

The various decisions are of course influenced by elements not brought out in the principal case. There is nothing in the Texas opinion which indicates the type of improvements in question other than that they were "permanent in their nature", nor is there anything to indicate that the realty would be in any way damaged by their removal. Barring these factors, the case seems to reach a logical rather than an equitable result. I. J. W., '35.

LIENS—EXTENSION TO COVER THE EXPENSE OF ENFORCING.—Defendant garage keeper, having a statutory lien on plaintiff's cars, hired a sheriff to take possession of them. His fee was \$10 per car. Plaintiff sued to replevy the cars, but refused to pay the sheriff's fees. Section 2 of the Garage Keeper's Lien Act, C. S. N. J. (Supp. 1931), secs. 135-46 to 135-148 stated, "The person having the said lien may, without further process of law, . . . seize the motor vehicle . . . ; provided, however, that such seizure can be made without use of force and in a peaceable manner." Section 1 of the same act defined the lien as "for the sum due for such storing, maintaining, keeping, or repairing of such motor vehicle or other supplies therefor." *Held*, since no mention was made in the statute of seizure by sheriffs or of the expense of recaption, the lien did not cover the sheriff's fee. "The legislative intent . . . is to give the garage keeper special remedy which may be pursued immediately and without delay, cost, or resort to the courts, and nothing can be read into the statute which is not already there in definite terms." *Keshen v. Olsan* (1932) 10 N. J. Misc. 1301, 163 Atl. 280.

The case raises the interesting question of whether a garage keeper may extend his lien to cover costs which he might incur in retaking the car himself. "A person who has a lien upon a chattel cannot add to the amount a charge for keeping the chattel till the debt is paid; that is, in truth, a charge for keeping it for his own benefit, not for the benefit of the owner of the chattel. . . . The right of detaining goods on which there is a lien is a remedy to be enforced by the act of the party who claims the lien, and having such remedy, he is not generally at common law allowed the costs of enforcing it." 1 Jones, *Liens* (3d ed. 1914) 972. See also *Somes v. British Empire Shipping Co.* (1860) 8 H. L. Cas. 338, 11 Eng. Repr. 459. In a later case it was held that a master has no lien for demurrage occasioned by his own refusal to deliver even when such refusal is for the purpose of preserving his lien for other charges. *Miedbrodt v. Fitzsimon, The Energie* (1875) L. R. 6 P. C. 306. In Canada the ruling of *Somes v. British Empire Shipping Co.*, supra, was applied in *Pease v. Johnston et al.* (1905) 7 Terr. L. R. 416, 1 W. L. R. 208, where it was held that a vendor of chattels under a lien note who has retaken possession in accordance with the note is not entitled to add to the charge against the chattels the expense of keeping them after seizure. The rule was again applied in *Canada Steel and Wire Co. v. Ferguson* (1915) 25 Man. L. R. 3201, 8 W. W. R. 416, 21 D. L. R. 771.

In the United States the leading case of *Devereaux v. Fleming* (C. C. S. C., 1892) 53 Fed. 401 was differentiated from *Somes v. Shipping Co.*, supra, the court holding that when the contract is one of storage and the contract is

for delivery on payment of the charges, the right to hold the goods does not cease until the storage charge is paid or tendered, and until then the lienor may charge for storage and have the benefit of a lien for such charges. *Reidenbach v. Tuck* (1904) 88 N. Y. S. 366 is in accord. In *Folsom v. Barrett* (1901) 180 Mass. 439, 62 N. E. 723, the court held that the lien holder may enforce the payment of such expenses on the theory that in reality he was holding the chattel for the owner's benefit. In Texas it was held that where a garage holding an automobile on which it claims a lien is sued by the owner for possession of the car, and after a writ of sequestration has been issued, replevies the car, the garage cannot claim storage charges for the time it held the car after its replevy. *White v. Texas Motorcar and Supply Co.* (Tex. Civ. App. 1918) 203 S. W. 441, *Hudson v. Breeding* (Tex. Civ. App. 1920) 224 S. W. 718. J. H., '35.

MORTGAGES—RIGHT TO DEFICIENCY JUDGMENT.—The plaintiff brought foreclosure proceedings upon a mortgage of land. The sale left a deficiency of \$1,379.16 on the original loan of \$2,000. The trial court confirmed the sale upon the express condition that the plaintiff consent to the denial of a motion for a deficiency judgment. *Held:* Upon application for confirmation of a foreclosure sale the court may establish a fair value of the property and as a condition to confirmation require it to be credited on the foreclosure judgment. The mortgagee should be given the option to accept or reject the confirmation on such terms. Since the plaintiff was not given this option the cause was remanded. *Suring State Bank v. Giese* (Wis. 1933) 246 N. W. 556.

The first step in the procedure for the mortgagee after the sale is to secure the court's confirmation thereof. There are several grounds upon which this may be refused. Mere inadequacy of price is insufficient, but if the accompanying circumstances show unfairness or fraud, confirmation may be denied. *Schroeder v. Young* (1896) 161 U. S. 334; *Union & Planters' Bank & Trust Co. v. Pope* (1928) 176 Ark. 1023, 5 S. W. (2d) 330; *Garitee v. Popplein* (1891) 73 Md. 322, 20 Atl. 1070; *Frensley v. American Nat. Bank* (1928) 129 Okla. 164, 264 Pac. 188. If the price is so inadequate as to shock the conscience or moral sense of the court, the sale will be set aside. *House v. Clarke* (Mo. 1916) 187 S. W. 57; *Donaho v. Bales* (Tenn. Ch. App. 1900) 59 S. W. 409. If mistake or inadvertence accompanies inadequacy of price, there may be no confirmation. *Rohrer v. Strickland* (1914) 116 Va. 755, 82 S. E. 711; *Kremer v. Rudolph* (1900) 105 Wis. 534, 81 N. W. 654. The same is true if there has been an agreement between the parties that the mortgagor will not contest the foreclosure if the mortgagee will take the property in satisfaction of the debt. *Mutual Life Insurance Co. v. O'Donnell* (1895) 146 N. Y. 275, 40 N. E. 787; *Silver v. Berger* (1930) 228 App. Div. 592, 240 N. Y. S. 468. Some courts suggest that the question is to be left to the discretion of the trial judge. *Jacksonville Loan & Insurance Co. v. National Mercantile Realty Co.* (1919) 77 Fla. 825, 82 So. 292; *Williams v. Taylor* (1902) 63 Neb. 717, 89 N. W. 261; *State v. Campbell* (1894) 5 S. D. 636, 60 N. W. 32; *Griswold v. Bardon* (1911) 146 Wis. 35, 130 N. W. 954.