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Chattel Mortgages: Trust Receipts: Security Transactions

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ceeds therefrom in the hands of the buyer where the seller and the buyer have not complied with the requirements of the Bulk Sales Act. *Patmos* v. *Grand Rapids Dairy Co.*, 243 Mich. 417, 220 N.W. 724 (1928); *Roundy, Peckham, and Dexter Co.* v. *Hetzel,* 198 Wis. 492, 224 N.W. 725 (1929). The Bulk Sales Act is in the statutes in Wisconsin, section 241.18, and the purchase and sale of a stock of goods like that of the drug stores here would obviously be within the statute. *Roundy, Peckham, and Dexter Co.* v. *Hetzel,* supra.; *Prokopovitz* v. *Kurowski,* 170 Wis. 190, 174 N.W. 448 (1919); *Pennsylvania Rubber Co.* v. *Sampson,* 193 Wis. 77, 213 N.W. 643 (1927). A borrowing and lending and the giving of a mortgage on a stock of goods to secure the loan does not fall within the scope of the Bulk Sales Act. *In Re George Seton Thompson Co., Central Trust Co. of Illinois* v. *First National Bank of Oak Park,* 297 Fed. 934, (C.C.A. 7th, 1924). See also *Noble* v. *Fort Smith Wholesale Grocery Co.*, 34 Okla. 662, 127 Pac. 14 (1911); *Mills* v. *Sullivan,* 222 Mass. 587, 111 N.E. 605 (1916). The legislature in Michigan has enacted a separate statute called the Bulk Mortgage Act to catch borrowing and lending transactions and to make the borrower and lender the same prescriptions as if they were completing a purchase and sale. 9548 C.L. Mich. 1929. Cf. *Cohen* v. *Hodes,* 54 F. (2d) 680, (D. Ct. E.D., N.Y., (1931).

The Wisconsin legislature has not enacted any Bulk Mortgage Act. There is a section in the Wisconsin statutes which covers the execution and recording of mortgages on stocks of goods to be sold in trade, Section 241.14. The Wisconsin court at an early date had decided that a mortgage on after acquired property was void as between the parties even where the mortgagor had subsequently acquired the property intended to be covered by the mortgage. *Chynowith* v. *Tenney,* 10 Wis. 397 (1860). That rule had never been changed by judicial decision. Under section 241.14 the mortgagor and mortgagee can bargain for and can make effective a security interest in subsequent additions to a stock of goods. This statute prescribes also what the parties must do to keep alive a security interest in any stock of goods to be sold in trade. The mortgagor is expected to file statements every four months describing the condition of the stock particularly with respect to depletions and additions. The mortgagee is expected to see that the mortgagor complies with these requirements. If both fail in their duties the mortgage is no longer enforceable as a lien on the stock except as between the parties. The Wisconsin court has held that a creditor of the mortgagor, proceeding as a plaintiff against the debtor to reduce his claim to judgment, can reach the proceeds derived from the sale of the mortgaged goods through garnishment where the borrower and lender have failed to comply with the provisions of section 241.14 about the filing of inventories and where the mortgagee has purported to foreclose. *Thomas Produce Co.* v. *Letman,* 184 Wis. 211, 199 N.W. 79 (1924). The Wisconsin and Michigan statutes cover similar situations. The requirements with respect to execution and filing are different. A failure to comply with these requirements in either case may produce the same result.

RUSSELL DEVITT.

CHATTEL MORTGAGES—TRUST RECEIPTS—SECURITY TRANSACTIONS.—The finance company made loans to the distributor to enable the latter to buy automobiles from the manufacturer. As security for its loans the finance company took chattel mortgages on each car so purchased. The distributor was expected to sell these automobiles in the regular course of business and to account to the finance

company out of the proceeds derived from the sales. The finance company thereafter purported to require the distributor to get the consent of the company's representative for every sale. The plaintiffs purchased the automobile in question from the distributor. The car was covered by a recorded chattel mortgage. The plaintiffs knew that the company held a chattel mortgage on the car but they did not know that the company had purported to make any restrictions on the apparent power of the distributor to dispose of the cars. The defendants subsequently took the car from the plaintiffs. This is an action by the purchasers to recover possession of the car. A judgment in favor of the defendant was reversed. *Held,* plaintiffs were entitled to relief against the mortgagees because they, as purchasers, had relied upon the mortgagor's apparent authority to dispose of the car free from the mortgage lien. *Bernhagen* v. *Marathon Finance Corporation,* (Wis. 1933) 250 N.W. 410.

That the plaintiff purchaser is protected against the mortgagee where the car is expected to be sold in the regular course of business, and where the mortgage is of record, has already been decided in Wisconsin. *Southern Wisconsin Acceptance Co.* v. *Paull,* 192 Wis. 548, 213 N.W. 317 (1927). The court in the present case decided that any subsequent restriction upon the power of the mortgagor to dispose of the car in the regular course of business cannot be made effective against a subsequent purchaser who knows nothing about the restriction. That the mortgagee had permitted the car to get into the possession of the distributor-dealer ostensibly for the purpose of sale is vitally important.

This case calls attention to the problem of the creditor-finance company who wants a convenient yet reasonably adequate type of security device to finance this kind of loan. The creditor wants protection against other creditors of the debtor, against the debtor himself, and against probable stranger-tortfeasors. He ought not expect protection against subsequent purchasers from the debtor nor against subsequent encumbrancers. Through the device of a recorded chattel mortgage he gets protection against the first group, but he does not get protection against the others because the courts have seen fit to work out something of an implied agency relationship between the mortgagor and the mortgagee as the instant case illustrates. Why then is the chattel mortgage not an acceptable device? The finance company may have to record too many instruments. A recorded chattel mortgage may stop purchasers from taking the car from the dealer. The purchasers in the instant case were retailers themselves who were buying from a distributor. They could appreciate the true scope of the creditor's security. Other purchasers who might see the mortgage of record might not understand that the creditor was impliedly consenting to the sale of the car free from the mortgage lien. A creditor in the position of the finance company here, who is financing the purchase of finished manufactured goods by a retailer or distributor from a manufacturer for sale in the regular course of business, ought to be able to use some othe rsecurity device, such for instance as the trust receipt. See Recent Decision, 18 Marq. Law Rev. 139. It is generally understood among commercial lawyers in Wisconsin that the trust receipt gives the creditor no protection against other creditors of the borrower. See *In re L. E. Lee, Bankrupt,* 6 Am. Bank. Rep. (N.S.) 437 (Ref., W. D., Wis., 1923). The Wisconsin Supreme Court has not purported to say that a trust receipt is like a chattel mortgage and must be filed to give the creditor protection against anyone but the debtor himself. Perhaps the legislature may suggest a definite solution. The trust receipt should be permitted in this one type of case to secure the creditor who has financed the purchase of finished manufactured goods to be

sold by a retailer in the course of trade. The creditor should not be required to record his security instrument to get protection against any creditors of the borrower.

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CONSTITUTIONAL LAW—POLICE POWER—PRICE FIXING.—A law passed by the New York state legislature (Chapter 158 of the Laws of 1933) declared that the milk industry was of paramount importance to the people of the state; that conditions existed in the industry which warranted control in the interests of the public welfare; and founded a conrol board with the power to regulate the entire milk industry and in particular to fix minimum and maximum prices for the sale of fluid milk. The law was based on an extensive survey made by a joint legislative committee which reported that the evils in the industry, owing to certain peculiar factors, could not be expected to right themselves through the ordinary play of the forces of supply and demand. The statute also provided for a criminal sanction. Defendant was convicted of selling milk at a price lower than that fixed by the control board. His conviction was affirmed by the New York Court of Appeals. [262 N.Y. 259, 186 N.E. 694 (1933); Recent Decision, 18 Marq. Law Rev. 56 (1933).] Defendant appeals to the Federal Supreme Court on the ground that the statute contravenes the 14th Amendment, particularly the due process clause. *Held,* judgment of conviction affirmed. The statute is constitutional *Nebbia* v. *New York,* 54 Sup. Ct. 505, 78 L.Ed. 563 (1934).

A state legislature has no power to fix prices at which commodities may be sold, services rendered, or property used, unless the business or property involved is "affected with a public interest." *Munn* v. *Illinois,* 94 U.S. 113, 24 L.Ed. 77 (1876); *William* v. *Standard Oil Co.,* 278 U.S. 235, 49 Sup. Ct. 115, 73 L.Ed. 287, 60 A.L.R. 596 (1928). As first ennunciated in the *Munn* case, where a state statute fixing maximum charges for the storage of grain in warehouses was sustained, this simply meant that a business, although private in its nature, may become of such public consequence and so affect the community at large, as to be subject to reasonable regulation in the interest of the public. However, Mr. Justice Field, dissenting in that case, construed the phrase "affected with a public interest" more narrowly, to mean a business dedicated by the owner to public uses, or a business the use of which was granted by the government, or in connection with which special privileges were conferred. It was this construction that was adopted by the court in decisions subsequent to *Munn* v. *Illinois,* supra; so that statutes very similar to the one in the instant case have been held invalid as taking property without due process of law: *Lochner* v. *New York,* (hours of labor in bakeries) 198 U.S. 45, 25 Sup. Ct. 539, 49 L.Ed. 937 (1905); *Adkins* v. *Children's Hospital,* (minimum wages for women) 261 U.S. 525, 43 Sup. Ct. 394, 67 L.Ed. 785 (1923); *Wolff Packing Co.* v. *Court of Ind. Rel.,* (wages for the meat packing industry) 262 U.S. 522, 43 Sup Ct. 630, 67 L.Ed. 1103 (1923); *Tyson & Bro.* v. *Banton,* (maximum price for resold theater tickets) 273 U.S. 418, 47 Sup. Ct. 426, 71 L.Ed. 718 (1926); *Fairmount Creamery Co.* v. *Minnesota,* (price at which creameries could buy cream) 274 U.S. 1, 47 Sup. Ct. 506, 71 L.Ed. 893 (1926); *Ribnick* v. *McBride,* (charges to be made by employment agencies) 277 U.S. 350, 48 Sup. Ct. 545, 72 L. Ed. 913 (1927); *Williams* v. *Standard Oil Co.,* (price at which gasoline could be sold (278 U.S. 235, 49 Sup. Ct. 115, 73 L.Ed. 287 (1928). In each of these cases the legislature, no doubt, thought that conditions warranted control in the interests of public welfare, and that the regulation passed was reasonably adapted to achieving such control.