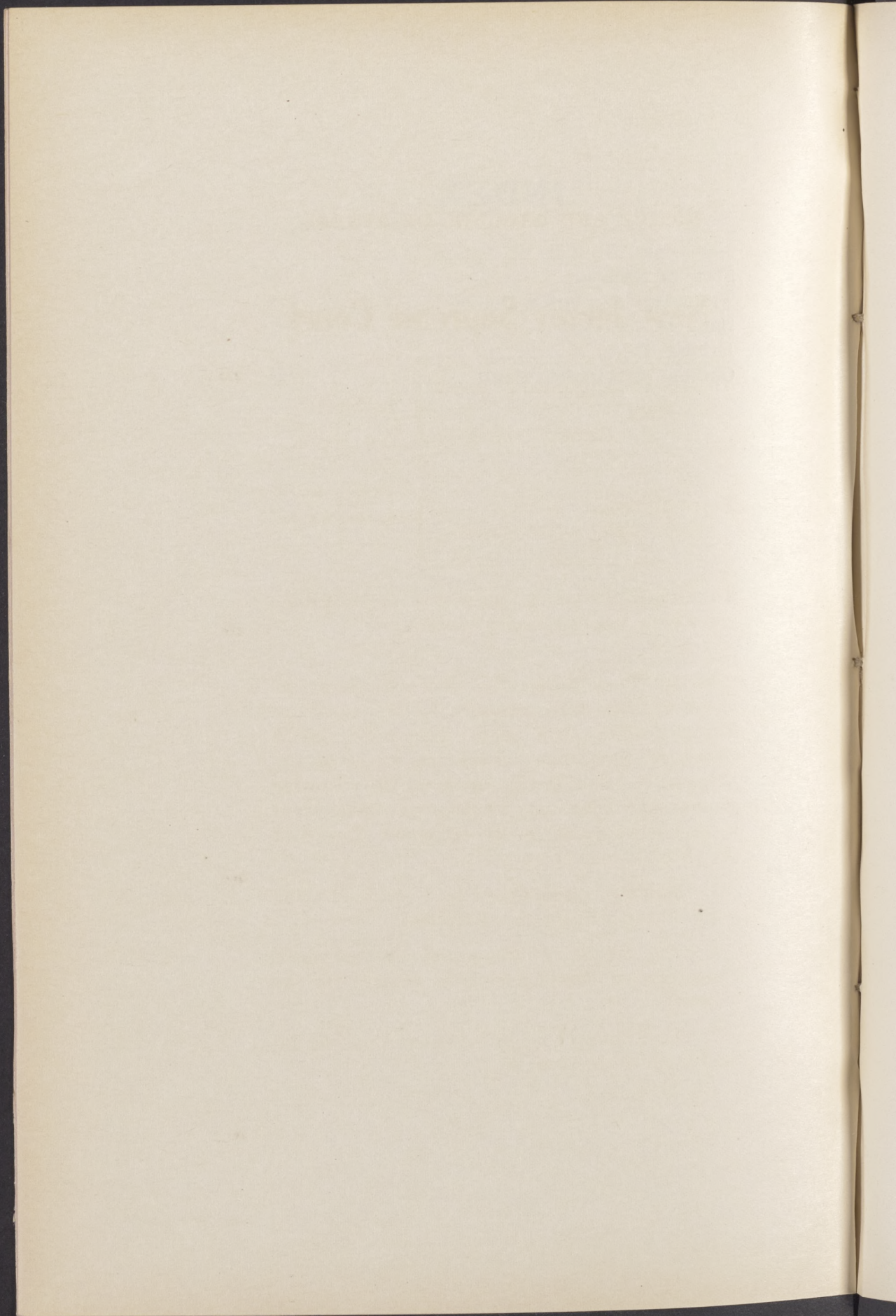


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NOTICE AND GROUNDS OF APPEAL.

Filed July 26, 1929.

New Jersey Supreme Court

<p>TOLEDO SCALE COMPANY, a corporation, <i>Plaintiff-Appellant,</i> <i>vs.</i> PETER MUCHA, <i>Defendant-Appellee.</i></p>	}	<p><i>In Tort.</i> <i>On Appeal</i> <i>from New</i> <i>Jersey Su-</i> <i>preme Court.</i></p>	<p>10</p>
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To Sidney Finkel, attorney for defendant-appellee or to whom it may concern: 20

SIR:

PLEASE TAKE NOTICE that the plaintiff in the above-entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following ground, to wit: because the Supreme Court erred in giving judgment to the defendant instead of the plaintiff in that:

1. Judgment should have been entered for the plaintiff and against the defendant. 30
2. The defendant was guilty of conversion and judgment should have been entered for the plaintiff.
3. That the said judgment entered for the defendant is contrary to law.

Notice and Grounds of Appeal.

4. Under the facts as disclosed at the trial defendant was guilty of conversion and judgment should have been entered for the plaintiff.

5. The defendant testified that after obtaining the scale he sold same and this constituted an act of conversion.

10

6. Under the Uniform Conditional Sales Act of New Jersey, P. L. 1919, chapter 210, page 461 *et seq.*, section 5 (p. 462) P. L. 1919, the defendant Peter Mucha was not a purchaser (for value) from the conditional vendee, and that he therefore obtained no title to the said scale and that his subsequent act in selling same, under the laws of this state amounts to an act of conversion, and for that reason the plaintiffs were entitled to judgment.

20

MEISTERMAN & KATCHEN,
Attorneys of Plaintiff-Appellant.

SAMUEL G. MEISTERMAN,
Of Counsel with Appellant.

Due, timely and legal service of a copy of the within notice of appeal is hereby acknowledged this 22nd day of July, 1929.

30

SIDNEY FINKEL,
Atty. of Defendant-Appellee.

40

STATE OF DEMAND.

Filed December 22, 1928.

FIRST DISTRICT COURT

OF THE CITY OF NEWARK.

<p>TOLEDO SCALE COMPANY, a corporation, <i>Plaintiff,</i> <i>vs.</i> PETER MUCHA, <i>Defendant.</i></p>	}	<p><i>In Tort.</i> <i>State of Demand.</i></p>	10
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The plaintiff states that:

1. On or about January 10, 1928, it sold one Dayton White Scale to one Stephen Grentius on a conditional bill of sale, title being expressly retained in this plaintiff until such time as said Stephen Grentius had completely paid the purchase price of \$110.00 for the said scale.

2. Said Stephen Grentius made but one payment of \$11.00 and defaulted in all other payments and installments with the result that this plaintiff elected to take back the said scale. At all the times mentioned hereinbefore and hereinafter this defendant was the landlord of said Stephen Grentius.

3. On or about March 1, 1928, this defendant distrained upon all the property including said Dayton White Scale in the premises which had been let by this defendant to said Stephen Grentius.

20

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TRANSCRIPT OF CLERK'S DOCKET.

FIRST DISTRICT COURT,

NEWARK, N. J.

TOLEDO SCALE COMPANY, a corporation, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> PETER MUCHA, <div style="text-align: right;"><i>Defendant.</i></div>	}	10
---	---	----

PLAINTIFF'S COSTS.

Summons	2.10	Dec. 15	20
Mileage16		
Listing	1.50	Jan. 2	
Witness fee	1.00		

Meisterman & Katchen, plaintiff's attorneys,
411 Myrtle avenue, Irvington.

A state of demand was filed and a summons in the above stated cause was issued on the twenty-second day of December, 1928, returnable on the third day of January, 1929, wherein the plaintiff demands of the defendant the sum of five hundred dollars. 30

The summons was served and returned as follows:

The said defendant, Peter Mucha, not being found I served the within summons Dec. 28, 1928 by leaving a copy thereof at his residence with a member of his family

Transcript of Clerk's Docket.

above the age of fourteen years informing her of its contents.

M. B. ROSE,
Sergeant-at-Arms.

1929

- 10 Jan. 3. This cause was adjourned to Jan. 10, 18, 22, 29, Feb. 5, 14.
- Feb. 14. The plaintiff and the defendant appearing, the cause was tried at this time.
Harold Weinstein & David Rothberg sworn for plaintiff.
Contract and bill of sale in evidence for plaintiff.
Defendant sworn.
- 20 Feb. 25. The evidence being closed the Court reserved decision and on
The Court rendered judgment in favor of the defendant and against the plaintiff with costs; whereupon judgment is entered in favor of the defendant and against the plaintiff with costs.
- Mar. 18. Notice of appeal.
- Mar. 18. Appeal (cash in lieu of bond) filed \$1.00.
- 30 Mar. 22. Order extending time filed \$1.00.

STATE OF THE CASE.

FIRST DISTRICT COURT OF THE
CITY OF NEWARK.

TOLEDO SCALE COMPANY, a corporation, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 5px 0;"><i>vs.</i></div> PETER MUCHA, <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>	}	<i>On Appeal.</i> <i>State of the Case.</i>	10
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The parties to the above-entitled suit having been unable to agree upon a state of the case on appeal, have applied to me, Cecil H. MacMahon, Judge of the First District Court of the City of Newark, to settle such state of the case to be used upon appeal. 20

The complaint is that the defendant tortiously converted a scale alleged to be the property of the plaintiff. The case was tried before me without a jury. I find the facts to be as follows:

The plaintiff sold to one Stephen Grentius, a Dayton White scale for the sum of \$110.00 on a conditional bill of sale, title being expressly retained by the plaintiff. The contract is in evidence and marked P. 1. \$11.00 was paid on account of this sale, leaving a balance of \$99.00. 30

The conditional bill of sale was not filed nor recorded in Essex County, where the place of business of Grentius was located, and where the scale was delivered by plaintiff.

PETER MUCHA, the defendant, is the owner of premises, No. 88 Broom street, Newark, New 40

State of the Case.

Jersey, which premises were occupied by the said Grentius, and upon which premises among other goods, was the scale in question. Grentius being in arrears for rent, among other things sold the scale in question to the landlord in payment of the arrears of rent. This transaction
10 took place after the landlord had issued a warrant to distrain for the rent in arrears, which warrant had been executed by the making of a levy. The tenant, Grentius, being in possession of the scale and other goods, upon the premises, rented by him from Mucha, and being in arrears for his rent, and the conditional bill of sale not having been filed or recorded at the time the tenant sold the scale to the defendant herein,
judgment was given in favor of the defendant.

20 All of which is respectfully submitted this third day of April, A. D. 1929.

CECIL H. MACMAHON,
Judge of the First District Court of
City of Newark.

30

40

EXHIBIT P. 1.**TOLEDO SCALE COMPANY****Form for Certified Scales and Used Scales**

City Vaux Hall County Union State N. J.

Toledo Scale Company, Toledo, Ohio: 10

Deliver or ship to the undersigned at No. 82
Lanol Ave as soon as possible

(A) One Certified Dayton scales. Finish W. L.
For Warranties and Guaranties see Paragraphs
below numbered 1 and 2

In consideration the undersigned will pay you
One Hundred Ten dollars (\$110.00) price of
scales f. o. b. Toledo, Ohio, freight prepaid, on
the following terms:

\$.....less 5% cash discount if paid within
thirty days after delivery of scales. 20

Cash with order, \$11.00; \$99.00 in 10 monthly
installments of \$9.90 each and..... of \$.....
evidenced by installment note of the undersigned,
which, it is agreed, may be detached by you for
collection purposes.

Title to said scales shall remain in you until
the purchase price is paid in full.

This contract shall not be countermanded and
upon refusal of the undersigned to make any pay-
ment provided for above, it is agreed that the 30
purchase price less any previous payments there-
on, shall at once become due and payable.

Upon any attempt to sell or transfer posses-
sion, remove, or attempt to remove said scales
from the premises described above without your
previous written consent, you or your agent may
take possession of and remove said scales with-
out legal process; and, all payments theretofore
made to you hereunder, shall be considered as 40

Exhibit P. 1.

having been made for the use of said scales while in the possession of the undersigned.

10 1—CERTIFIED SCALES—Should CERTIFIED scales described in Paragraph “A” prove defective due to faulty workmanship or material within one year after shipment, you agree to replace such defective parts and repair the scales gratis, the undersigned to pay transportation charges to and from your factory or nearest agency capable of making the necessary repairs, or, if repairs are desired made where the scales are located, the undersigned to prepay the expenses of the mechanic from and to your factory or nearest agency capable of making the necessary repairs. Any repairs or alterations made
20 without your written consent or contrary to your instructions shall be at the expense and risk of the undersigned. It is agreed that your guaranty shall be effective only if scales remain in possession of undersigned.

30 2—USED SCALES—It is understood that scales described in Paragraph “B” are ordered as USED scales and that you make no warranties or guaranties, either express or implied, other than ownership at the time and place of delivery. The undersigned agrees to pay all taxes on scales, to hold them at his risk and no injury, loss or destruction of same after delivery to the carrier shall release undersigned from payment of the purchase price.

The undersigned acknowledges receipt of a copy hereof.

Notice—No scales placed on trial.

This order shall not be countermanded.

Stephen Grentus

Exhibit P. 1.

(Sign here name under which the business is conducted)

(When signing for a partnership or corporation, the party signing should sign his name opposite the word "By" and following his name, where it is a corporation, he should show his title.)

10

Stephen-Grentius

(Print purchaser's name plainly on this line)

Memorandum only signed by both parties.

ShipCollect through New York Office

Serial number of scale shipped C 544913

Salesman H Weinstein 15% Sales Agent R. A.

Chambers R. J. Hancock 15%

Accepted at Toledo, Ohio, on Jan 10 1928

TOLEDO SCALE COMPANY,

20

By O Miller

FILE—AUTHORIZED TOLEDO CERTIFIED
SCALE DEALER

30

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OPINION.

Appeal from District Court.

Action by the Toledo Scale Company against Peter Mucha. Judgment for defendant, and plaintiff appeals. Affirmed.

10

Argued May term, 1929, before PARKER, BLACK, and BODINE, JJ.

Samuel G. Meisterman, of Newark, for appellant.

George D. Mulligan, of Newark, for appellee.

20

PER CURIAM. The plaintiff is a vendor by contract of conditional sale which was not recorded, in which contract one Grentius was the conditional vendee. Grentius was also a tenant of the defendant, Mucha, and was indebted to him for rent. Mucha started distress proceedings to recover his rent, and while these were pending, Grentius and Mucha made a settlement whereby Grentius sold and delivered to Mucha the property covered by the conditional sale contract, and other property in satisfaction either wholly or partially of the claim for rent. It does not specifically appear in the state of the case that Mucha had no knowledge of the contract of conditional sale; but as nothing is said about this point, we assume that the parties so understood at the trial. The appellant vendor seeks to hold Mucha for a conversion of the property covered by the conditional sale.

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The case of *Commercial Credit v. Vineis*, 98 N. J. Law, 376, 120 A. 417, is authority for the proposition that the lien of the landlord by distress is not such a lien as will take precedence of an unrecorded contract of conditional sale; but

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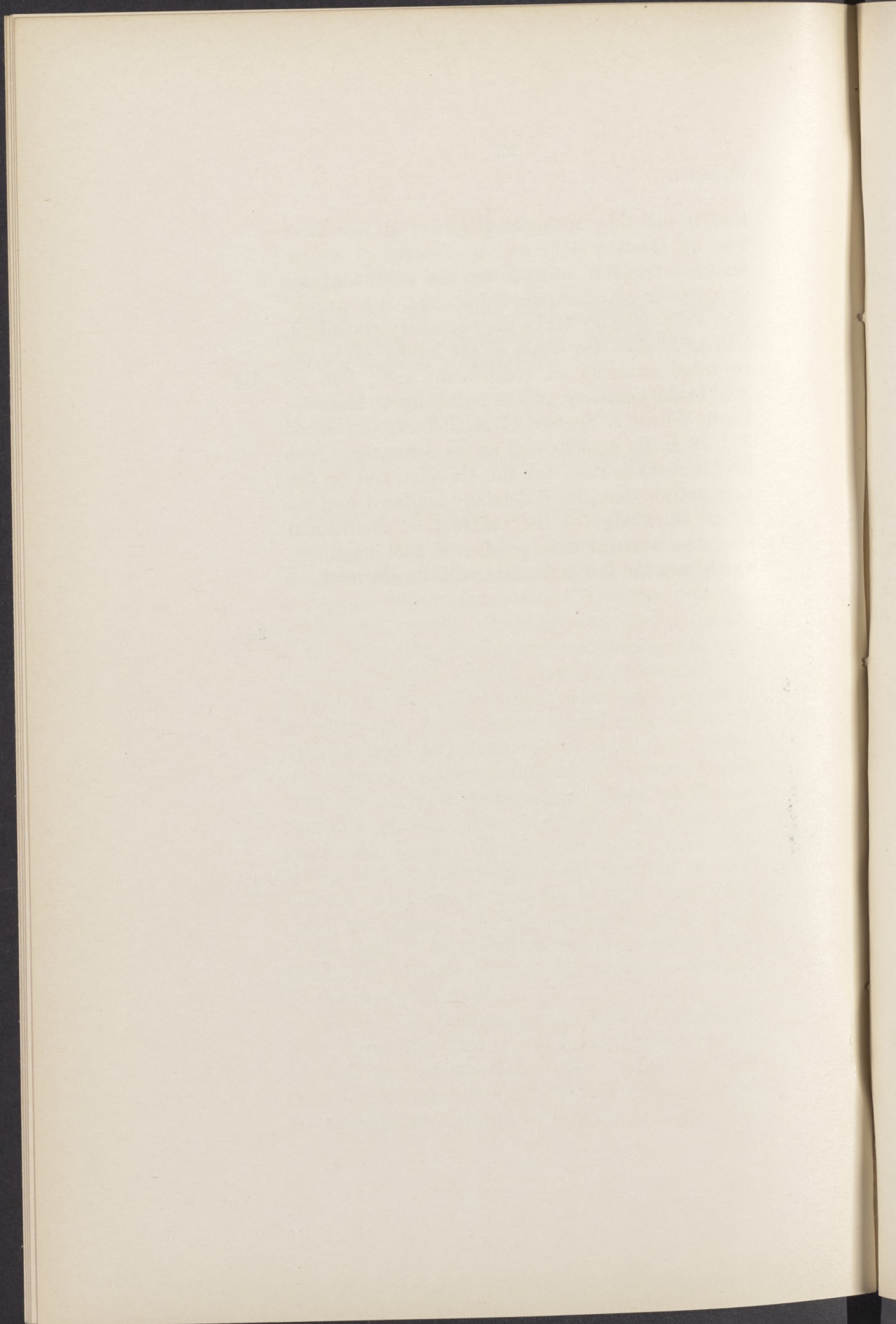
Opinion.

that is not this case. In the case at bar there was an existing debt and a transfer or an attempted transfer of title by the debtor of his property in satisfaction of that debt. It is argued that such transfer lacks the necessary consideration as against the claim of the holder of an unrecorded contract of conditional sale; but we hold to the contrary, on the authority of *Knowles Loom Works v. Vacher*, 57 N. J. Law, 490, 31 A. 306, 33 L. R. A. 305; and as we deem there was lawful consideration for the transfer and on the assumption that the defendant landlord had no actual knowledge of the contract of conditional sale, the transfer was good, and the judgment, which was for the defendant, will be affirmed.

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

New Jersey Court of Errors and Appeals

TOLEDO SCALE COMPANY, a corporation,

Plaintiff-Appellant,

vs.

PETER MUCHA,

Defendant-Appellee.

In Tort.

*On Appeal
from Supreme Court.*

Sat Below:

Justices

PARKER,

BLACK and

BODINE.

BRIEF OF ATTORNEYS FOR PLAINTIFF-APPELLANT.

Statement.

This is an appeal from a judgment of the New Jersey Supreme Court affirming a judgment entered in the First District Court of the City of Newark on February 25, 1929, in favor of the defendant. The case in the District Court was tried before the Honorable Cecil H. MacMahon, Judge of said Court without a jury and the matter was heard in the Supreme Court before Justices Parker, Black and Bodine.

Facts.

The facts of the case are briefly set forth in the case on appeal on pages 7-8 of the State of the Case:

"The plaintiff sold to one Stephen Gren-tius, a Dayton White scale for the sum of \$110.00 on a conditional bill of sale, title being expressly retained by the plaintiff. The contract is in evidence and marked P. 1, \$11.00 was paid on account of this sale, leaving a balance of \$99.00.

The conditional bill of sale was not filed nor recorded in Essex County, where the

place of business of Grentius was located, and where the scale was delivered by plaintiff.

Peter Mucha, the defendant, is the owner of premises, No. 88 Broome street, Newark, New Jersey, which premises were occupied by the said Grentius, and upon which premises among other goods, was the scale in question. Grentius being in arrears for rent, among other things sold the scale in question to the landlord in payment of the arrears of rent. This transaction took place after the landlord had issued a warrant to distrain for the rent in arrears, which warrant had been executed by the making of a levy. The tenant, Grentius, being in possession of the scale and other goods, upon the premises, rented by him from Mucha, and being in arrears for his rent, and the conditional bill of sale not having been filed or recorded at the time the tenant sold the scale to the defendant herein, judgment was given in favor of the defendant."

The only point in issue is whether under Section 5 of the Conditional Sales Act, P. L. 1919, p. 461, etc., the defendant acquired title to a scale received by him from his tenant in payment of rent past due, which scale had been previously sold to the tenant by the plaintiff under a conditional sales contract, upon which a substantial balance was then due and which contract had not been filed or recorded.

ARGUMENT.

The point of law to be argued in this brief is that the defendant was not a purchaser "for value" and, therefore, the plaintiff's title was superior to that of defendant.

Section 5 of the Uniform Conditional Sales Act, P. L. 1919, p. 461 at 462, reads as follows:

"Every provision in a conditional sale reserving property in the seller, shall be void

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

This Act is in derogation of the common law and is, therefore, to be construed strictly. Under the common law, in effect in this State prior to the passage of the first Conditional Sales Act, P. L. 1899, p. 421, as amended by the present Act, above referred to, a purchaser from a conditional vendee obtained no greater title or right than the vendee had himself.

In *Ohio Saving Bank & Trust Co. v. Schneider*, (211 N. W. 248, Ia.) the defendant had purchased an auto from a conditional vendee whose contract had not been filed or recorded. The consideration for the purchase was a past indebtedness. This the Court held did not constitute “value” nor was the transaction considered effective to constitute the defendant a purchaser for value.

In the instant case, the defendant had levied a distress for arrears in rent and thereafter had taken the scale for the rent due him, arguing that that taking constituted a purchase by him for value. Certainly such a transaction can no more be considered a purchase for value than the automobile transaction in the foregoing case.

In *Thompson v. Van Vechten*, 27 N. Y. 580, DENIO, J., said:

“A precedent debt does not qualify the mortgagee of a chattel as one in good faith under New York Act of 1833 (speaking of Chattel Mortgage Act which is the same as the New Jersey Act; see also *Knowles Loom v. Vacher*, 57 N. J. L. 494), so as to entitle

him to question a prior mortgage for default in refiling it.”

And in *Knowles Loom Works v. Vacher*, 57 N. J. L. 490, Justice VAN SYCKEL says at page 496:

“In *Mingus v. Condit*, 8 C. E. Gr. 313, in which it is claimed that the New York rule was adopted, Chancellor Zabriskie held that a mortgage of lands from a grantee whose deed is void against creditors of his grantor under the second and third sections (now sections 12 and 13) of the statute of frauds, will not be protected by the sixth (now 15th) section of that act, if he took his conveyance for a pre-existing debt.”

So was the debt owing to the defendant from the tenant a pre-existing debt. The Court then continues at page 496:

“The language of the sixth section is for ‘good consideration and bona fide.’ The learned chancellor said that the mortgagee in that case was a mortgagee in ‘good faith,’ but not for a good consideration within the meaning of said section. He said he felt bound by the statement made by Chief Justice Green in *Allaire v. Hartshorne*, 1 Zab. 665, that although a pre-existing debt is sufficient consideration to make the endorsee of negotiable paper a bona fide holder, yet the rule as to personal property is, ‘that a purchaser who has obtained title as a mere security for a pre-existing debt, is not entitled to the character of a bona fide purchaser for value.’”

The following is also to be quoted from the same opinion:

“In voluntary assignments, where the previous liens are honest, although they may be voided by subsequent judgment creditors, ‘the assignee takes the estate assigned in the same plight and condition in which his assignor held it.’ There is nothing in the procedure of a voluntary assignment which

elevates the assignee to a higher plane than the assignor himself occupied.”

Although the case just cited is authoritative only in a court of equity, nevertheless since the Uniform Conditional Sales Act may very well be classified as legislation enacted to administer equity and to aid those who rely on possession as being the primary evidence of ownership, it is deemed applicable. It is to aid those who part with a money consideration to buy something which is apparently owned by the vendor and which he is selling in the ordinary scope of his business. The Act is legislation which stands by itself and is to protect creditors obtaining a lien by attachment or levy or purchasers who buy in the open market.

The defendant does not fall in this class, therefore, the above cited portions of the Knowles case are deemed applicable.

Although the rent claim may have been sufficient to support a transfer of the Grentius' own property, it was not sufficient consideration to support a transfer of plaintiff's property to defendant, destroying plaintiff's title and vesting title in the defendant. In cases involving conditional sales it must be borne in mind that title to property is being dealt with and not merely liens.

Ohio Savings Bank & Trust Co. v. Schneider, supra.

The act of the tenant, Grentius, in turning over the scale of the plaintiff to the defendant constituted nothing more or less than a voluntary assignment for the benefit of not all of his creditors, but just one of them, and, therefore, the plaintiff's title is undeniably superior to that of the defendant.

It is to be borne in mind that the creditors protected by the Conditional Sales Act are only those who purchase in open market, or attaching creditors or such creditors who obtain a lien by levy.

In *Reischmann v. Masker*, 69 N. L. Law, 353, the Court said at page 357:

“Nor can a levy under a distress warrant affect goods in the tenant’s possession that belong to another. But the all-sufficient answer is that the landlord under such circumstances is not a judgment creditor within the plain meaning of the statute, and, as already shown, its meaning cannot be extended by implication. Such statutes are restrictions upon common right and must be construed strictly. *Woolley v. Geneva Wagon Co.*, 69 N. J. L. 278.”

A case bearing strongly on the proposition under consideration herein is *Commercial Credit Co. of Baltimore v. Vineis*, 120 Atl. Rep. (N. J. S.) 417. There the landlord had distrained his tenant’s automobile for rent and defendant had purchased same at the sale. In an action of replevin by the assignee of one who had sold the car to the tenant under an unrecorded conditional bill of sale, the Court held that the defendant deriving his title through the landlord was not protected by the Uniform Conditional Sales Act (P. L. 1919, p. 461). To quote from the Court at page 417:

“The legal status of the defendant, in order to succeed, must be predicated upon the fact that within the language of the act he is a creditor who has acquired ‘by attachment or levy a lien’ upon the property. In this instance the landlord as a creditor possessed neither an attachment nor a levy, nor did his right to distrain confer those legal procedural powers upon him. He possessed only an exceptional privilege conferred by ancient law and recognized by

statute of seizing and selling, within a limited period, the goods of his tenant found upon the demised premises. This statutory language inherited from centuries of legal application has a fixed and determinate meaning peculiar to legal procedure, and obviously imports the precedent institution of a legal proceeding in a court of law or equity, as a basis for the existence of the writ and a levy thereunder. 25 Cyc. 206, and cases; 6 C. J. 42, and cases; 17 R. C. L. 102, and cases therein cited.

A statute therefore containing such well-defined legal terms with reference to the determination of a legal right inter partes must be strictly construed, and its plain legal meaning cannot be extended by implication. *Woolley v. Geneva Co.*, 69 N. J. L. 278, 35 Atl. 789."

Note especially the following at page 418:

"A sale by the agent of the distrained goods conferred upon the purchaser no greater right or title than the landlord himself possessed."

So in the instant case, the defendant landlord as a creditor possessed neither an attachment nor a levy, nor did his right to destrain confer those legal procedural powers upon him. He merely possessed a special privilege conferred by statute of seizing and selling, within a limited period, the goods of his tenant found upon the demised premises, but not the goods of another. *Woodside v. Adams*, 40 N. J. L., p. 417 at 419.

ARGUMENT.

Plaintiff's rights to the scale are superior to that of defendant under Section 5 of the Conditional Sales Act.

The facts found by the trial judge follow:

Peter Mucha, the defendant, is the owner of premises, number 88 Broome street, Newark, New Jersey, which premises were occupied by the said Grentius, and upon which premises among other goods, was the scale in question. Grentius being in arrears for rent, among other things sold the scale in question to the landlord in payment of the arrears of rent. This transaction took place after the landlord had issued a warrant to distrain for the rent in arrears, which warrant had been executed by the making of a levy. (See pages, 7-8, State of Case, l. 39 to l. 13).

Certainly the defendant knew that Grentius was irresponsible when he could not pay rent. Knowing this, Mucha had issued a distress warrant, by virtue of which he could sell property owned by Grentius in the store. A sale by virtue of this proceeding would have conferred no title on the purchaser to the scale. (*Commercial Credit Co. v. Vineis, supra.*) After this he took the scale among other things in payment of arrears of rent.

It is a well established principle of law that

“A vendee who acquires title from a debtor in failing circumstances must not only be a purchaser for value, but also a purchaser in good faith.”

(*Second National Bank v. O'Rourke*, 13 Stew. Equity 99; *Hancock v. Elmer*, 61 New Jersey Equity 558 at 564.)

The purpose of the Uniform Conditional Sales Act adopted in this state, as expressed by its

draftsman, George Gleason Bogert, and especially Section 5 as stated in his commentaries on the subject in Volume 2A Uniform Laws Annotated is expressed as follows:

“Section 5 prescribed some of the principal limitations. It lays down a requirement of public record for the protection of persons who rely on the appearance of absolute ownership which the conditional sale gives to the buyer.”

That the act was not to apply to a situation such as the one in the instant case needs little argument. It was intended to protect a person who bought articles as a commodity in open market or acquired title by levy or attachment and not for the benefit of one who is compelled to take an article in payment of money due him from an irresponsible party and who takes it realizing the futility and hopelessness of getting his money in any other way. The Uniform Conditional Sales Act was enacted for the benefit of the public at large and not for the benefit of a person who might be situated as the defendant in the above case.

This reason is fortified by Section 9 of the Conditional Sales Act (P. L. 1919, p. 461) at 463, reading as follows:

“When goods are delivered under a conditional sale contract and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the reservation of property shall be void against purchasers from the buyer for value in the ordinary course of business, and as to them the buyer shall be deemed the owner of the goods, even though the contract or a copy thereof shall be filed according to the provisions of this act.”

The foregoing shows clearly that the Legislature contemplated the protection of only those

classes enumerated and not persons such as the defendant in the instant case. To extend to the defendant the benefit of the act, it would be necessary to do so by an unjustifiable implication which the language of the act and the decisions in this State do not warrant.

It is, therefore, urged that the decision of the First District Court and the judgment of the Supreme Court affirming such decision be reversed.

Respectfully submitted,

MEISTERMAN & KATCHEN,
Attorneys for Plaintiff-Appellant.

SAMUEL G. MEISTERMAN,
Of Counsel.

