The Uniform Trust Receipts Act as Adopted in Wisconsin

Robert H. Gorske
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AS ADOPTED IN WISCONSIN

I

THE BACKGROUND

In the United States, the trust receipt originated as a financing device for the importation of goods from foreign sellers. In the typical transaction the importer requested his bank to send a letter of credit to the foreign seller, authorizing it to draw its drafts on the bank for the cost of specified goods to be supplied to the importer. The seller shipped the goods, drew a draft on the importer's bank, attached a bill of lading to the order of the bank to the draft and forwarded it through banking channels for payment. The bank paid the draft, took possession of the bill of lading and notified the importer when the goods arrived. The importer then executed to the bank a trust receipt, which acknowledged that title to the goods was in the bank and that the goods were received in trust for some specified purpose (usually their sale in the ordinary course of trade). The trust receipt further provided that the bank could take possession of the goods at any time until they were delivered to a purchaser and the proceeds received, and that, after the proceeds were received, the bank could take possession of such proceeds. Upon execution of the trust receipt, the bank indorsed the bill of lading to the importer, who acquired possession of the goods and used them in accord with the purpose expressed in the trust receipt. The typical purpose being one of sale, the importer sold the goods—usually to a person having no knowledge of the financing arrangement—and used the proceeds to satisfy his debt to the bank. Thus the transaction was completed and the trust receipt was cancelled. It will be observed that in its origin the trust receipt transaction was tripartite one: involving a distant seller, a financing agency (called the "entruster") and a domestic purchaser (called the "trustee"). It will also be noted that legal title to the goods never rested in the trustee.

The trust receipt device is no longer restricted to importing situations; it is being used with greater and greater frequency in the field of domestic financing, especially that of automobile dealers. The typical trust receipt transaction today may involve, for example, General Motors as the distant seller, General Motors Acceptance Corporation as the entruster, and a local dealer in General Motors automobiles as trustee for the purpose of sale. It is this large scale entrance into the field of domestic financing that makes the subject of trust receipts more important than ever before.

The growing popularity of trust receipts in the domestic financing field unfortunately has not met with consistent reactions on the parts of the various courts. Confronted with this novel security device, many courts have lost sight of the fundamental characteristic of the trust receipt transaction—namely that it is a tripartite arrangement, the trustee never getting the legal title—and have tried to fit it into the straight jacket of some more familiar device. In different courts, the trust receipt transaction has been variously viewed as a bailment for sale,² a chattel mortgage,³ a conditional sale,⁴ a pledge,⁵ or as "an independent type of security device not falling in any of the established categories, the borrower having the beneficial interest in the goods, and the lender having a security title derived not from the borrower himself but from a third person."⁶ The result of some of the above analyses was to recognize the trust receipt as a valid incumbrance even in the absence of recording;⁷ the result of others was to declare trust receipts void as secret liens unless recorded in compliance with conditional sales or chattel mortgage statutes.⁸ At any rate, the status of trust receipts in states which had not ruled on them was so highly questionable as often not to justify risking their use. Further, aside from this confusion in the states which had neither rejected nor accepted the trust receipt device, there were many uncertainties in the use of that device even in those states which recognized its validity without recordation. There was, for example, the rule at common law that it was absolutely necessary for the validity of the transaction that the legal title never get into the trustee:⁹ if the trustee acquired the legal title, even for an instant, the trust receipt would be held to be a chattel mortgage subject to the applicable recording statutes.¹⁰ This situation created overly technical difficulties which were not justified by the substance of the transaction: in many cases the entruster could never be sure that the arrangement was legally valid.

To resolve these difficulties and to provide a pattern for the solution of other trust receipt problems, the Commissioners on Uniform

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² General Motors Acceptance Corporation v. Hupfer, 113 Neb. 228, 202 N.W. 627 (1925) ; Commercial Credit Company v. Interstate Securities Co., 197 S.W. 2d 1000 (Mo. App. 1946).
⁶ Note, 44 Harv. L. Rev. 304 (1930); see also, In re A. E. Fountain, Inc., 282 Fed. 816 (2d Cir. 1922).
⁸ See H.A.C. v. Berry, supra note 3.
⁹ In re James, Inc., 30 F.2d 555 (2d Cir. 1929); In re A. E. Fountain, Inc., supra note 6.
State Laws in 1933 adopted the Uniform Trust Receipts Act, which defines the rights and duties of trust receipt financing in great detail. Last year the Wisconsin Legislature adopted the Uniform Trust Receipts Act as chapter 490 of the Laws of 1953, becoming the 33rd jurisdiction to adopt it. The act is complex and comprehensive. An attempt will be made here to summarize its provisions and the cases interpreting it.

II
THE NATURE OF THE TRANSACTION UNDER WISCONSIN'S UNIFORM TRUST RECEIPT ACT

A. Incomplete Pledge Transactions.

The Uniform Trust Receipts Act is not restricted in its operation strictly to trust receipt transactions. It applies also to situations involving the attempted creation or continuance of a pledge without delivery to or retention of possession by the pledgee. This particular application of the Act will be discussed only at this point; the balance of this paper will be devoted to the sections of the Act which are concerned with trust receipts as such.

The Act provides that where an attempted pledge or agreement to pledge unaccompanied by possession in the pledgee fails also to qualify as a trust receipt transaction, it will nevertheless be valid as against creditors of the pledgor as follows:

1) if the pledgee has given new value, the transaction will be valid to the extent of the new value, as against the pledgor's creditors, with or without notice, for a period of 10 days from the giving of the new value;

2) where the 10 days in 1) has expired, or where the value given by the pledgee is not new, the pledge is valid as against lien creditors without notice, as defined in the Act, only as of the time the pledgee takes possession and without relation back.

Bona fide purchasers (defined by the Act to include entrusters) take

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11 1933 HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, p. 244n.
13 Bogert, in The Effect of the Trust Receipts Act, 3 UNIV. OF CHI. L. REV. 26, tells that the governor of the state of Illinois felt obliged to allow the Act to become law without his signature in view of its complicated nature. "The Uniform Trust Receipts Act is a perplexing maze of technical phrases wholly incomprehensible without an extensive study of the background and development of the security device known as the trust receipt." In re Chappell, 77 F.Supp. 573, 575 (D.C. Ore. 1948).
14 Uniform Trust Receipts Act §3; Wis. Stats. (1953) §241.33.
15 U.T.R.A. §3(1); Wis. Stats. (1953) §241.33(1).
free of the pledgee's interest unless the pledgee has reduced the subject of the pledge to possession before the purchase.\textsuperscript{17}

A common situation in which banks temporarily release collateral for the purpose of presentation, collection or renewal\textsuperscript{18} is provided for in the general terms of section 241.33(3). That section declares that where a security interest holder delivers the subject of his interest to the person holding the beneficial interest therein, and the circumstances do not constitute a trust receipt transaction, the transaction will be treated the same as an attempted pledge or agreement to pledge, for new value, as above. This means that the interest will subsist against all creditors of the beneficial interest holder for a period of 10 days,\textsuperscript{19} or, after the 10 days have expired, as against lien creditors without notice\textsuperscript{20} from the time the security interest holder reacquires possession of the property, without relation back.

To the extent covered by the Act, the common law rules: 1) that the validity of a pledge depends upon delivery, actual or constructive, of the property to the pledgee;\textsuperscript{21} and 2) that a pledge is discharged by the surrender of the pledged property to the pledgor\textsuperscript{22} have been abrogated. The only case construing this section held that where the owner of property subject to a pledge pledged his remaining interest to another by execution of a contract to that effect, the pledge to the second pledgee was perfected by possession within the meaning of §3(1)(b), U.T.R.A.,\textsuperscript{23} as of the time it was made, although physical possession of the property was not acquired until after the pledgor had gone into bankruptcy.\textsuperscript{24}

B. Transactions Not Falling Within the Act.

1. \textit{Where possession of the subject matter is not given to the trustee for one of the purposes enumerated in the Act.}

The Act provides that no trust receipt transaction exists unless the possession of the subject matter has been given to the trustee for one of the following purposes:

(a) in the case of goods, documents or instruments, for their sale or exchange;

\textsuperscript{17} U.T.R.A. §3(2); Wis. Stats. (1953) §241.33(2).
\textsuperscript{19} U.T.R.A. §3(1)(a); Wis. Stats. (1953) §241.33(1)(a).
\textsuperscript{20} See \textit{supra} note 16.
\textsuperscript{21} Geilfuss v. Corrigan, 95 Wis. 651, 70 N.W. 306 (1897); Dale v. Pattison, 234 U.S. 399 (1914).
\textsuperscript{22} Gregory v. Morris, 96 U.S. 619 (1877); Hubbard v. Tod, 171 U.S. 474 (1898).
\textsuperscript{23} Wis. Stats. (1953) §241.33 (1) (b).
\textsuperscript{24} Gins v. Mauser Plumbing Supply Co., 148 F.2d 974 (2d Cir. 1945), noted in 45 Col. L. Rev. 967 (1945). For further example of the protection given by courts to the pledgee's equitable interest as against the trustee in bankruptcy by the fiction of "relation back" see Goldstein v. Rusch, 56 F.2d 10 (2d Cir. 1932).
(b) in the case of goods or documents representing goods, for manufacturing or processing for ultimate sale or for loading, transporting, storing, etc., in a manner preliminary to or necessary for sale;

(c) in the case of instruments,
   (i) for the purpose of delivering them to a principal under whom the trustee is holding them, or
   (ii) for the purpose of consummating a transaction involving delivery to a depository or a registrar, or
   (iii) for their presentation, collection or renewal.\(^{25}\)

The theory that is evident from these provisions is that the trust receipt was intended under the Act chiefly for the use of dealers and manufacturers in financing their inventories, and for the use of banks in releasing collateral to borrowers for temporary purposes. That is to say that the Act was meant to apply where the parties occupy the positions of lender and borrower.\(^{26}\)

2. *Purchase money mortgages, conditional sales transactions, bailments and consignments for sale.*

In the section defining “entruster” the Act excludes purchase money mortgages and conditional sales contracts from its coverage.\(^{27}\) That section is very broad and excludes any transaction in which a person engaged in the business of selling goods or instruments for profit, who has at the outset a general property interest in the goods or instruments as against the buyer, sells to the buyer and retains title or a security interest. Any question this section might raise with respect to consignments for sale is resolved by a later section\(^{28}\) which declares that bailments and consignments are excluded from coverage of the Act where the bailor or consignor does not retain title to secure an indebtedness to him of the bailee or consignee.

3. *Where the agreement giving rise to the transaction is not written.*

The Act provides that between the entruster and the trustee the terms of the trust receipt shall be valid and enforceable.\(^{29}\) But in order to be valid, the trust receipt must be in writing, must designate the subjects affected and must recite that the entruster’s security interest remains or will remain in him or has passed or will pass to him.\(^{30}\) It has been held that where the parties had orally agreed to a financing

\(^{25}\) U.T.R.A. §2(3); Wis. Stats. (1953) §241.32(3).


\(^{27}\) U.T.R.A. §1; Wis. Stats. (1953) §241.31(3).


\(^{29}\) U.T.R.A. §5; Wis. Stats. (1953) §241.35.

\(^{30}\) U.T.R.A. §2(1) (b) (1); Wis. Stats. (1953) §241.32(1) (c) (1).
arrangement which was in substance an unwritten trust receipt transaction, common law principles applied instead of the Uniform Trust Receipts Act.\textsuperscript{31} It should also be noted that while a contract to give a trust receipt is equivalent in all respects to a trust receipt, when the property has been delivered to or the security interest has passed from the trustee, it must be in writing and signed by the trustee to have that effect.\textsuperscript{32}

4. \textit{Where the obligation secured under the purported trust receipt transaction is an unsecured past indebtedness or a future indebtedness.}

The entruster’s security interest may extend against both purchasers and creditors to obligations for which the subject matter of the trust receipt transaction was security or to obligations arising from the transfer or agreement to transfer new value.\textsuperscript{33} But other than that, the security interest may not extend to past or future indebtedness.\textsuperscript{34}

5. \textit{Where there is a single transaction of pledge, the entruster is a natural person and the trustee is his fiduciary for handling his investments or finances.}

The Act explicitly excludes single transactions of legal or equitable pledge between an entruster who is a natural person and a trustee who is the entruster’s fiduciary for investment or financial management where there is no existing course of business. This exclusion holds good whether the transactions are unaccompanied by delivery of possession, or involve constructive delivery, or delivery and redelivery, actual or constructive.\textsuperscript{35}


\textsuperscript{33} U.T.R.A. §14; Wis. Stats. (1953) §241.44.

\textsuperscript{34} Ibid.

\textsuperscript{35} U.T.R.A. §15; Wis. Stats. (1953) §241.45. A fact situation described as being not unlike the one contemplated by this section may be found in Sammet v. Mayer, 108 F.2d 337, 341n.7 (2d Cir. 1940). In that case, two partners gave a lender their note reciting that certain stock certificates were collateral therefor, placed the certificates in an envelope and retained possession of the envelope. The court did not feel called upon to decide whether or not the Act applied, since the result in the case, as decided on the basis of other law, was the same as it would have been under the Act, namely that the transaction was invalid as against creditors, under New York law which required an instrument to be filed embodying the terms of the transaction. In the 1930 HANDBOOK, pp. 289-290, the draftsman of the Act had this to say: "It would be undesirable for the Act to disturb the present law on constructive delivery of pledges of security papers between individuals personally unacquainted to the transaction of business, and their agents handling their affairs. In such situations, the cases have repeatedly, and with some justice, worked out sufficient 'delivery' under a pledge by the segregation and marking of securities. Whether this be wise or unwise, it is believed that a regulation of the situation had no place in this Act, and that applicable local law should stand."
C. Ways in Which Trust Receipt Transactions May Arise Under the Act.

The Act specifies in precise terms the situations which are designated as Trust Receipt Transactions.86 Basically, under the Act as adopted in Wisconsin, a trust receipt transaction can arise in any one of four ways, assuming that the other essentials are present, e.g., that the trust receipt is in writing,27 and the transaction is effected for one of the purposes required.28 Each of the four ways will be discussed separately.

1. Where the entruster has a security interest in goods, documents or instruments and releases possession to the trustee.

When the creditor in possession of security, a pledgee or a chattel mortgagee, of goods, documents, or instruments releases them to the debtor, extinguishes his security interest and takes in return a trust receipt, the Act recognizes the arrangement as a valid trust receipt transaction.39 It is to be noted that this type of situation differs from that dealt with above under "Incomplete Pledge Transactions,"40 in which a creditor also release security to his debtor, in that here all the technical requirements of a trust receipt transaction must be complied with: i.e., the security must be released for one of the purposes specified by section 241.32(3), etc.

2. Where the entruster for new value acquires by the transaction a security interest in goods, documents or instruments — or, as a result of the transaction, is to acquire such security interest promptly — and the entruster or a third person delivers the goods, documents or instruments to the trustee.

The traditional trust receipt situation, outlined in Part I of this paper, falls under the section of the Act which provides that a valid trust receipt transaction may arise where delivery of goods, documents or instruments is made to the trustee by the entruster or a third party, and the entruser, for new value, acquires a security interest therein.41 However, the provision in the Act covers a broader situation than the one outlined. By including within its coverage situations in which a security interest will be acquired by the entruster promptly after the transaction,42 this section removes the common law stumbling block which nullified the transaction if title rested in the trustee before passage to the entruster.43 This position is made even clearer by the pro-

87 See supra note 25.
88 U.T.R.A. §2(3); Wis. Stats. (1953) §241.32(3).
89 U.T.R.A. §2(1)(a); Wis. Stats. (1953) §241.32(1)(a).
90 See part II A. of this paper.
91 U.T.R.A. §2(1)(a); Wis. Stats. (1953) §241.32(1)(a).
92 Ibid.
93 Supra note 9.
vision that the security interest of the entruster may be derived from the trustee or from any other person.

3. Where new value is given by the entruster for a security interest in documents or instruments in the possession of the trustee, the possession of which is retained by the trustee.

The third situation recognized by the Act as a valid trust receipt transaction is that in which the entruster gives new value in return for a security interest in instruments or documents (not goods) actually exhibited to him or his agent at his place of business or that of his agent, and allows the trustee to retain possession of them for one of the purposes enumerated in section 241.32(3). While the intent of the draftman of the Act was avowedly to restrict the operation of this section “to the case of new acquisition by the dealer,” or “to the turning back of security already pledged,” one commentator has expressed his fear that the use of the phrase, “or documents,” might open the door to “masquerading chattel mortgages.” His theory is that a dealer might warehouse his goods and then exhibit the warehouse receipt to a finance company for the purpose of getting a loan. Whether this section by itself would warrant such a transaction is unimportant in Wisconsin since a unique provision in the Wisconsin version of the Act makes resort to such devious devices unnecessary. This provision, under which what is in effect a chattel mortgage may be effected by a trust receipt, will next be discussed.

4. Where the entruster gives new value in return for a security interest in goods or documents possession of which is in and remains in the trustee.

The Wisconsin Act, along with the Acts of a few other states, differs from the Uniform Act in adding a fourth type of trust receipt transaction: one which will allow the use of a trust receipt to effect the equivalent of a chattel mortgage. The section which permits this provides that a trust receipt transaction is a transaction whereby:

“(c) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in goods

44 U.T.R.A. §2(1) (b) (2); Wis. Stats. (1953) §241.32(1) (c) (3).
45 U.T.R.A. §2(1) (b); Wis. Stats. (1953) §241.32(1) (b).
46 1933 HANDBOOK, p. 249.
49 “In Connecticut, Illinois and Indiana, the uniform act was adopted with a substantial change by the addition of a new sub-paragraph (c) to section 2(1) which permits the use of a trust receipt where goods or documents are already owned by and are in the possession of the trustee. This places goods and documents in these three states on the same footing enjoyed by instruments under section 2(1) (b) and authorizes the use of a trust receipt in the normal chattel mortgage loan transaction between entruster and trustee.” Proceedings of the Section of Corporation, Banking and Mercantile Law of the American Bar Association, 1945, p. 115.
or documents in possession of the trustee and possession of which is retained by the trustee.”

It should, of course, be noted that the trust receipt itself must still be in writing, and possession retained by the trustee must still be for one of the purposes enumerated in section 241.32(3). But if these requirements are satisfied, the result is a secret lien on the goods of the trustee subject only to the qualifications of the filing sections of the Act. This possibility presents definite advantages to commercial lenders and borrowers because it relaxes the burdensome and sometimes embarrassing recording requirements that chattel mortgages involve, but subsequent creditors of the trustee are placed at somewhat of a disadvantage because of the difficulty in determining which of the trustee's assets are subject to another's lien. The draftsman of the Act described this sort of amendment as "disemboweling" and emphasized that the Act was never intended to enter into the field of chattel mortgage financing, but the Wisconsin Legislature has seen fit to ignore his arguments, and has chosen to adopt the Act with this amendment attached.

An interesting case construing this section is a California case, Chichester v. Commercial Credit Co. In that case the Chrysler Corporation shipped automobiles to a dealer along with invoices made out to the dealer, but made out and sent the bills of lading to Commercial Credit Co., a company engaged in the business of financing the dealer's new cars. The dealer executed trust receipts and took possession of the automobiles, but went into bankruptcy before he could sell them. Commercial Credit Co. then took possession of the automobiles pursuant to the terms of the trust receipt. This action arose when the trustee in bankruptcy of the dealer sued the finance company in con-

50 Wis. Stats. (1953) §241.32(1)(c).
51 Supra note 30.
52 See infra section III of this paper.
53 1938 Handbook, p. 105. He refers to the adoption of amendments such as this as a situation unique in the experience of the commissioners: the situation is this, that an act prepared to cover new financing only, of newly bought goods, bought by dealers, and limited in its entire effect and in its entire policy to the proposition that new assets coming in, purchase money mortgage stuff, purchase money lien stuff, could legitimately be given a preferred position because it deceived no one in a line in which that line of financing was familiar; that an act prepared along such lines has been exposed to a concentrated, uniform, well-backed attempt at amendment which blasted, where the amendment is adopted into the field of secret mortgage on a stock in trade, on any stock in trade, with no semblance of purchase money aspect to the deal.

"That set of amendments has been informally combated by your section wherever they raised their head and for several years with no effect. The Trust Receipts Acts as adopted has, I think I am correct in saying, in two-thirds of the cases contained these amendments which I can only describe as disemboweling."

54 37 Cal. App. 2d 439, 99 P.2d 1083 (1940). The subsection construed was repealed in 1939 by the California Legislature in an attempt to bring the Act into accord with the views of the Commissioners on Uniform State Laws as indicated supra note 53. However, the substance of this subsection is restored to the California Code in Cal. Civ. Code (1949) §3014.5; but the operation of the present subsection is limited to motor vehicle transactions.
version for wrongfully having taken possession of the automobiles. The trial court decided that the title to the cars was at all times in the finance company; the appellate court did not disturb that decision. But the appellate court went further and concluded that the source of the defendant finance company's title was of no importance:

"Although the trial court found that defendant was at all times the owner of the automobiles in question, it was of no consequence whether defendant's title originated with the Chrysler Corporation or with Reagan [the dealer]."55

D. Terms.

At this point it should be noted that the terminology employed by the Act in defining the nature of a trust receipt transaction is of a technical kind and should be examined closely in order to avoid confusion. Section 241.31 of the Act defines many of the terms used. The terms of particular interest with respect to the question of the trust receipt transaction itself are: entruster, trustee, goods, documents, instruments, new value and security interest. They will be discussed individually:

1. Entruster, as defined in section 241.31(3), is the person or his successor in interest, who has taken a security interest in goods, documents or instruments under a trust receipt transaction. Conditional sales vendors and purchase money mortgagees are excluded where they (a) are in the business of selling goods or instruments for a profit, (b) have, at the outset of the transaction, general property as against the buyer in the goods or instruments, and (c) sell them to the buyer on credit retaining a security interest.56 Nor does the term include a bailor or consignor where title is not retained to secure an indebtedness to him of the bailee or consignee.57 Nor does it include the type of individual discussed above in Section II B. 5 of this paper.

2. Trustee is defined to be the person having or taking possession of goods documents or instruments under a trust receipt transaction, and any successor in interest of such person.58 Any suspicion that this sort of trustee is in any way related to a strict trustee is set to rest in the next sentence, which declares that the use of the word "trustee" shall not be construed to imply the existence of a trust in the sense of equity jurisprudence except as otherwise provided.59

   (a) "Goods" are any chattels personal with the exception of money, choses in action and fixtures.60

55 99 P.2d at 1086; cf. In re Boswell, 96 F.2d 239 (9th Cir. 1938).
56 U.T.R.A. §1; Wis. Stats. (1953) §241.31(3).
58 U.T.R.A. §1; Wis. Stats. (1953) §241.31(14).
60 U.T.R.A. §1; Wis. Stats. (1953) §241.31(4).
(b) "Documents" are any documents of title to goods,\textsuperscript{61} e.g., bills of lading, warehouses receipts, etc.
(c) "Instruments" includes: (i) negotiable instruments as defined in the negotiable instruments law; (ii) stocks, bonds or debentures issued as part of a series, (iii) interim, de-
deposit or participation certificates. Documents of title to goods are expressly excluded from the meaning of this term.\textsuperscript{62}

4. New Value is a very important term used to determine whether a transaction falls under the Act. Under most sections of the Act\textsuperscript{63} a transaction is disqualified if the value given by the entruster is not new. Under the Wisconsin Act this term includes new advances and loans, their renewals and extensions, or new obligations incurred, or the release of a valid security interest, or the release of a claim to proceeds of a prior trust receipt transaction allowed by section 241.40.\textsuperscript{64} This provision differs materially from that of the Uniform Act in that the latter declares that "new value" shall \textit{not} be construed to include extensions or renewals of existing obligations of the trustee, nor obligations substituted for such existing obligations.\textsuperscript{65} The result of the Wisconsin provision is to broaden further the scope of coverage of the Act.

5. Security Interest under the Act is a rather broad term which means a property interest in the subject matter of the trust receipt, limited to securing the performance of an obligation. It includes the interest of a pledgee and also includes title where taken or retained for security purposes only.\textsuperscript{66} It, therefore, covers situations in which the entruster has not taken title, but only a lien on property as security for a loan.\textsuperscript{67}

III

FILING REQUIREMENTS UNDER THE ACT

The filing requirements of the Act are rather unique in that they do not demand that each trust receipt be recorded or even that notice of each trust receipt transaction or a description of the goods covered be recorded. To comply with the Act it is necessary only to file with the Secretary of State a statement that the parties expect to engage in

\textsuperscript{61} U.T.R.A. §1; Wis. Stats. (1953) §241.31(2).
\textsuperscript{62} U.T.R.A. §1; Wis. Stats. (1953) §241.31(5).
\textsuperscript{63} See, e.g., U.T.R.A. §§2 (1)(a) and 2 (1)(b); Wis. Stats. (1953) §§241.32 (1) (a), 241.32(1)(b) and 241.32(1)(c).
\textsuperscript{64} Wis. Stats. (1953) §241.31(7).
\textsuperscript{65} U.T.R.A. §1.
\textsuperscript{66} Ibid.; Wis. Stats. (1953) §241.31(12).
\textsuperscript{67} "It is clear from these provisions of the act that, in a trust receipt transaction, the security interest which the entruster has may be either in the nature of a lien upon the goods or the title to the goods, whenever such title shall be in substance taken or retained for security only." Premium Commercial Corp. v. Kasprrycki, 129 Conn. 446, 29 A.2d 610, 614 (1942); Bank of America Na-
tional Trust and Savings Ass’n v. National Funding Corporation, 45 Cal. App. 2d 320, 114 P.2d 49 (1941).
trust receipt transactions. This notice need be in no particular form, but must be signed by both parties and must contain the following information: 1) the names of the entruster and the trustee; 2) the chief place of business of each of the parties; 3) a statement that the parties expect to engage or are engaged in trust receipt financing; and 4) a description of what type or types of goods or documents will be the subject of the transactions. When this statement is presented to the office of the Secretary of State, with two dollars filing fee, it is deemed to have been filed in favor of entruster with respect to any of the type of goods or documents described which are or have been the subject of a trust receipt transaction within 30 days before or one year after. At any time within a year of filing, the entruster may by himself renew the filing for another year by filing an affidavit to the same effect as the statement originally filed. He may, of course, file a statement similar to the first one, signed by both himself and the trustee, but he need not. When this affidavit or statement is filed, it extends the effect of the filing for another year and retains for the entruster his rank as against junior interest holders.

The effect of this revolutionary sort of recording requirement is to allow to the entruster a secret lien on the subject matter of the transaction for a period of 30 days, since no filing of any kind is required within that period in order to preserve his interest. Further, even after the 30 days have passed, the specific goods covered by the transaction need not be described in particular in the statement filed in order for the filing to constitute constructive notice of the proposed methods of financing and any rights that may be acquired thereunder.

68 U.T.R.A. §13; Wis. Stats. (1953) §241.43. Note that under this section only statements regarding transactions involving goods or documents may be filed.
69 A form is suggested in U.T.R.A. §13(2); Wis. Stats. (1953) §241.43(2).
70 U.T.R.A. §13(1); Wis. Stats. (1953) §241.43(1).
71 U.T.R.A. §13(1) (a); Wis. Stats. (1953) §241.43(1) (a).
72 Ibid.
73 U.T.R.A. §13(1) (b); Wis. Stats. (1953) §241.43(1) (b).
74 U.T.R.A. §13(1) (c); Wis. Stats. (1953) §241.43(1) (c).
75 U.T.R.A. §13(3); Wis. Stats. (1953) §241.43(3).
76 U.T.R.A. §13(4); Wis. Stats. (1953) §241.43(4).
77 U.T.R.A. §13(5); Wis. Stats. (1953) §241.43(5).
78 Cf. Donn v. Auto Dealers Inv. Co., 385 Ill. 211, 52 N.E.2d 695, 696 (1944), "The apparent purpose in permitting filing of a statement by such financier and dealers is to have some method of giving notice to other prospective creditors that the former are doing business by the trust receipt financing method. The purpose seems to have been to retain the advantages of a security interest in goods by the use of the trust receipt, and yet to eliminate, as far as possible, both secret liens and the necessity of recording each transaction."
79 Universal Credit Co. v. Citizens State Bank of Petersburg, 224 Ind. 1, 64 N.E.2d 28 (1946). These lax requirements are, nevertheless, thought to be sufficient, things being what they are: "Although this method is unusual, it seems to be adequate. Buyers from the trustee who pay cash for the goods or who buy on credit are given protection against the entruster whether there has been a filing or not; prospective creditors, mortgagees, and pledgees of the trustee and persons who propose to take from him in cancellation of in-
after the 30 days is valid, but the interest of the entruster is deemed to have been created by the trustee at the time of filing, without relation back to the time of the transaction. If the entruster takes possession of the subject matter of the transaction, it is deemed the equivalent of filing, with respect to goods and documents, and notice, with respect to instruments, for as long as he retains possession.

In view of these loose requirements, it is not surprising that the tendency of the courts seems to be toward a strict construction of the filing provisions. The Massachusetts Court, confronted with a case in which a corporate trustee, whose true name was "E. R. Millen, Co., Inc.," was designated in the statement filed as "E. R. Millen, Co.," and in its signature thereto as "E. R. Millen, Trustee," held that the filing of the statement was insufficient to impart constructive notice to lien creditors. In coming to this conclusion, the court emphasized the necessity of strict construction for making uniformity of construction throughout the country more realizable:

"This, we must bear in mind, is a uniform law. No pertinent decision has come to our attention. But it cannot be doubted that the statute must be construed in a way that will tend to uniform decisions in the several states. Any relaxation in strict interpretation tends, in a given case, to carry in the opposite direction and, for future cases, to open the door wider to still other variations."

The court went on to decide, however, that inaccuracy in the signature of a party to the trust receipt itself would not affect the validity between the parties, in the absence of fraud.

Although the Act states that the description of the subject matter may be general (such as "coffee," "silk," "automobiles," or the like), it may not be so general that the nature of the goods or documents is not apparent. A 1934 opinion of the New York Attorney General expressed the feeling that a more detailed description was required than general terms like "merchandise" or "appliances." More recently, however, a California case has defined this requirement somewhat more exactly:

"The only notice given to the public of the possible existence of a trust receipt transaction or lien, is in the notice filed with the
Secretary of State. This section does not even require a detailed description of the individual property, but since it requires a description of the kinds of goods covered, it certainly must be strictly construed."

In conformity with the view thus expressed, the court then decided that, where the statement filed with the Secretary of State described the following goods: "Radios, stoves, washers, refrigerators, ice boxes and other gas and electric equipment," trust receipts covering non-electrical water softeners were not protected.

The Act contains another unique filing section; it provides that where a trust receipt transaction is of such a nature as to fall also under another law requiring recording or filing, the entruster need not comply with both, but may comply with either at his election. He then gets the protection of the law complied with.

**Rights and Duties of the Parties to the Transaction**

**A. In General.**

Fundamentally, the right-duty relationship created by the trust receipt transaction is very similar to that created by other credit transactions whereby the ownership of a chattel has been split. The risk of loss is generally held to fall upon the trustee. The entruster's security interest is limited to securing the performance of the trustee's obligation, even though the interest is in terms of absolute title. The interest of the trustee is obviously such that when he pays the amount due, the subject matter of the transaction is free from any incumbrance in favor of the entruster. Further, if the entruster takes possession of the subject matter of the transaction wrongfully before default of the trustee, it seems clear that the entruster is a converter, and that the remedies of conversion and replevin are open to the trustee.

**B. The Entruster's Rights on Default.**

Upon the trustee's default, the entruster becomes entitled to possession of the subject matter of the transaction. The means by which he may properly acquire possession are not specified, but once he does, the Act provides that pending a sale he holds the property with the

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87 101 F.Supp. at 256.
89 Except as to buyers in the ordinary course of business described in section 241.39(2) and lienors as described in section 241.41, who are protected by the provisions of the Trust Receipts Act no matter which filing or recording law the entruster has elected to comply with.
91 U.T.R.A. §1; Wis. Stats. (1953) §241.31(12).
93 U.T.R.A. §6(1); Wis. Stats. (1953) §241.36(1). Apparently the entruster may take possession before default if the trust receipt so provides.
94 U.T.R.A. §6(2) provides that "An entruster entitled to possession under the terms of the trust receipt or of subsection (1) may take possession without
rights and duties of a pledgee. He may, for example, be entitled to a court order requiring surrender to him of evidence of title, but not to an order authorizing him to deal with the property as he sees fit.

When the entruster has gained possession of the property, he may give notice, on or after default, of his intention to sell the property. Five days after sending or serving the notice, he may sell the property at either a public or a private sale; but he may purchase the property himself only if the sale is public. The proceeds of the sale are applied first to the payment of the expense of the sale, second to the payment of the expenses of retaking, and third to the satisfaction of the indebtedness. If there is any surplus, the trustee receives the benefit; if there is any deficiency, the truste is liable.

C. The Entruster's Rights to Proceeds.

When the trust receipt provides that the trustee is to have no liberty of disposition, or that he is to account for the proceeds of any disposition of the subject matter, the entruster has rights to certain of the proceeds as against all persons with respect to whom his security interest was valid at the time of the disposition by the trustee, and to the same extent. In such cases, the entruster will be entitled to any debt due to the trustee as a result of the disposition, and any security therefor. However, this right is subject to any set-off or defense which has accrued in favor of the transferee against the trustee prior to actual notice of the entruster's interest. The entruster is entitled to any proceeds whatever which are identifiable. Furthermore, he has a right to any proceeds, or the value thereof, whether identifiable or not, if such proceeds were received within ten days prior to the commencement of any sort of insolvency proceeding; and, in such case, he receives a priority to the amount of such proceeds or value. The lien of the entruster is said to pass from the subject matter of the trust receipt to the property received as proceeds from the disposition thereof. The Uniform Act, as proposed by the Commissioners on Uniform State Laws, contains a provision which requires that the en-

legal process, whenever that is possible without breach of the peace." For some inexplicable reason this provision does not appear in the Wisconsin Act.

95 U.T.R.A. §6(3) (a); Wis. Stats. (1953) §241.36(2)(a).
97 U.T.R.A. §6(3) (b); Wis. Stats. (1953) §241.36(2) (b). The notice required must be in writing; it may either be personally served on the trustee, or it may be sent to his last known address by ordinary mail. U.T.R.A. §6(3) (b); Wis. Stats. (1953) §241.36(2) (c).
98 U.T.R.A. §6(3) (b); Wis. Stats. (1953) §241.36(2) (b).
99 U.T.R.A. §6 (3) (b); Wis. Stats. (1953) §241.36(2) (c).
101 U.T.R.A. §9(3); Wis. Stats. (1953) §241.39(3).
102 U.T.R.A. §10(c); Wis. Stats. §241.40(3).
103 U.T.R.A. §10(b); Wis. Stats. §241.40(2).
trustee make demand for the proceeds within ten days after having gained knowledge of them or be deemed to have waived any right.\footnote{U.T.R.A. §10(c).} This provision was omitted from the Wisconsin Act.

D. The Right to Provide for Forfeiture.

Apparently, the parties may provide for forfeiture on default in only one situation: i.e., where the subject matter of the trust receipt is "style or model" goods.\footnote{U.T.R.A. §6(5); Wis Stats. (1953) §241.36(4).} In such case the trust receipt may validly provide that the entruster may declare the trustee's interest forfeit, but the entruster must cancel at least 80\% of the purchase price to the trustee, or the original indebtedness, whichever is greater.\footnote{Ibid. The percentage required to be cancelled declines with the number of renewals; for details see that section.} The nature of the goods which are to fall in this class is not quite clear, but one writer has attempted to analyze the phrase:

"A great many types of goods are now style or model goods. Automobiles are produced in annual models; modernistic furniture is style goods. Indeed in a broad sense nearly all manufactured articles which are advertised and sold under trade names might be called style or model goods. Yet the market price of most such goods remains fairly stable over many months, even years. It seems to be intended that the one case in which the trustees may be subjected to a forfeiture is an exceptional case. Therefore, it is submitted that 'style or model' goods should be construed to mean only those which may be expected to be popular for a short season, after which they are likely to drop out of the market or to considerably depreciate in value due to the changing fancy of the buyer public."\footnote{Bacon, op. cit. supra note 47, p. 267.}

Thus construed, this provision furnishes the entruster with much needed security in the field of rapidly depreciating merchandise, since the customary modes of foreclosing the trustee's interest are too slow to protect the entruster when he has nothing but the goods against which to proceed.

If the trustee has defaulted, the parties may agree to forfeiture: the Act provides that after default surrender of the trustee's interest to the entruster is valid on any terms upon which the parties may agree,\footnote{U.T.R.A. §6(4); Wis. Stats. (1953) §241.36(3).} whether the subject matter of the trust receipt consist of goods manufactured by style or model or not.

V

Rights of Third Parties

A. Purchasers from the Trustee.

1. Purchasers of negotiable instruments or documents.

In the case of negotiable instruments or documents, the rights of a
bona fide purchaser for value are not limited by the Act. Further, where instruments are purchased and sold as though negotiable, the rights of a purchaser in good faith for value by transfer in the customary manner are likewise not limited. Filing under the Act does not constitute notice to purchasers in good faith and for value of negotiable instruments, except transferees in bulk.110

2. Purchasers in the ordinary course of trade.

When the trustee has liberty of sale, and a purchaser buys in the ordinary course of trade, the purchaser takes title free of the entruster's interest, regardless of whether filing has taken place or whether the thirty day grace period has expired.111 Moreover, no limitation placed on the liberty of the trustee to sell is effective against a buyer in the ordinary course of trade, unless the buyer has actual notice of the limitation.112 "Liberty of sale" as used in this section of the Act means merely "authority to sell." The Act anticipates problems of estoppel and provides that where the entruster consents to or allows the trustee's keeping of the goods subject to the trust receipt in his stock in trade or in his sales or exhibition rooms, the entruster will be deemed to have granted the trustee liberty of sale.113

3. Purchasers other than in the ordinary course of trade.

If the entruster files as the Act provides within the thirty day period, his security interest is good as against all persons except as otherwise provided by the Act.114 If the entruster files late, the filing has like effect, without relation back, as against all persons not having notice of his interest.115 Therefore, a purchaser not in the ordinary course of trade—though he is in good faith and parts with value—cannot prevail against the entruster if the latter has properly filed. However, if the entruster has failed to file, he may lose his interest in the subject matter of the trust receipt to a purchaser from the trustee, though such purchaser does not purchase in the ordinary course of business. If such purchaser in good faith without notice of the entruster's interest gives new value prior to the expiration of the thirty day period or gives value, new or otherwise, after the expiration of such period, and, in either event, obtains possession of the goods before filing, he will take free of the entruster's interest. If such purchaser is a transferee in bulk, he will take free of the entruster's interest only if he has given value after the expiration of the thirty day period and has acquired possession of the goods before filing.116

111 U.T.R.A. §9(2) (a) (i) ; Wis. Stats. (1953) §241.39(2) (a) (1).
112 U.T.R.A. §9(2) (a) (ii) ; Wis. Stats. (1953) §241.39(2) (a) (2).
113 U.T.R.A. §9(2) (c) ; Wis. Stats. (1953) §241.39(2) (c).
115 U.T.R.A. §7(1) (b) ; Wis. Stats. (1953) §241.37(1) (b).
116 U.T.R.A. §9(2) (b) ; Wis. Stats. (1953) §241.39(2) (b).

When the entruster avails himself of the rights to the proceeds of any sale, as described *supra* in section IV C. of this paper, and demands that the purchaser pay to him any amounts owing to the trustee, the purchaser is entitled to any set-off or defense which has accrued in his favor against the trustee prior to his obtaining actual notice of the entruster's security interest.\(^{117}\)

5. Responsibility of the entruster on sales by the trustee.

Even though the entruster has given the trustee liberty of sale, the Act provides that he is not to be held responsible as principal or as vendor under any sale or contract to sell made by the trustee.\(^{118}\)

B. Creditors of the Trustee.

For thirty days after the delivery of the subject matter to the trustee, the security interest of the entruster is valid as against all creditors of the trustee whether they have notice or not.\(^{119}\) However, persons who without notice acquire the status of lien creditors after the expiration of the thirty day period and before filing will prevail over the entruster.\(^{120}\) The Act provides that

"'Lien creditor' means any creditor who has acquired a specific lien on the goods, documents or instruments by attachment, levy or by any other similar operation of law or judicial process including a distraining landlord."\(^{121}\)

The concept of "lien creditor without notice" is extended to include: 1) an assignee for the benefit of creditors; 2) a receiver in equity; and 3) a trustee in bankruptcy or judicial insolvency proceedings. The fact that the receiver, assignee or trustee personally has or has not actual notice of the entruster's interest is deemed immaterial; the representative of the creditors will prevail over the entruster unless filing has occurred or possession has been taken by the entruster prior to the acquisition of notice by all creditors.\(^ {122}\)

When a specific lien has arisen from contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise dealing in the ordinary course of business with the subject matter of the trust receipt preparatory to its sale, such lien will attach to the interest of the entruster as well as to that of the trustee, whether or not filing has occurred. But the entruster is not obligated to pay any debt secured by the lien.\(^{123}\)

\(^{117}\) U.T.R.A. §9(3); Wis. Stats. (1953) §241.39(3).

\(^{118}\) U.T.R.A. §12; Wis. Stats. (1953) §241.42.

\(^{119}\) U.T.R.A. §8(1); Wis. Stats. (1953) §241.38(1).

\(^{120}\) U.T.R.A. §8(2); Wis. Stats. (1953) §241.38(2) (a).

\(^{121}\) U.T.R.A. §1; Wis. Stats. (1953) §241.31(6). Distress for rent, however, is abolished in Wisconsin. Wis. Stats. (1953) §234.01.

\(^{122}\) U.T.R.A. §8(2)(b), (a); Wis. Stats. (1953) §241.38(3), (2).

VI

Conclusion

In the form adopted by the Wisconsin Legislature, the Trust Receipts Act provides an especially flexible means of financing the inventories of retail merchants. The liberal provisions of the Act will most certainly make the trust receipt device more attractive, because less cumbersome, than the financing methods more usually employed heretofore. From the standpoint of the parties to the transaction, the advantages of the trust receipt over the more conventional conditional sale for resale and chattel mortgage with liberty of sale are clear. However the Act will present difficulties to credit investigators, because the extent of the lien upon the merchant's inventory will no longer be a matter of public record. Subsequent creditors of the trustee will be forced to accept the word of the trustee or the entruster as to the amount of the entruster's lien on the trustee's inventory.

The Act itself is a well thought out piece of work, being the product of over twenty years' development in the hands of the Commissioners on Uniform State Laws and the legislatures and courts of the nation. It may be depended upon to provide a fairly adequate legal coverage of the situations likely to arise in trust receipt financing, and, as is the case with the other uniform laws, cases from other jurisdiction will be found valuable in its construction. The chief obstruction to the use of the trust receipt — the uncertainty of its legal status — having been removed, the use of that device in Wisconsin, especially in the financing of automobile dealers' inventories, should become quite widespread.

Robert H. Gorske