the receiver is individually insolvent.[27] These rules, however, are subject to the limitation that a receiver can not be sued in his official capacity after his discharge.[28]

---

TAXATION—PERSONAL PROPERTY—LIEN.—In recent years, numerous municipalities in New Jersey have resorted to a more stringent enforcement of the personal property taxes as a means of raising sufficient revenue for their increased expenditures, and as a means of distributing the tax burden more equitably. This policy has been beset with numerous difficulties, for the legislature has not seen fit to provide as thorough and complete a law for the taxing of personalty as it has for the taxing of realty. Moreover, the enforcement of a personal property tax in past years has been so lax that there is a scarcity of judicial construction of the statute.

One of the problems which arises recurrently is whether a municipality can distrain for personal property taxes against goods in the hands of a purchaser, in a case where the taxes were assessed against the seller before the sale took place.[1] The determination of this question depends upon whether, at the time of the sale, the tax was a lien on the property itself, whether such lien, having attached, follows the property in the hands of a purchaser, and whether such lien, having so followed the property, may be enforced by distraint.

It is well settled that taxes for personal property are not, generally, a lien thereon until after a distress and levy has been made.[2] So, ordinarily, if the person assessed sells the goods before any distraint for the tax has been made, the purchaser takes free of the tax, assuming, of course, that the sale was not a fraudulent one in an attempt at evasion.[3] If the sale is made after distress and levy on the goods, the purchaser takes subject to the tax.[4] The only way in which the taxes may be a lien other than

27. *Ibid.*

28. HIGH, RECEIVERS (2d ed.) § 398b.

1. 7 N. J. L. J., nos. 14, 15.

2. Public School Trustees v. Trenton, 30 N. J. Eq. 667 (E. & A. 1879); Hardenburgh v. Converse, 31 N. J. Eq. 500 (Ch. 1879); Paterson v. O'Neill, 32 N. J. Eq. 386 (E. & A. 1880); Lydecker v. Palisades Land Co., 33 N. J. Eq. 415 (Ch. 1881); Smith v. Specht, 55 N. J. Eq. 47, 42 Atl. 599 (Ch. 1899).

3. Manzo v. Manzo, 99 N. J. Eq. 97, 133 Atl. 190 (Ch. 1926).

4. Maish v. Bird, 22 Fed. 180 (C. C. 1884); Palmer v. Pettingill, 6 Idaho 346, 56 Pac. 653 (1898).

by distress and levy is by legislative enactment. The legislature does have the power to make the taxes a paramount lien on the personalty, irrespective of whether the tax is due or delinquent or whether there has been a distress and levy after delinquency.[5] The only statutory provision on this subject in New Jersey is Section 513 of the Tax Act, which provides that "no tax or assessment imposed or levied . . . shall be set aside or reversed . . . for any irregularity or defect in form . . . in the proceeding for collecting the same, if the person against whom, or the property upon which such tax or assessment is assessed or laid is in fact, liable to taxation or assessment . . . and the same shall be and remain a first lien or charge upon the property and person, and collectible in the manner provided by law, the same as if such tax or assessment had been legally levied, assessed or imposed in the first instance. . . ."[6] The question to be determined is whether this statute creates such a lien as authorizes the municipality to distrain the property in the hands of the purchaser.

The objection has been raised that although this section may make an irregularly assessed tax a first lien, after judicial review and correction, it does not apply to a tax, regularly assessed. However, in *Cranbury Twp. v. Chamberlin and Barclay, Inc.*[7] the Supreme Court answered this with the reasoning that if the act makes taxes irregularly assessed, a first lien on personalty, then, *a fortiori,* taxes irregularly assessed in the first instance, are first liens on the personalty.

This reasoning finds support in a settled rule of statutory construction, that where a literal interpretation will lead to an absurd result, resort

---

5. N. J. P. L. 1918, c. 236, at 870; N. J. COMP. STAT. (CUM. SUPP.), at § 499, § 208-66d (513). "The legislature may make taxes a paramount lien on property, and the consequence is that the lien takes precedence of every other lien or claim on the property of whatsoever kind, however created, and whether attaching before or after the assessment of the taxes." 37 Cyc. 1143. See also cases cited, *supra* note 2.

6. N. J. COMP. STAT. (CUM. SUPP.), *supra* note 5.

7. 6 N. J. Misc. 39, 139 Atl. 800 (Sup. Ct. 1928), *aff'd,* 105 N. J. L. 236, 143 Atl. 920 (E. & A. 1928). The court said in part: "To adopt any other view would necessarily invoke as (sic) interpretation of the statute, which would lead to an absurdity, namely, that where a tax or assessment is irregularly assessed, . . . such irregularity can be cured, and when this is done, renders such tax or assessment a first lien upon the personal property levied against, whereas in a case where the tax or assessment is regularly levied, in the first instance, such tax or assessment does not become a first lien upon the property taxed or assessed."

may be had to the doctrine that the spirit of the law controls the letter.[8] In such construction, the statute should be construed so as to suppress the mischief, and advance the remedy intended by the legislature.[9] The common law before the act of 1918 was that taxes on personalty property were not a lien until distress and levy was made. The mischief was that evasions of payment were easy and frequent because of the nature of the property, with no method provided for taxing bodies effectively to enforce payment. The remedy provided was to make personal property taxes a first lien on the property itself, so that no matter what any third person might do, the sovereign could not be divested of its lien for taxes.[10]

In *Chase Brass & Copper Co. v. Bart Reflector Co.*,[11] it was held that the lien of municipal taxes on personal property is imposed by the statute, and comes into being with the assessment,[12] and that such lien does not depend upon the tax being due or delinquent nor upon a distress warrant and levy after delinquency.[13]

---

8. Mendles v. Danish, 74 N. J. L. 333, 65 Atl. 888 (Sup. Ct. 1907); Jensen v. Woolworth, 92 N. J. L. 529, 106 Atl. 808 (E. & A. 1919).

9. 1 Bl. Comm. 87.

10. The fundamental rules for enterpretation are:
    1. What was the common law before the act?
    2. What was the mischief and effect for which the common law did not provide?
    3. What remedy did the legislature resolve and appoint to cure the disease of the commonwealth?
    4. The true reason of the remedy—that the mischief may be suppressed, and a remedy advanced. See L. R. 2 App. Cas. 783 (H. L., 1877).

An almost identical statute, affecting taxes, assessments and water rates (N. J. P. L. 1881, at 194; N. J. Comp. Stat., at 5170, § 191) was held as designed to correct the evils arising from the frequent evasions of taxation, and should be liberally construed. State v. Montclair and Greenwood Lake R. R. Co., 43 N. J. L. 524 (Sup. Ct. 1881).

11. 111 N. J. Eq. 59, 161 Atl. 54 (Ch. 1932).

12. Citing the Chamberlin case, *supra* note 7: "Though the view generally had been that a tax on personal property was a debt, and that a lien could be had only by a levy under a distress warrant and that the lien feature of the section . . . was intended to give a lien for the assessment made by the court only where the tax would have been a lien had it been legally imposed in the first instance, our court of Errors and Appeals unanimously affirmed the Supreme Court's" opinion in Cranbury Township v. Chamberlin & Barclay, Inc. "and by that ruling we are bound." Pasquariello v. Arena Twine & Cordage Co., 108 N. J. Eq. 491, 155 Atl. 608 (Ch. 1931).

13. See also, Spark v. LaReine Hotel Corp., 112 N. J. Eq. 403, 164 Atl. 589

It is the general rule, that, if a tax has become a lien on the personal property of the tax debtor, one who purchases the property after the lien attaches, whether he knows of it or not, takes subject to it.[14] The objection is made, however, that Section 513, after declaring the taxes a lien, provides that they are "collectible in the manner provided by law,"[15] and that this provision refers to Section 606 of the Tax Act. This latter provision enacts that the collector shall distrain the goods and chattels of the *delinquent* and that failing to produce the taxes, imprison the delinquent.[16] This, it is argued, prevents distraint of goods not belonging to the *delinquent,* but to another, even though such other person acquired title subsequent to the attaching of the lien. The case cited to support this contention is *Manzo v. Manzo,*[17] which states, "Where there is a divestiture of title to the property, the City may not distrain; otherwise, it may."[18] This case, however, apparently through an oversight, stated that there was no statute in existence which made personal property taxes a lien on the property, while as a matter of fact Section 513, which gives a paramount lien, had been in existence for seven years. Having

(Ch. 1933). Under the 1918 revision of the Tax Act, taxes are assessed as of the first day of October in each year. N. J. COMP. STAT. (CUM. SUPP.), at 3433.

14. Rodgers v. Gaines, 73 Ala. 218 (1882); Worthen v. Quinn, 52 Ark. 82, 12 S. W. 156 (1889) "If goods are sold by the person charged with the taxes after the lien attaches, they are liable to seizure in the hands of the vendee for the satisfaction of the lien." See also Millikan v. O'Meara, 222 Pac. 116 (Colo., 1924); Robinson v. Youngblood, 103 N. E. 347 (Indiana, 1913); Shanafelt v. Chandler, 103 N. W. 976 (Iowa, 1905); Larson v. Hamilton City, 99 N. W. 133 (Iowa, 1904); Witschy v. Seaman, 112 Pac. 739 (Kansas, 1911); St. Johns National Bank v. Binghan Twp, 71 N. W. 588 (Mich., 1897); J. I. Case Threshing Machine Co. v. Oates, 112 Pac. 409 (Okla., 1910).

15. *Supra* note 6.

16. N. J. COMP. STAT. (CUM. SUPP.), § 208-66d (606), as amended N. J. P. L. 1933, at 712. "It shall be the duty of the collector . . . to enforce the payment of all taxes on personal property . . . by distress and sale of any of the goods of the delinquent in the county . . . if goods and chattels of the delinquent can not be found or not sufficient to make all the money required to pay the taxes . . . then it shall be the duty of the collector in person or by deputy to take the body of the delinquent and unless the tax is at once paid, with costs, to deliver the same to the sheriff or the jailor of the county to be kept in close and safe custody until payment shall be made of the amount due on said taxes with costs. . . ." See also, Bulk Sales Act, as amended N. J. P. L. 1932, c. 225, at 501.

17. *Supra* note 3.

18. Citing 1 CLARK, REC. 513; and Maish v. Bird, 22 Fed. 180 (C. C. 1884).

failed to discover any statute giving a lien, the court reasoned that the only remedy existing for the collection of taxes on personal property, was that provided in Section 606, and since that section only referred to goods and chattels of the delinquent himself, distraint of the goods in the hands of a purchaser was not authorized. But since this ruling is based on the premise that the taxes are not a lien, it is inapplicable to the present question, for municipal taxes were made a paramount lien from the date of assessment, by Section 513, as shown above.

The case of *Maish v. Bird*,[19] which was cited in *Manzo v. Manzo*, holds that where taxes are not a lien upon personalty until distraint therefor is made in the manner provided by the statutes, one purchasing personal property before distraint thereupon has been made, *i.e.*, before any lien is acquired, is protected against a subsequent distraint for the taxes assessed against the vendor.

The same result is reached by approaching the problem from the provisions of the act itself. After providing that the courts shall have power to correct errors in assessments and to determine for what sum the person or property is legally liable to taxation, the section provides that "the sum so fixed shall be the amount of tax or assessment for which such person or property shall be liable, and the same" (sum so fixed) "shall be *and remain* a first lien or charge upon the *property* and persons, and" (the sum so fixed shall be) "collectible in the manner provided by law, the same as if such tax or assessment had been legally levied, assessed or imposed in the first instance. . . ." The phrase "collectible in the manner provided by law" refers to the sum or amount fixed by the court, and only operates to give such judicially computed amounts the same force and effect as a regularly assessed tax, for the phrase is qualified by the one following: "the same as if such tax or assessment had been legally levied, assessed or imposed in the first instance. . . ." As pointed out above, the act was designed to prevent evasions and to attain this end provided a method of enforcement which did not previously exist by making the tax a first lien on the property from the date of assessment. It could not have been the intention of the legislature to limit the enforcement of the lien to property still in the hands of the delinquent at the time of distraint. Such construction would render the section and its purpose nugatory, for that property was subject to seizure prior to

19. *Supra* note 4.

the passage of the act. Seizure of the goods in the hands of the person assessed was previously available, and was found inadequate. It was to remedy this that the taxes were made a first lien on the goods themselves. Also, further than declaring the taxes a first lien on the personalty, the section provides that they shall *remain* a first lien. The result is that taxes not only displace other liens already on the property, but remain attached to it indefinitely until discharged either by payment or by act of the municipality itself.

On the other hand, it may well be argued that the cases upon which this reasoning is based do not involve the situation of a bona fide purchaser for value[20] and that, although the courts have said that a lien exists, such a lien is rather in the nature of a preference in payment where the goods are in the hands of the person assessed or in the hands of a receiver. The law throughout the country is not in agreement, but the distinction between the cases rests on whether or not the statute of the particular state creates a lien such as will follow the property. Where the courts have held the tax not to be a lien except after distress and levy, it usually has been on the ground that the statute under consideration was not sufficiently explicit to warrant a construction that it imposed such a lien.[21] Such a lien may be a practical necessity as a means of enforcing this tax, because of the nature of the property, the ease with which it may be concealed, the difficulty in urban districts of tracing it, and the difficulty of showing a fraudulent intent; but it is, nevertheless, a drastic step, for there is no complete record system for the sale of personalty, and it puts the purchaser on notice as to the taxes assessed against his vendor. Then, too, the personalty is easily transported and may be sold in other cities, or in other states.

It is thus seen that both views, while diametrically opposed, are both well supported by authority and sound reasoning; the one being based on the necessity for providing an adequate means of enforcement, and the other on the difficulty of employing the means itself, and on the lack of express and detailed legislative enactment. It is to be remembered that it was necessary for the courts to imply from Section 513, that the

20. Pasquariello v. Arena Twine & Cordage Co., *supra* note 12; Spark v. LaReine Hotel Corp., *supra* note 13; Chase Brass & Copper Co. v. Bart Reflector Co., *supra* note 11.

21. Jaffray v. Anderson, 66 Iowa 718, 24 N. W. 588 (1885); Binkert v. Wabash Ry. Co., 98 Ill. 205 (1881); Palmer v. Pettingill, 6 Idaho 346, 55 Pac. 653 (1898).

legislature intended the tax to be a lien. Whether the courts will carry that implication to its logical conclusion, based on the statements in the cases,[22] is at best a matter of conjecture. The writer submits that in view of these considerations, it is the legislature's duty to the public to enact a more definite, complete and accurate law for the taxation of personalty if such is its intent, or to repudiate the implications raised by the cases in construing the present statutes if they are contrary to its intent.

---

TEACHERS TENURE.—In New Jersey, as elsewhere the legislature has provided an intermediate system of courts to hear and determine the litigation of causes arising under the School Laws. As a result, the various adjudications of the intermediate boards of appeal seldom reach the attention of the average practitioner, especially since few of the matters are taken into the regular courts on certiorari. It is the purpose of this note to clarify some of the fundamental requirements underlying one aspect of the School Law—the tenure of teachers in the public schools of the state.

The School Law of New Jersey provides that the "services of all teachers . . . of the public schools in any school district . . . shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive calendar years in that district . . . or

22. "Personal property taxes . . . become a lien upon assessment." Spark v. LaReine Hotel Corp., *supra* note 13. "The lien of municipal taxes on personal property . . . does not depend upon the tax being due or delinquent, nor upon a distress warrant and levy after delinquency, but is imposed by the statute and comes into being with the assessment." Chase Brass and Copper Co. v. Bart Reflector Co., *supra* note 11. "A tax on personal property is superior to the lien of a prior chattel mortgage." Pasquariello v. Arena Twine & Cordage Co., *supra* note 12. "We must attach some significance to that part of the section" (513) "which declares that 'the same shall be and remain a first lien upon the property and persons, and collectible in a manner provided by law, the same as if such tax or assessment had been legally levied, assessed or imposed in the first instance.' We think this language is sufficiently explicit to constitute a tax or assessment . . . against personal property, a first lien. . . ." Cranberry Twp. v. Chamberlin and Barclay, Inc., *supra* note 7.