

Real Property--Private Water Companies--Payment of Prior Accrued Charges Unenforceable Against Receiver in Foreclosure (Title G. & T. Co. v. 457 Schenectady Ave., 260 N.Y. 119 (1932))

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the vacated premises.⁸ In all these cases, although the lease has been terminated, the covenant of continuing liability is held to be distinct from the relationship of landlord and tenant and so survives the annulment of that relationship.⁹ In the instant case, it was immaterial whether the recovery be termed damages¹⁰ or rents, since all payments were past due at the inception of the action.¹¹

M. M.

REAL PROPERTY—PRIVATE WATER COMPANIES—PAYMENT OF PRIOR ACCRUED CHARGES UNENFORCEABLE AGAINST RECEIVER IN FORECLOSURE.—Plaintiff, by virtue of a provision in a mortgage authorizing it, upon default in payment, to collect the rents, procured the appointment of a receiver during the pendency of the foreclosure sale. Prior to the appointment water charges accumulated by the mortgagor were not discharged. A private water company organized pursuant to C. 737 of the Laws of 1873 made application for an order granting it permission to turn off the water unless the mortgagor's bill was paid. *Held*, the company had no lien; and no right to discontinue the water supply for arrears not incurred by the receiver. *Title G. & T. Co. v. 457 Schenectady Ave.*, 260 N. Y. 119, 183 N. E. 198 (1932).

A private water company is under a public duty to furnish water to all consumers who may require it and comply with its reasonable rules.¹ Reasonable regulations include the right to shut off water supplied to *delinquents* and to demand charges for a reasonable time in advance.² Default in payment, however, does not give the company an absolute right to discontinue the supply. Its rights are to be determined by a competent court.³

The supplying of water is a sale.⁴ A private water company does not have a lien by statute⁵ for water charges as is the case

⁸ *Supra* note 4.

⁹ *Roe v. Conway*, 74 N. Y. 201 (1878); *Michaels v. Fishel*, 169 N. Y. 381, 62 N. E. 425 (1902).

¹⁰ See *Hermitage Co. v. Levine*, *supra* note 7, for "damage" clauses and the difficulty encountered there.

¹¹ Instant case, at 454, 184 N. E. at 52.

¹ *City of New York v. Jamaica Water Supply Co.*, 181 App. Div. 49, 167 N. Y. Supp. 763 (2d Dept. 1917), *aff'd*, 226 N. Y. 572, 123 N. E. 859 (1919).

² *Millville Improvement Co. v. Millville Water Co.*, 92 N. J. Eq. 480, 113 Atl. 516 (1921); *supra* note 1.

³ *McEntee v. Kingston Water Co.*, 165 N. Y. 27, 58 N. E. 785 (1900); *Pond v. New Rochelle Water Co.*, 143 App. Div. 69, 127 N. Y. Supp. 582 (2d Dept. 1911), *aff'd*, 206 N. Y. 719, 100 N. E. 1132 (1912); *supra* note 1.

⁴ *Canavan v. City of Mechanicville*, 229 N. Y. 473, 128 N. E. 882 (1920); N. Y. PERSONAL PROPERTY LAW (1909) §156, subd. 1.

⁵ C. 737 of the Laws of 1873 and amendments. (Courts should not permit water to be turned off. It may be an easy method of collecting debts but a patron who did not purchase the water should not suffer for company's negligence by not demanding charge in advance.)

when service is furnished by a city,⁶ town,⁷ or a village.⁸ It is not the receiver's duty to pay mortgagor's water bill.⁹ The courts of this state have not heretofore determined the issue but other jurisdictions have. Change of possession denies the company the right to refuse water supply.¹⁰ The receiver's possession is that of the mortgagee. Until redemption the mortgagee in possession has all the rights which actual possession confers.¹¹

P. A. L.

SAVINGS BANK TRUSTS—LOSS OF INTEREST BY BENEFICIARY BY PREDECEASING DEPOSITOR.—In the instant case the depositor was an aged woman. She lived alone in a rooming house. She was unemployed and depended for her existence upon some property which she possessed. Part of this property had come to her upon the death of a brother by way of a savings bank trust. She had two other brothers, Leonard and Herbert. Her relations with the former were not of the best due to some unprofitable investments which he had made for her. She opened a savings account in her own name in trust for Herbert. She retained the pass book until her death. On several occasions she had stated to her physician that she had opened the account to make sure that Herbert would get it. She made similar statements to the woman in whose house she was a tenant that she desired he get all the money she had left. On one occasion she drew money from the account for her own purposes. Herbert predeceased her. *Held*, the fact that the beneficiary predeceased the depositor terminated his interest in the tentative trust. *Matter of Vaughan*, 145 Misc. 332, 260 N. Y. Supp. 197 (Surr. Ct. 1931).

Prior to *Matter of Totten*¹ the law regarding savings bank trusts was in doubt and very uncertain. This case laid down a rule

⁶ Greater N. Y. Charter (Laws of 1901, c. 466, and Laws of 1916, c. 602, §2) §473.

⁷ N. Y. TOWN LAW (1909) §293 (Amended Laws of 1929, c. 592).

⁸ N. Y. VILLAGE LAW (1909) §229 (Amended Laws of 1930, c. 300).

⁹ (A consumer is not bound to pay former's bill.) *Ranney v. Peysers*, 83 N. Y. 1 (1880); *Herring v. N. Y., Lake Erie & W. R. R. Co.*, 105 N. Y. 340, 12 N. E. 763 (1887); *Silkman v. Board of Water Commission*, 152 N. Y. 327, 46 N. E. 612 (1897). (Expenses and charges on premises only are added to mortgage debt. N. Y. Civil Practice Act §1087.)

¹⁰ *Turner v. Revere Water Co.*, 171 Mass. 329, 50 N. E. 634 (1898) (water is sale on credit; person not party to contract should not be compelled to pay); *Coe, et al. v. N. J. Midland Ry. Co.*, 30 N. J. Eq. 440 (1879); *Millville Improv. Co. v. Millville Water Co.*, *supra* note 2, at 484, 113 Atl. at 518 ("But the water is a commodity * * * it is to be furnished at a price to such person as is entitled to receive it and desires to purchase it"); *Vanderbilt v. Hackensack Water Co., et al.*, 110 N. J. Eq. 636, 638, 160 Atl. 825, 826 (1932) ("I see no more reason why complainants should be compelled to discharge defendants' unpaid bill, than that they should be required to pay for coal, janitor's services or any other commodity furnished to and consumed by the mortgagor while he was in possession").

¹¹ *Barson v. Mulligan*, 191 N. Y. 306, 84 N. E. 59 (1908).

¹ *Matter of Totten*, 179 N. Y. 112, 71 N. E. 748 (1904).