unusual. In *Seidler v. Branford Restaurant*, 97 N. J. Eq. 531, this Court, speaking by Mr. Justice Lloyd, stated that:

“The Receiver represents the Court and acts for the best interest of all concerned.”

The Court said further (p. 535) that:

“Receivers are but the arms of Chancery, appointed to preserve the property of corporations and similar entities for the benefit of all parties in interest, and in cases of insolvency to administer the estate under the direction of the Court. In theory of law, at least, a receiver has no part in his selections, but stands as the representative of the court, impartially between the parties.”

It appears to be the general rule that a receiver has not the right to appeal from an order determining the relative rights of the parties to a suit. This is clearly enunciated in an opinion of the United States Supreme Court, by Mr. Justice Brewer, in *Bosworth v. Terminal Railroad Association of St. Louis*, 174 U. S. 182, 43 L. Ed. 941, 19 Sup. Rep. 625:

“It is often said that he (a receiver) is merely the hand of the court which has appointed him; and for certain purposes that is not an inapt expression. He is charged with the duty of carrying into execution the orders of that court, but he is also a custodian of property, and has by virtue of such custody certain obligations to the parties owning or interested therein. First. A receiver may defend, both in the court appointing him and by appeal, the estate

in his possession against all claims which are antagonistic to the rights of both parties to the suit. \* \* \* Second. He may likewise defend the estate against all claims which are antagonistic to the rights of either party to the suit, subject to the limitation that he may not in such defense question any order or decree of the court distributing burdens or apportioning rights between the parties to the suit or any order or decree resting upon the discretion of the court appointing him. \* \* \* In appointing a receiver the court has a right within certain recognized limits, to prescribe the terms and conditions of the appointment. \* \* \* Now these conditions, whatever they may be, are beyond the challenge of the receiver. He may not say directly or indirectly, 'I accept the appointment; I take charge of the property, but I repudiate the terms and conditions imposed on the receivership'. \* \* \* Third. *Neither can he question any subsequent order or decree of the court distributing the estate in his hands between the parties to the suit. It is nothing to him whether all of the property is given to the mortgagee or all returned to the mortgagor. He is to stand indifferent between the parties, and may not be heard either in the court which appointed him, or in the appellate court, as to the rightfulness of any order which is a mere order of distribution between the parties.*"

Also see

*Bosworth v. Terminal R. Asso., supra;*  
*Grier v. Union Nat. L. Ins. Co.,* 217  
 Fed. 293;  
*State ex rel. Wilkerson v. Cobbs,* 182  
 Ala. 331, 62 So. 729;

*Knabe v. Johnson*, 107 Md. 616, 69 Atl. 420;

*Esmeralda County v. Wildes*, 36 Nev. 526, 137 Pac. 400;

*Strauss v. Carolina Interstate Bldg. & L. Asso.*, 118 N. C. 556, 24 S. E. 116;

*Battery Park Bank v. Western Carolina Bank*, 127 N. C. 432, 37 S. E. 461;

*State ex rel. Miller v. People's State Bank*, 22 N. D. 583, 135 N. W. 196.

“Under a statute giving the right of appeal to any party ‘aggrieved’, it was held in *Esmeralda County v. Wildes*, 36 Nev. 526, 137 Pac. 400, that a receiver had no right to appeal, even with the permission of the court rendering it, from a decree that a sum deposited in a bank for which the receiver was appointed was a special deposit, and that it be paid by the receiver to the petitioner as a preference, the receiver admitting that the sum had been deposited with the bank, but denying that it was a special deposit. The ground of the decision is that in cases of this character, where the debt is admitted, but the only contest is whether the claimant is entitled to a preference, the receiver does not have sufficient interest to appeal, but should stand as neutral between the parties, and that the creditors only are the aggrieved parties entitled to appeal.”

The Appellate Court may on its own motion dismiss an appeal by a receiver in which he has no interest and no right of appeal (*Chicago Title & T. Co. v. Caldwell*, 58 Ill. App. 219; *Foreman v. Defrees*, 120 Ill. App. 486) :

“In *Chicago Title & T. Co. v. Caldwell*, *supra*, the court said: ‘This point has not

been made by counsel for the appellee, but we cannot sanction, even by silence, the idea that a receiver may set up in opposition to the court, his theories of how the assets shall be disposed of.'"

What difference does it make to the Receiver whether the mortgagee or the conditional sellers get certain moneys? He will not add to the quantum of the estate if the orders are reversed, but instead of the moneys going to one group of persons it may go to another. As a matter of fact, he is burdening the estate by the costs and expense of this appeal, including the cost of printing state of case and brief, engaging counsel to prosecute appeal, &c. So that even if we concede that Receiver will be successful, he is diminishing the estate by his efforts, by projecting himself into a quarrel between the parties which is no concern of his.

For this reason, if for no other, your Honorable Court should dismiss the appeal.

Furthermore, the Receiver is not acting impartially between the parties to this litigation, which is apparent by the remarkable statement which he makes on page 25 of his brief when he states "it would be startling to contend that these (referring to equipment which are the subject matter of conditional sale contracts) could be removed to the prejudice of rights of prior and subsequent mortgagees and mechanic's lien claimants". What right has the Receiver—this impartial official—to espouse the rights of mortgagees and mechanic's lien claimants as against conditional sale claimants? It is unfair. He should leave them fight their own battle, as the mortgagee is already doing in this case. (The mortgagee, Consolidated Securities Corporation, has also taken an appeal

in this case from the same orders, which appeal is set down for argument at this term.) For this additional reason, as a matter of public policy, and to preserve the impartiality of a receiver, this appeal should be dismissed.

## POINT II.

**This respondent's reservation of property in "Frigidaire" equipment under conditional sale contract was valid against the Receiver who was the Receiver of the corporation which owned the real estate at the time of his appointment.**

Under Point I, the Receiver contends that he was the "owner" of the real estate and as against him the reservation of title was void, because the contract or a copy thereof was not filed in the Office of the Clerk of the County where the realty was situate before the said goods were affixed, under Section 7 of the Uniform Conditional Sales Act, P. L. 1919, page 463, 2 Cum. Supp. to Compiled Statutes, page 3130 (Appellant's Brief, p. 7).

There is no dispute concerning the facts, the same being stipulated in writings (Case, pp. 53-58).

The goods were sold by Conditional Seller to defendant corporation on October 28th, 1927, at which time the conditional sale contract was entered into.

The goods were sold as personalty but the same were so affixed to the realty as to become part thereof, *but to be severable without material injury to the freehold* (Case, p. 54, par. 5, ll. 13-16).

The amount of the contract is \$2,690, and nothing was paid.

A copy of the conditional sale contract was filed in the Bergen County Clerk's Office on September 28th, 1928, after the appointment of the Receiver and after the goods were delivered.

The Receiver contends that Conditional Seller's reservation of title is void because the contract or a copy thereof was not filed in the County Clerk's Office before the goods were so affixed to the realty.

It is agreed that this situation is governed by Section 7 of the Uniform Conditional Sales Act, *supra*, because the goods were so affixed to the realty as to become part thereof, but to be severable without material injury to the freehold (*Olson v. Voorhees*, U. S. C. C. A., Third Circuit (N. J.), 292 Fed. 113).

Section 7, for convenience, may be divided in three parts, each part consisting of a sentence. We are not concerned with the first sentence or part, because that only applies to a situation where the goods are not severable without material injury to the freehold.

We contend that the second sentence or part governs and controls our situation. The Receiver, however, contends that the third and last sentence or part is the controlling one.

It must be borne in mind that the defendant corporation in this case was the owner of the realty, and that the Conditional Seller's conditional sale contract was made with said defendant corporation, which was such owner.

If Conditional Seller's contract had been made with a contractor, and not the owner of the realty, then the third sentence or part would be applicable, because that sentence or part only contemplates the situation where the conditional sale

contract is entered into between the seller and a contractor, and not with the owner. A comparison of the three sentences or parts indicates this. This is also borne out by the statement of the Uniform Law Commissioners who drafted the act, and who prepared a note on each section. Here is what the Commissioners said about this last sentence:

“\* \* \* A separate sentence has also been inserted to cover the peculiar case of the sale of goods to a contractor to be affixed by him to the real property of another, in other words, the case of the validity of the conditional sale of a fixture as against the ‘owner’ of the realty.”

Even without the benefit of this explanatory note, it is apparent that this is the meaning of the section, because under the first sentence or part the reservation of property is void only “as against any person who has not expressly assented to the reservation”, even though the goods are not severable without material injury to the freehold. In other words, the contract is always good and valid between the immediate parties thereto, which is the situation in this case.

And incidentally, this is the position always taken by our courts.

We believe that the Receiver concedes that if we are governed by the second sentence or part, and not by the third sentence or part, that our reservation of property is valid, because “the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the Conditional Seller’s title”, unless contract or copy thereof is filed, etc. An equity receiver is, of course, not a subsequent purchaser for value and without notice.

Under Section 4 of the Uniform Conditional Sales Act, Chapter 210, Laws of 1919, page 462, "Every provision in a conditional sale reserving property in the seller after possession of the goods is delivered to the buyer, shall be valid as to all persons, except as hereinafter otherwise provided".

Section 5 provides that the reservation shall be void as to any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods, or acquires by attachment or levy, a lien upon them before the contract is filed.

In the case of goods affixed to realty, and which are severable without material injury to the freehold, Section 7 is the pertinent provision. The same provides that the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the Conditional Seller's title, unless the contract or a copy thereof is filed. Section 1 of the act provides that "purchaser" includes mortgagee, and pledgee.

Now let us see whether the Receiver appointed in this equity proceeding comes within any of these classes.

He is not a purchaser without notice; he is not a creditor of the defendant corporation who, without notice, acquired by attachment or levy a lien upon the goods; he is not a subsequent purchaser, mortgagee or pledgee, for value and without notice of the Conditional Seller's title.

A receiver in equity is not a creditor. His status cannot be likened to that of a trustee in bankruptcy at the present time. Prior to 1910, even a trustee in bankruptcy acquired no superior

rights against an unfiled conditional sale contract. *York Mfg. Co. v. Cassell*, 201 U. S. 344, 26 S. Ct. 481, 50 L. Ed. 782.) However, in 1910, Congress amended Section 47-A-2 of the National Bankruptcy Act so as to give a trustee in bankruptcy the status of a judgment creditor with a levy. However, there is no legislation in this State which confers this status upon an equity receiver.

There are numerous decisions by our courts and also other courts, that an unfiled conditional sale contract is valid as against an equity receiver. There is the case of *Walter E. Koerner v. U. S. Waxed & Coated Paper Co.*, 94 N. J. Eq. 655, by Vice-Chancellor Foster; *Depew v. C. W. Depew & Co.*, 98 N. J. Eq. 461, by Vice-Chancellor Backes, in which Vice-Chancellor Backes stated:

“the conditional sale was good against the company without the filing of a copy of the contract. It is void, if not filed, only as against purchasers without notice and creditors who acquire liens ‘by attachment or levy’. 2 Comp. Stat., page 3130. The receiver stands in the shoes of the company. As the company could not attack the contract, he can not. *Koerner v. U. S. Waxed & Coated Paper Co.*, 94 N. J. Eq. 655; *Falaenau v. Reliance Steel Foundry Co.*, 74 N. J. Eq. 325; *Smith v. Hotel Ritz Co.*, 74 N. J. Eq. 616.

The receiver will be ordered to hand over the property.”

In *Mlodzik v. Ackerman Oil Co.*, Supreme Court of Wisconsin, 210 N. W. 694, Chief Justice Vinje construed the Conditional Sales Act of that State, which is the same as our Uniform Act, and relying upon the *Koerner* and *Depew* cases he held that a receiver's taking possession of assets of a

corporation was not a "levy" within the meaning of the Uniform Conditional Sales Act. In referring to said decisions he stated that the rulings of the New Jersey courts are both logical and equitable.

In *Quinn v. Bancroft Jones Corporation et al.*, 18 F. (2) 727, the U. S. C. C. A., Second Circuit, which embraces the State of New York, where the Uniform Conditional Sales Act adopted in this State exists, held that an unfiled conditional sale contract is valid against receiver. This decision contains a host of authorities and cites the New Jersey cases herein mentioned.

We also have a very illuminating decision by our Supreme Court in this State, written by Justice Minturn, in *Commercial Credit Corporation v. Vineis*, 98 N. J. L. 376, in which the Court held that one must be a creditor who has acquired "by attachment or levy a lien" upon the property and that a landlord by virtue of his statutory lien and distress was not such a creditor. The Supreme Court of Wisconsin in the case above relied upon Justice Minturn's reasoning and construction of the phrase "by attachment or levy".

We therefore contend that the Receiver is in no position to attack our failure to file contract, because he does not fall within the classes comprehended by the Uniform Conditional Sales Act.

In *Kanawha National Bank et al. v. Blue Ridge Co. Corporation et al.*, 148 S. E. 383, the Supreme Court of Appeals of West Virginia (West Virginia being a state which adopted the Uniform Conditional Sales Act), in an opinion handed down on May 21st, 1929, held that in order that

machinery or equipment used in connection with real estate shall become a fixture, it must be shown that the machinery or equipment was not only attached to the real estate and adapted to the use being made of the part of the real estate to which it is attached, but also that the intention of the parties placing it there was to make it a permanent part of the freehold. Consequently, where the evidence showed that it was not intended that the equipment become part of the freehold, the seller's reservation of title was good against the Receiver, although the contract of conditional sale, when recorded, did not contain a statement briefly describing the realty and stating that the machinery was to be affixed thereto, as required by Section 7 of the Uniform Conditional Sales Act. (This is the same section as our act.)

Receiver cites the case of *Jackson v. Houghton Engineering Co.*, 7 Adv. Rep. 558, 145 Atl. 465, and misconstrues that opinion to hold that a conditional sales contract to be a claim against realty must be filed as a building contract. It holds nothing of the kind. It decides that a conditional sale contract filed by the County Clerk as such is not to be considered "filed" by the Clerk as a building contract so as to protect the owner of the real estate against mechanics' liens.

Furthermore, Mr. Justice Parker said "that while in one sense the contract is a contract for additions to a building, in another sense it is a contract for the conditional sale of a sprinkling system, *which normally would become part of a building, but which remains subject to seizure and removal.*" (Italics ours.) His Honor undoubtedly had in mind Section 7 of the Uniform Conditional Sales Act in connection therewith.

We also desire to state that a conditional sale contract was valid at common law, without any filing or recording, and that this is restated in Section 4 of the Uniform Conditional Sales Act, except as to persons otherwise designated in the act. (*Cole v. Berry*, 42 N. J. L. 308.) And the Receiver is not one of these persons, even though he contends that the situation is governed by the third sentence or part of Section 7. In the first place, we say that the Receiver's contention is specious and that the same would completely nullify the first sentence or part. It is a well known rule of statutory construction that where the Court can so interpret a statute as to uphold each and every part thereof, it will do so and not give a construction to one part which will nullify the other, where they can be so construed as to be consistent. As we also called to your Honors' attention the Uniform Law Commissioners in their statement, set forth that they inserted the third sentence or part to take care of the peculiar situation existing where the goods are sold, not to the owner of the building, but to a contractor. We appreciate that this statement is not binding on your Honors' construction of the section, but it should certainly receive great weight and consideration, coming as it does from the great lawyers who drafted the act and their expressed intention should be strongly persuasive. Even a cursory and superficial reading of Section 7 will disclose that as between the parties to the conditional sale contract, the goods may be removed whether they are severable either with or without material injury and whether the contract is filed or not filed in accordance with the terms of said section.

Receiver contends that Section 10 of the act (P. L. 1919, p. 464), which provides that the filing

officer shall file contract, etc., in his office, keep a separate book, and index such book under the names of both seller and buyer, does not apply to sales of goods comprehended within Section 7. He contends that such conditional sale contract should be filed either as a building contract or as a mortgage. Section 7 provides that the contract shall be filed in the office where a deed would be recorded or registered to affect realty. It says nothing about filing the contract as a building contract or about recording the contract as a mortgage. This seems to be a conception of the Receiver as to what he thinks the Legislature should have enacted to carry out his idea. It will be noted in reading the Uniform Conditional Sales Act that it covers three classes of goods—the first class, or ordinary goods (embraced in Sections 5 and 6); the second class, or goods so affixed to realty as to become a part thereof, etc. (embraced in Section 7); and the third class, or railroad equipment (embraced in Section 8). To show that contracts covering goods comprehended in Section 7 are to be filed and indexed in the books provided in Section 10, attention is called in Sections 8 and 10 that contracts governing railroad equipment are to be filed in a different office, and are to be treated differently by the Secretary of State than other contracts. Nowhere can support be found for the position contended by Receiver that such contracts affecting realty should be handled as he contends. Besides, if the Receiver's contention that Section 10 does not apply to contracts embraced within Section 7 is correct, would we not have the same situation as prevails with regard to building contracts referred to by Mr. Justice Parker in *Jackson v. Houghton Engineering Co.*, *supra*, where he states that the Mechanic's Lien Law seems to contain no definite provision

specifying just what the County Clerk is to do with respect to recording and indexing of a building contract, when filed as such, and that even though the Clerk may keep an index, this index is no part of the statutory scheme, and "that the question is whether the contract was filed, and not whether it was properly indexed". Furthermore, it is immaterial in this case whether the conditional sale contracts were filed so far as the Receiver is concerned, as already set forth herein.

The Receiver tries to liken the situation of the conditional sellers to that of chattel mortgagees. There is no similarity between them. A chattel mortgage has always been regarded with suspicion, and with a presumption of fraud, but a conditional sale contract since its very origin has never been so regarded, and has always been upheld, although modern statutes provide for their filing as against certain persons. The Receiver conceding that the situation is governed by Section 7, how can he with any consistency argue that mechanic's lien claimants are comprehended? As already argued, only *subsequent* purchasers for value and without notice and similar mortgagees and pledgees can attack the reservation of property, and even the mortgagee for whom the Receiver is so solicitous is not a subsequent mortgagee, but a prior mortgagee.

### POINT III.

**The reservation of title is valid as against the mortgagee.**

The Receiver states in Point I as follows: "The reservations of title \* \* \* are void as against the

*subsequent mortgage*". (Italics ours.) The Receiver misstates the fact when he states that the mortgage is subsequent. He tries to create this impression by referring to the date of the contract of this respondent, when in fact the date of the contract is immaterial, because the Act says that "the reservation of property shall be void *after the goods are so affixed* as against subsequent purchasers", etc.

It is clearly apparent that the mortgagee has no status to attack us, because they did not become mortgagees after the goods were affixed on May 12th, 1928, but were *prior* mortgagees, their mortgages having been executed in October and November, 1927.

The theory upon which a mortgagee can attack a conditional sale contract is on the doctrine of estoppel; that is, that the mortgagee observed that certain fixtures were in a building and that before he advanced the consideration moneys of his mortgage he relied upon the fact that the fixtures belonged to the building and that there was no conditional sale contract against the same. This is borne out by a number of cases in this State. In *Williamson v. N. J. Southern R. R. Co.*, 29 N. J. Eq. 311, at page 336, Mr. Justice Depue said, "Purchasers or mortgagees, in order to take advantage of the failure of another mortgagee of chattels to comply with the statutes, must be subsequent purchasers or mortgagees, taking their title under the mortgagor in good faith." Of course, this language was used in connection with the Chattel Mortgage Act, but the language of Section 7 is the same.

Even the former Conditional Sales Act provided that the reservation "shall be absolutely

void as against \* \* \* subsequent purchasers and mortgagees in good faith". The mortgages in this case were executed months before the "Frigid-aire" equipment was delivered or furnished in the building, and said mortgagee is a *prior* mortgagee and *not a subsequent* mortgagee for value and without notice, and therefore cannot take advantage of any failure to record or file, under the new Act or even under the old Act. (*General Electric Co. v. Transit Equipment Co.*, 57 N. J. Eq. 460, p. 469; *Falienau v. Reliance Steel Co.*, 74 N. J. Eq. 325, 328; *Oil City Boiler Works v. N. J. Water, etc. Co.*, 81 N. J. L. 491, 492, 496; *Blanchard v. Eureka Planing Mill Co.*, 58 Or. 37, 113 Pac. 55, 37 L. R. A. (N. S.) 133.)

The Receiver cites the case of *Koehler v. Brasum*, 249 N. Y. 224, 164 N. E. 31, and contends that that case squarely upholds his contention. Now let us see if it does! In this case, a purchaser of certain hotel property on the foreclosure of a land contract was held entitled to an electric light plant which had been purchased and placed on the premises under a conditional sale agreement. The seller of the electric light plant failed to comply with the statute requiring the filing of the contract, and the Court therefore held that the seller was not protected against the third party, who purchased without actual or constructive notice of reservation of title. The New York Court of Appeals, in a subsequent case, *Madfes v. Beverley Development Corporation* (May 28th, 1929), 251 N. Y. 12, 166 N. E. 787, distinguished the *Koehler* case. In the *Madfes* case, gas ranges were sold on conditional sale to the owner of an apartment house, who, subsequent to their installation, executed a mortgage upon the premises. The mortgagee had no knowl-

edge of the contract of conditional sale. After the execution and delivery of the mortgage, and subsequent to its recordation, the conditional sale contract was filed.

The question was, whether in an action to foreclose the mortgage, the gas ranges were subject to the lien thereof, and would, therefore, pass to the purchaser at the foreclosure sale.

The Court was of the opinion that it was the legislative intent of Section 67 of the Personal Property Law (which is the same as Section 7 of our Uniform Conditional Sales Act, New York having adopted the Uniform Conditional Sales Act in 1922), that the condition reserving title in the seller should not have the effect of converting into real estate that which, irrespective of an agreement to that end, is intrinsically personalty. In order that property become real estate so that the statutory provision take effect, it must be property which after annexation, except which, agreement to the contrary, would have become part and parcel of the realty. The judgment was modified to provide that the gas ranges are property of seller, and not subject to lien of mortgage on the realty.

It is apparent, therefore, that the *Koehler* case has no applicability to this mortgage situation, but that the *Madfes* case is on all fours with the case at bar from the mortgage standpoint, and is from a sister State which has the same Act as we have, and which, in view of the legislative pronouncement contained in Section 30 of our Act, should receive great weight and consideration by this Court, it being the intention of the Uniform Conditional Sales Act, as expressed in said Section 30, to make uniform the law in this State and in other States which enact the same.

The Receiver also cites *Cohen v. 1165 Fulton Ave. Corp.*, 222 App. Div. 378, 226 N. Y. S. 209. This case applies to a *subsequent* mortgagee.

With regard to Point III of appellant's brief, this respondent is not considered under said Point.

With regard to Point IV of appellant's brief that conditional sale vendors should not be preferred over mechanic's lien claims, we come back to our first contention that this is no concern of the Receiver.

Furthermore, the conditional sellers are not being preferred over anyone. They have acquiesced and consented in the sale of their goods and they are merely being paid for their goods, in which no one else has any interest.

There is nothing inequitable about such a situation, as asserted by the Receiver. It is the only fair thing that can be done. It meets the principles laid down by this Court in the leading case of *Campbell v. Roddy*, 44 N. J. Eq. 244, and *General Electric Co. v. Transit Equipment Co.*, 57 N. J. Eq., at page 472, where the Court said: "Here we encounter the elements of the hardship and injustice of taking one man's property without his consent, to advance the pecuniary interest of another." And in *Hudson Savings Institution v. Curran Paper Mills Co.*, 58 N. J. Eq., at page 70, the Court said: "In either case complainant is met by a strong indisposition and manifested at all times by the courts of this as well as other States, to so construe the laws to permit one man's property to be taken to pay another man's debt."

The Receiver then proceeds (Appellant's Brief, p. 24) to set up a new economic theory based upon "changes in social conditions", that because today

people live in apartment houses which are equipped with modern improvements, such as electric lighting fixtures, electric iceboxes and cabinets, &c., that because the tenants do not furnish the same and that because they are treated as part of realty by every owner and by the tenants, then "it would be startling to contend that these could be removed to the prejudice of the rights of prior and subsequent mortgagees or mechanic's lien claimant". It is difficult to follow this theory. The mere statement repudiates it because why should it be startling that these articles should be removed "to the prejudice" of mortgagees or mechanic's lien claimants. It completely overlooks the fact that science has been able to revolutionize the art of living (using the Receiver's language), because installment selling, that is, conditional sale contracts, have made it possible for science so to do because under such instruments science was able to finance itself. This is a well known fact adverted to by the late Mr. Justice Katzenbach in *General Motors Acceptance Corporation v. Smith*, 101 N. J. L. 154, with regard to motor vehicles when he stated that "this method of sale and purchase (under conditional sale contracts) 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 sale agreements, finance or acceptance corporations, of which the plaintiff in this case is one. The method of purchase and sale under a conditional sale agreement has been in use for many years." He also refers to it as the modern method of entering into an agreement to buy and sell. Similar selling and financing has also helped to popularize frigidaire equipment, radio sets, &c., and any "social change" which

would destroy this means of modern selling and buying would be detrimental to the manufacturers and distributors and the science which have made it possible for these modern necessities to develop. Millions and millions of dollars have been invested in and by large finance companies in these various types of equipment and the manufacturer and distributor have received the necessary financial aid to deliver their product to the public and it cannot be gainsaid that this has contributed very much to the era of prosperity which we have enjoyed in this country during the late decade, during which period the conditional sale agreement has come into such popular usage. Therefore, paraphrasing the Receiver's statement, it would be "startling" to nullify and end conditional sale contracts on these forms of equipment.

It is respectfully submitted that in the first instance this Receiver should not have taken this appeal, in the second instance it is no concern of the Receiver as to how the relative rights of the parties were determined by the Chancellor, in the third instance, on the merits the orders made by the Chancellor (advised by Vice-Chancellor Fallon) were properly made in the interest of equity and justice, and that neither the mortgagees or mechanic's lien claimants are effected and prejudiced, and the Receiver is not an aggrieved party and therefore the orders made by the Court of Chancery should be affirmed with costs of this respondent.

GREEN & GREEN,  
*Counsel for Respondent, Domestic  
Electric Co., Inc.*

HARRY GREEN,  
*Of Counsel.*



8/89

## New Jersey Court of Errors and Appeals

Between

ELBERT M. CROWN, trading as  
CHARLES P. WALKER COM-  
PANY,

*Complainant,*

and

REGNA CONSTRUCTION COMPANY,  
*Defendant.*

On Appeal from  
Chancery.

On Appeal by  
Receiver.

### BRIEF FOR WASMUTH-ENDICOTT CO., APPELLEE.

#### Statement.

This appeal is taken by the Receiver of Regna Construction Company, an insolvent corporation, appointed under the provisions of the Corporation Act, from three orders of the Court of Chancery respecting the determination of claims made by conditional vendors. The orders in each case are in the same form. The only one in which Wasmuth-Endicott Co. is interested is the one respecting its conditional bill of sale.

#### Facts.

The facts in the main are correctly stated in the brief of appellant. The Regna Construction Company, for which company the appellant was appointed receiver, was the owner of certain real

estate on Mt. Vernon Street, Ridgefield Park, Bergen County, New Jersey. In the fall of 1927 the Regna Construction Company, the owner in fee of the property, was engaged in the construction of a five-story, 32 family brick apartment building on the property. It is important to note that the owner of the land was constructing the building itself.

Appellant as receiver obtained an order to sell the lands and premises free and clear of all liens and encumbrances except a first purchase money land mortgage for \$8,000; the purchase price of the property to be held by the receiver subject to the same liens and equities of all parties interested in the properties sold, as was the property before sale, all further equities of all persons whatsoever being reserved (see Order, pp. 3-7).

The property was sold by the receiver under said order for the sum of \$96,500 subject to the first mortgage and municipal liens and assessments and also subject to confirmation by the Court.

Objection to confirmation was made by counsel representing parties who sold to Regna Construction Company, the insolvent corporation for which the receiver was appointed, kitchenettes, refrigerators, gas ranges, and lighting fixtures under conditional sale contracts, wherein the seller reserved title to the goods until the purchase price was paid therefor. Wasmuth-Endicott Co. was one of the objectors.

As to the facts relating to the claim of Wasmuth-Endicott Co., there is no controversy. A conditional sales contract for kitchenettes, cabinets, etc., was entered into by the Regna Construction Company for the purchase of the kitchenettes, cabinets, etc., for the sum of \$2,840, upon condition that title was reserved in the vendor until payment of the purchase price. The contract is dated

November 9, 1927, and was filed in the Bergen County Clerk's office on November 14, 1927. The goods were installed in the building in the early part of March, 1928. For the sake of diminution of the record, the entire contract is not printed in the record, as the only question raised by the receiver against the claim of Wasmuth-Endicott Co. is that the contract contained no brief description of the realty. All the contract stated in this respect were shipping instructions, which were as follows: "Ship to Regna Construction Company, Mt. Vernon St., Ridgefield Park, N. J." (p. 36a). A copy of the contract, however, is printed in the State of Case on the appeal of Consolidated Securities Corporation in the same cause at pages 147-151.

Testimony was taken by the receiver in respect to the claim of Wasmuth-Endicott Co. (pp. 20-31). It is not necessary to comment on this testimony for the reason that no point is made as against the claim of Wasmuth-Endicott Co. except that the contract contained no brief description of the realty and therefore under Section 3 of Paragraph 7 of the Uniform Conditional Sales Act, the reservation of the property was void as against the receiver.

Demand for possession of the goods was duly served upon the receiver and reclamation proceedings instituted (pp. 15-19). After the taking of testimony the receiver filed his report in which he found that the property conditionally sold was affixed in and to the premises in the early part of March, 1928. That the contract was dated November 9, 1927, and filed in the Bergen County Clerk's Office on November 14, 1927. That under the terms of the contract, the vendor reserved the title to the property until the price was paid. That the property so sold by Wasmuth-Endicott Co. was

affixed to the realty so as to become part thereof, but is severable without material injury to the freehold. The receiver further held that the conditional sales contract as filed was fatally defective in that it contains no description of the realty and hence the reservation of title is void as against the owner of the realty. The receiver therefore rejected the claim of title to the goods as against the owner of the realty or its receiver, and allowed the claim of Wasmuth-Endicott Co. for the unpaid purchase price as a general claim (see Report of Receiver, pp. 32-36). Exceptions were duly taken by Wasmuth-Endicott Co. to the report of the receiver (pp. 37-38) and upon the matter being argued before Vice-Chancellor FALLON, an order was entered overruling the receiver's report and upholding its claim under the conditional sales contract, and directing the receiver to pay to Wasmuth-Endicott Co. from the proceeds of sale the amount of the purchase price with interest in preference to the mortgagee's and mechanics' lien claims (see Order, pp. 39-41). The opinion of the Vice-Chancellor is found on pages 83-94. From this order the appeal is taken.

#### POINT I.

**The conditional sales contract of Wasmuth-Endicott Co. and the reservation of title therein is good as against the receiver.**

The sole contention of the receiver is that, under the 3rd sentence of Paragraph 7 of the Uniform Conditional Sales Act. Comp. Stat. 1917-24, Supp. Sec. 183-93, pages 3130-3131, the reservation of title in the conditional sales contract is void as against the receiver for the reason that the conditional sales contract recorded did not contain a

statement briefly describing the realty and is therefore void as against the owner of the realty. A copy of Section 7 is printed on page 9 of appellant's brief with the exception that the section is not divided into paragraphs as there printed. It is also printed in the opinion of the Vice-Chancellor on page 90 of the State of Case.

In this case it is important to note at the outset that the corporation for which the receiver was appointed is *both the buyer and the owner of the realty.*

We first contend that the conditional sales contract was properly recorded in accordance with the provisions of Section 7 of the Act. The conditional sales contract clearly indicates that the buyer was Regna Construction Company, Mt. Vernon St., Ridgefield Park, Bergen County, N. J., and this is where the realty is situated. There is no question but that a proper search for conditional sales contracts would turn up this contract and that anyone would have constructive notice. Counsel, on page 13 of his brief, refers to Section 10 of the Uniform Conditional Sales Act, to Comp. Stat. 1911-24, Supp. Sec. 182-96, page 3131, providing for the filing of the contract and the record to be kept by the county clerk. He correctly states that the section requires the county clerk to keep a separate book in which to show both the name of the seller and buyer, the date of the contract, description of the goods, etc. It is important to note, however, that there is no provision for there being inserted in the index a statement of the location of the real estate. Counsel argues that this section refers and is intended to apply to sales of personal property having no connection with realty. There is no justification for this contention, however, for the reason that Section 6 of the Act immediately follows Section 5, which relates

to contracts for the sale of property not relating to where the goods are affixed to the realty. Section 6 provides that that section shall not apply to contracts described in Section 8 relating to railway equipment, etc. Section 10 relates to the record to be kept by the county clerk of any contracts filed in pursuance to the terms of the Act excepting an additional provision in entering contracts mentioned in Section 8. Section 10 also provides that said book shall be indexed under names of both seller and buyer. Where is there any justification for the contention that Section 10 is intended to apply only to sales of personal property having no connection with realty?

The Conditional Sales Act is a general act, and all persons are obliged to take notice of it. Under its provisions anyone dealing with real estate is obliged to search against conditional sale contracts mentioned in Section 7 when the goods are affixed to the realty as well as all other conditional sale contracts.

Counsel for support of his contention cites the case of *Jackson v. Houghton Engineering Co.*, 145 Atl. Rep. 465. A reading of the opinion of Mr. Justice PARKER in that case shows that there is no support whatever contained therein for this contention. In the first place, Mr. Justice PARKER was construing the Mechanics' Lien Act, and in the second place, he pointed out that the contract was in one sense a *contract for additions to a building*. He was not construing the rights of the conditional vendor. It was a suit between a mechanic lien claimant and the owner of the building. On page 465, Mr. Justice PARKER said that the whole question in the case was whether the plaintiff was entitled to a lien under the statute; and that this question was to be tested by deciding whether a contract had been filed in the sense intended by

the Mechanics' Lien Statute. At the foot of page 466, the Court said:

"This being so, the proposition advanced for the plaintiff (the word plaintiff is evidently a misprint and should have been defendant) and assented to by the trial judge was that the filing of a paper by the seller as a contract of conditional sales is sufficient to protect the owner of the real estate from mechanics' liens, because it should be considered filed as a building contract. This view we deem wholly fallacious. As already noted the Mechanics' Lien Act does not make special provision with respect to the manner of filing and indexing, etc., but the conditional sales law does \* \* \* It is plain that, when a paper is filed as a conditional sales contract, it will appear upon the register of the county clerk kept in accordance with the provisions of this statute, and nowhere else; and, to hold that such a filing of such a paper is notice to laborers, sub-contractors and material men *that a building contract has been filed in the office of the Clerk* (italics mine) and that they must look to the building fund for payment of their claims strikes us as out of the question."

The entire theory of the Act is *notice*. Conditional sale contracts have never been looked upon by the courts with suspicion as have chattel mortgages. In the case of *Marey & Co. v. Schaad*, 1 N. J. Adv. Rep., page 819, the Court held that:

"The provisions of this Section are based upon the theory of actual notice of the making of the contract or constructive notice by filing it. Where a contract of conditional sales of goods was not filed within the statutory period of ten days, but was filed afterwards and a creditor of the purchaser caused a writ of attachment to be issued against the goods *after the contract was filed*, the conditional sale was not void as against such attaching creditor."

It is true that in this case the Court was referring to the fifth section of the Act, but nevertheless, the reasoning is the same. Even though it be held that the 3rd sentence of Section 7 applies, the receiver certainly cannot say that the owner of the realty (who is the only person who is protected in this section) did not have actual notice when it was in fact, not only the owner of the realty, but the buyer.

The statute only provides for a brief description of the realty. There is no question but that the intent was simply to give notice and to place persons interested in the land on their guard. The only indexing required by the statute is for the indexing of the names of both seller and buyer. In the contract itself, right at the outset, it appears that the buyer is the Regna Construction Company, Mt. Vernon St., Ridgefield Park, Bergen County, N. J. The building was being erected by Regna Construction Company and the land was owned by Regna Construction Company and was on Mt. Vernon Street. Anyone turning up this contract would be placed upon notice. The Vice-Chancellor held, however, that in his opinion this recital in the conditional sale contract does not comply with the statutory requisite of "briefly describing the realty." He further held, however, that such non-compliance is inconsequential in the matter *sub judice* (p. 88). The only intent under this section being to give notice to the owner of the realty, it is absurd to say that where the owner not only had actual notice that the goods were intended for use on that particular property, but was the actual buyer and had actually assented to the reservation of title, that because of the fact that there was not a strict compliance with the statute in its filing requirements, that the owner was not bound by the contract providing for reser-

vation of title, *to which he as the buyer had expressly agreed*. The Vice-Chancellor was absolutely correct in his finding that under such a state of facts, *where the owner of the realty and the actual buyer was one and the same person*, that the fact that there was not contained in the contract a notice briefly describing the real estate was immaterial and such non-compliance was inconsequential.

Even where the goods are so affixed as not to be severable without material injury to the freehold, it is only provided by the first sentence of Section 7 that the conditional sale contract *shall be void as against any person who has not expressly assented to the reservation*. In this case, of course, the corporation in whose shoes the receiver stands, expressly assented to the reservation, for it bought the goods under the conditional sale contract. Likewise, the second sentence of Section 7 does not help the receiver, for it only applies in cases of a subsequent purchaser of the realty for value, and without notice, and it has been held that the receiver does not stand in any such position.

Under the true construction of the entire statute, the third sentence of Section 7 does not apply in the case where the owner is also the buyer *and certainly had actual notice*. The statute cannot be distorted so that it would protect a buyer who happened to be the owner of a realty, whereas it would not protect the buyer if not the owner of the realty.

A mere reading of the statement of the Uniform Law Commission referred to in the opinion of the Vice-Chancellor at the top of page 93 clearly indicates that this third sentence of Section 7 was inserted to cover the peculiar case of the seller of goods to a contractor to be affixed by him to the real property of another. Also the statement con-

tained in Uniform Laws Annotated, 2 a. U. L. A., at page 107, as follows:

“Doubtless actual notice would take the place of the constructive notice provided for by the filing statute, and any owner who consented to the attachment of a fixture which had been conditionally sold to his contractor, would not be allowed to resist the removal of the fixture by the conditional seller of it, in case of default by the contractor in his payment.”

We further desire to call the Court's attention to the fact that throughout the Act the vendee is designated as the buyer. At the very outset, Section 1, in defining the terms used in the Act, thus provided that “buyer means the purchaser who buys or hires the goods covered by the conditional sale contract or any legal successor in interest of such person.” The receiver contends that the statute is not ambiguous, and therefore the Court has no power to construe it. We disagree entirely with any such doctrine as of necessity, where different provisions are made in relation to the power and also the owner of realty, where they are distinct and separate persons, that because one section refers to the owner of realty, it certainly cannot be held that because the buyer happened to be the owner of the realty, that we must do away with all of the other sections relating to the buyer. Under this posture of affairs it certainly is necessary to look into the reasoning *for the statutory provisions and the minute we do the receiver's contention is answered in the negative.*

That the receiver acquired no more rights than would the Regna Construction Company is clearly indicated by the decision of Vice-Chancellor FOSTER in the case of *Kremer v. U. S. Wax and Coated Paper Co.*, 94 N. J. Eq. 655, and the deci-

sion of Vice-Chancellor BACKES in the case of *Depue v. C. W. Depue & Co.*, 98 N. J. Eq. 461.

The receiver on page 11 of his brief states that he is also the representative of creditors and stockholders. As stated before, conditional sale contracts are looked upon with favor by the Court and the rights of sellers under conditional sale jealously protected, as is indicated by the cases above cited and also by the fact that the Uniform Conditional Sales Act has been adopted by a very large number of States. It cannot be said that, as to any of the creditors, there is any fraud upon the state of facts in this case such as very often appears in the case of a chattel mortgage.

In the case of *Spitalny v. Superior Novelty Mfg.*, 98 N. J. Eq. 523, Vice-Chancellor BUCHANAN held that the receiver has no power to sell the property of a conditional sale vendor, the title of which remained in it, *until the full purchase price is paid*. The Court, however, pointed out, on page 527, that a receiver would be entirely justified in paying the conditional vendor in full in order to be able to make sale of the goods to better advantage. This is the position taken by the receiver upon condition, however, that it be determined that the conditional sale contract of appellee is valid. The learned Vice-Chancellor in the case at bar wrote an elaborate and well-considered opinion upholding the conditional sale contract of appellee.

The Vice-Chancellor in his opinion, on page 93, referred to the case of *Kohler v. Brasun*, 249 N. Y. 224; 164 N. E. 31. Counsel for appellant on page 18 cites this case as squarely upholding his contention. We submit that he is entirely in error. A reading of the opinion of the New York Court of Appeals, 164 N. E. 31, on page 32, shows that the Court in that case was construing the section of the New York Sales Act similar to Section 7 of the New Jersey Act in relation to the rights of

the conditional vendor as against an *actual* subsequent purchaser of the property for value. That case is clearly distinguishable from the case at bar, where the controversy is between the owner of the realty, who was also the buyer under the conditional sale contract. *Also in the New York case the conditional sale contract was not filed at all.* At the conclusion of the opinion the Court said:

“The evident intent is between the buyer and seller of the chattel that it should retain its character as personalty cannot foreclose *the third party who purchased without actual knowledge* and without that constructive notice for which the statute provides.”

A reading of the opinion shows that it is clearly based upon the element of an *actual subsequent purchaser for value of a hotel* in which there had been installed a power and light plant under a conditional bill of sale signed by the previous owner which had not been filed and of which the new purchaser for value had absolutely no notice. A reading of the portion of the opinion quoted above clearly shows that it was predicated upon the fact that the third party, when he bought the property, “*purchased without actual knowledge.*”

Likewise, in the case of *Cohen v. Fulton Avenue Corporation* (Court of Appeals of New York), 251 N. Y. 24; 166 N. E. 792, the Court was considering the rights of a conditional sale vendor against a mortgagee who had advanced the mortgage money upon a mortgage on the apartment house premises after the goods had been installed in the building. And even in this case the Court referred to the fact that the mortgage, after describing in detail the real estate mortgaged, continued with words descriptive of the subject-matter of the mortgage as follows:

"Together with all fixtures and articles of personalty now or hereafter attached to or used in connection with the premises, all of which are covered by this mortgage."

And further down:

"Here the question is: Did the mortgagor have title to the gas ranges, so that they became in part the subject matter of a mortgage executed by it, which covered not only a building owned by the mortgagor but *all articles of personalty attached thereto*" (italics mine).

And further:

"Consequently, as to the plaintiff, the condition reserving title was void and the mortgage *upon chattels* given to her created a lien upon the ranges in the possession of the mortgagor as fully would have been the case had an absolute title thereto been acquired by it."

The Court further said:

"For those reasons and those reasons only, the order appealed from was properly granted."

The Court also referred to the fact that the mortgagee had no "actual knowledge."

In the case of *Madfes v. Beverly Development Corporation, et al.* (Court of Appeals of New York), 251 N. Y. 12; 166 N. E. 787, the Court held that gas ranges attached by a coupling to the gas service pipe which delivered gas to the various apartments remained personal property. Judge CRANE dissented, and the opinion says on page 78 in reference to his dissent:

"In his dissenting opinion herein, Judge CRANE reminds us that apartment houses today are massive affairs, housing hundreds of families and occupying entire blocks; that gas ranges are the universal equipment of every apartment in all such buildings. He expresses

the view that in holding that gas ranges, after attachment to real estate, do not become a part thereof, we are pressing the facts into an old fashion mold."

Yet, the Court held the gas ranges, although attached as aforesaid, to be personalty.

Likewise in the case at bar, although the receiver held that the goods were attached to the freehold, but severable without damage to it, nevertheless the only testimony in the case did not show that there was any intent that the property sold by the appellee should become part of the real estate. On page 28, Julius Steigler, who made the sale, testified as follows:

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

"Q. It is more than a piece of furniture, in that it is affixed to the building, but your contention being that it can be removed without damage. A. Absolutely; and I only look on it as a piece of furniture."

It is a well-known doctrine that the recording of a document is for the sole purpose of giving either actual or constructive notice. The only purpose of the third sentence of Section 7 of the Condition Sales Act, *and particularly of the provision for a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto*, can only be for the purpose of giving the owner of the realty notice that the goods are sold under a conditional sale contract. This Act only applies where the owner is a different person than the buyer. *Certainly where the owner is the buyer he has actual notice of the conditional sale contract. Likewise, he has actual notice of*

*the realty to which the goods are to be affixed.* It is absurd to contend the contrary when, as in this case, the owner of the realty was actually constructing the building and was the buyer. Yet the only ground upon which the receiver has rejected the claim of Wasmuth-Endicott Co. and upon which he bases his appeal is that he contends that the description of the property contained in the conditional sale contract (to which the owner of the realty, and in whose shoes the receiver stands, was a party) was defective in that it did not briefly describe the realty. It seems to us that a mere statement of the facts in this case refutes the contention of the receiver and leads to an overruling of his report, and leads to an affirmance of the order of the Chancery. All of the cases are careful to refer to the fact that there *was no actual notice*. In the case at bar *the owner had actual notice and in fact* agreed to the reservation of title.

No matter whether any of the provisions for filing had been complied, he would be *estopped* to deny what he had actually agreed to.

## POINT II.

### **The reservation of title in Wasmuth-Endicott Co. is valid as against the second mortgage of Consolidated Securities Corporation.**

A correct chronological statement of the liens and encumbrances against the premises in question insofar as the issues in the case are concerned and the dates of the filing of the conditional sale contracts and the recording of the respective mortgages is contained on pages 4 and 5 of appellant's brief.

There can be no question but that the second purchase money land mortgage held by Harry C.

Leidinger in the sum of \$9,500, and the first mortgage held by Consolidated Securities Corporation in the sum of \$30,000, which were both recorded at least a month and a half before the filing of the conditional sale contract of Wasmuth-Endicott Co., cannot come under the heading of "*subsequent purchasers for value*," for they were executed and recorded prior to the filing of the conditional sale contract of appellee.

Therefore, the only contention that the appellant makes is as to the second mortgage of Consolidated Securities Corporation in the sum of \$20,000. It appears in the record that the purchase price of the property was \$96,500. The determination of this question is therefore somewhat *academic* for the reason that even though it might be held that the second mortgage of \$20,000 should be paid prior to the conditional sale vendors, whose claims aggregate approximately \$8,000, there would be ample proceeds from the sale with which to pay the full purchase price of all of the conditional sale contracts.

The Court below pointed out that while in Section 1 of the Conditional Sales Act, "purchaser" as defined includes "mortgagee" nevertheless such mortgagee is not defined anywhere in the Act to be "*a subsequent purchaser*." The Court held that the Consolidated Securities Corporation "is not a *subsequent purchaser*" of the realty of the Regna Construction Company as against the reserved title of the above-named vendors to the goods which are the subject-matter of the conditional sale contracts affixed to the realty so as to become part thereof but severable without material injury to the freehold.

In this connection it must also be noted that while the conditional sale contract of appellee was dated November 9, 1927, and filed November 14,

1927, and the second mortgage of Consolidated Securities Corporation was dated November 29, 1927, and recorded November 30, 1927, the property sold under the conditional sale contract was not delivered on the ground until the latter part of February, 1928, and was not actually placed in the building until the early part of March, 1928, over three months after the recording of the mortgage. It cannot be argued, therefore, that the Consolidated Securities Corporation at the time of placing the second mortgage was deceived believing that the kitchenettes sold by appellee were actually paid for and not sold under a conditional sale contract, for the reason that at the time the mortgage was executed and recorded the kitchenettes not only had not been placed in the building, but had not even been delivered on the ground.

Although it might be contended that the Consolidated Securities Corporation, so far as its second mortgage is concerned, even where the mortgage was executed and recorded 3 months before the goods were placed in the building, it certainly could not be said that it was "*a subsequent purchaser for value*" and it is necessary to go that far under the Act.

### POINT III.

**The claim of appellee in respect to the goods sold by it is prior to any mechanics' lien claims.**

The only objection raised against the claim of appellee is that the contract filed did not contain a brief description of the realty. The only provision relating to the necessity of a statement briefly describing the realty is that contained in Section 7 of the Act. Section 7 of the Act only provides

for a reservation of property being void as against "subsequent purchasers" of the realty for value and without notice of the conditional seller's title and the *owner of the realtor*. Mechanics' lien claimants cannot come within either of these classes. Counsel cites the case of *Jackson v. Houghton Engineering Co.*, 145 Atl. Rep. 465. This case has absolutely no application as we have heretofore pointed out in this brief.

### CONCLUSION.

The receiver has, as pointed out in the *Spitalny* case, elected to sell the building, including the property of appellee, and to pay the full purchase price in the event that the claim of appellee is sustained. The learned Vice-Chancellor below sustained the claim of appellee and advised the order overruling the receiver's report and directed the receiver to pay to appellee from the proceeds of sale of the premises the purchase price due to appellee.

**It is respectfully submitted that the order below appealed from should be affirmed.**

Respectfully submitted,

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Appellee.

CAREY & LANE,  
Solicitors.