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pared by Chief Justice Taney just before his death, printed in 117 U. S. 697) there was no possibility of the court's rendering a final judgment. These and other similar cases are distinguished, and the nature of a declaratory judgment admirably contrasted in *In Re Kariher's Petition* (1925) 284 Pa. 455, 131 Atl. 265. The declaratory judgment is merely a remedial change, a variation in the procedure by which a party may protect a valuable legal right. The court must be "satisfied that an actual controversy, or the ripening seeds of one, exists between the parties, all of whom are sui juris and before the court, and that the declaration sought will be of practical help in ending the controversy." If these elements are not present, the court will refuse jurisdiction on grounds independent of the nature of declaratory judgments.

It is gratifying that the Supreme Court at the first time it was called upon to squarely face the issue in an actual decision recognized the true significance of the declaratory judgment and distinguished its ill-considered dicta of previous cases. Such a position has long been urged. See Borchard, *The Constitutionality of Declaratory Judgments*, supra. S. M. R., '33.

FIXTURES—RIGHT OF REMOVAL BY REMOTE ASSIGNEE DESPITE CONTRACT OF VENDOR.—Plaintiff agreed to sell a tract of land to S. under an executory contract of sale, retaining title until all installments were paid. The contract provided that upon a breach by S., plaintiff should have the right of immediate possession, together with all improvements. Defendant was a tenant of J., a remote assignee of S.'s rights under the contract. Under his contract with J. defendant had the right to remove the improvements in question, which were of a permanent nature. Upon plaintiff's asserting his right of reentry, the court granted an injunction preventing defendant from removing certain improvements placed by him on the land. *Willard v. Geary* (Tex. Civ. App. 1932) 53 S. W. (2d) 489.

It is clear that even without an agreement, if the improvements had been made either by S. or by J. the right of removal would have been lost, for buildings and other fixtures erected by one in possession of land under a contract of purchase become a part of the realty. 1 Thompson, *Real Property* 206. The purchaser in such a case stands in a position analagous to that of a mortgagor, and has no greater rights of removal than the mortgagor has as against the mortgagee. 26 C. J. 675.

But the problem here is not so simple. It obviously involves a conflict of interests, calling for a balancing of equities. There seem to be no other reported cases precisely in point; but workable analogies are more abundant.

In *Harris v. Hackley* (1901) 127 Mich. 46, 86 N. W. 389, a conditional seller of fixtures to the vendee of land was granted recovery against the vendor of the land holding title, in spite of an agreement between the vendor and vendee of the land that the former should get all improvements. The court held that the agreement between the vendee and the conditional seller kept the property personalty even though the vendee might have intended it

to become a permanent part of the realty. This case has been followed by a more recent decision, *Otis Elevator Co. v. DeVos* (1927) 240 Mich. 413, 215 N. W. 343, which establishes the general rule that the rights of a seller of fixtures will prevail as against the lien of the vendor of realty to which they have been attached. *Hendy v. Dinkerhoff* (1880) 57 Cal. 3; note (1921) 13 A. L. R. 457.

But in *Des Moines Improvement Co. v. Holland Furnace Co.* (1927) 204 Iowa 274, 212 N. W. 551, where a purchaser in possession, under an agreement with the vendor of the land that all improvements should remain thereon, contracted with the vendor of a furnace that the title should remain in the latter until the price was paid, the court gave a verdict for the vendor of the land when the furnace, once permanently attached, was removed from the premises after the purchaser defaulted to both parties.

Similar cases arising where the original relationship is that of mortgagor-mortgagee rather than vendor-vendee merely add to the existing conflict. But inasmuch as one holding a vendor's lien has a legal position similar to that of a mortgagee, and the cases do not attempt to distinguish between those instances where the vendor retains title and those where he merely has a lien, the analogy is pertinent. The decisions support a majority view that if the mortgagor of land leases it to a third person and gives him the right to remove improvements, such chattels do not become subject to the mortgage if they can be removed without damage to the realty. Note (1926) 41 A. L. R. 616. But again there are contrary holdings.

The subsequent attachor of chattels is favored in *Belvin v. Raleigh Paper Co.* (1898) 123 N. C. 138, 31 S. E. 655; *Broadus v. Smith* (1899) 121 Ala. 335, 26 So. 34, and *Equitable Guarantee & Trust Co. v. Hukill* (1912) 10 Del. Ch. 88, 85 Atl. 60. The Delaware case bases the question of removal on the permanency of the improvements, or the intent of the parties, reasoning that when there is an agreement with the tenant for removal, the improvement was not intended to be a permanent one. The court in *Belvin v. Raleigh Paper Co.* also argues that since the improvements never belonged to the mortgagor there is no reason why the mortgagee should have them. And the Alabama case reaches the same decision with the reservation that the mortgagor or tenant may not do anything to impair the security of the mortgagee.

The contrary view, known as the Massachusetts rule, laid down in *Clary v. Owen* (Mass. 1860) 15 Gray 522, has also met with approval in Maine, *Ekstrom v. Hall* (1897) 90 Me. 186, 38 Atl. 106, and Georgia, *Cunningham v. Cureton* (1895) 96 Ga. 489, 23 S. E. 420. In the Georgia case the rule was applied to those fixtures placed in a building to carry out the obvious purpose for which it was erected or permanently to increase its value for occupation or use.

Logically, one holding under a mortgagor or vendee in possession should have no greater rights than the mortgagor or vendee himself, and therefore any fixtures should remain with the land. But it is hardly just to enhance the security of the mortgagee or vendor at the expense of an innocent third party who has done everything possible to protect himself.

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