

# Bulk Mortgage Statutes: Bulk Sales Statutes: Rights of Creditors and Trustees in Bankruptcy

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drawn the courts say that they will submit the question to the jury. The jury was permitted to pass on the question of gross negligence in the instant case and in the following ones: where the host drove to the left of automobiles which were waiting for a traffic signal at a speed of 40 m.p.h., *Nelson v. Westerguard*, (Cal. 1933) 19 P. (2d) 867; where the host was driving down a hill at 55 m.p.h. and stepped on the accelerator instead of the brake, *Seisseger v. Puth*, (Iowa 1933) 248 N.W. 352; where the host was racing a motorcycle at a speed of 65 m.p.h., *Morris v. Erskine*, (Neb. 1933) 248 N.W. 96; where the host, after drinking intoxicating liquor, was driving at a speed of 55 m.p.h. when he turned to wave at the occupants of a passing car, *Tomlinson v. Kirsmidjian*, (Cal. 1933) 24 P. (2d) 559; where the host raced with another car at night at a speed of 70 m.p.h. on a gravel road in a dense cloud of dust, *McLone v. Bean*, 263 Mich. 113, 248 N.W. 566 (1933); where the host raced with another truck at a speed of 40 m.p.h. on a road where the greatest extent of vision was four hundred feet, *Younger v. Gallagher*, supra; where the host drove over a rough macadam road with a steering apparatus he knew to be defective, *Walker v. Bacon*, (Cal. 1933) 23 P. (2d) 520; where the host in driving down a steep hill at 35 m.p.h. turned out to pass a truck and collided head on with an oncoming car, *Schusterman v. Rosen*, (Mass. 1933) 183 N.E. 414; where the host was traveling about 25 m.p.h. on an icy street and on turning out to pass the automobile ahead skidded into a street car, *Learned v. Hawthorne*, supra; where the host driving 60 m.p.h. applied the brakes on a curve, the car skidded and a defective door swung open flinging the guest to the ground, *Slobodnjak v. Coyne*, supra; where the host in ascending a hill looked back and plunged into a ditch, *Richards v. Richards*, (N.H. 1933) 166 A. 823; driving at an excessive speed while intoxicated, *McCarron v. Bolduc*, 270 Mass. 39, 169 N.E. 559 (1930).

The legislatures have definitely intended to cut down the responsibility of car owners in a particular class of cases. Although the general trend of judicial decision in the field of tort is to impose wider responsibilities upon defendants for acts done which are injurious to others, nevertheless the indications are that more legislatures may very likely enact guest statutes. Perhaps it is impossible to expect the legislatures to confine the administrative discretion of the courts in defining gross negligence or "wilful misconduct" by any specific provision in the statutes. The courts themselves can devise no positive formulae to aid them in solving their administrative duties. Gross negligence cannot be defined.

JOHN C. QUINN.

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BULK MORTGAGE STATUTES—BULK SALES STATUTES—RIGHTS OF CREDITORS AND TRUSTEES IN BANKRUPTCY.—A trustee in bankruptcy sued a mortgagee of the bankrupt to recover the proceeds derived by the mortgagee from a foreclosure sale. To secure a loan of \$3,000 the bankrupt had given to the mortgagee a chattel mortgage covering the stock and fixtures of two drug stores. The mortgagee and the mortgagor had not complied with the sections of the local statutes requiring the borrower to furnish to the lender a complete list of his creditors so that notice could be given to the creditors of the prospective deal. *Held*, that the mortgage was void and that the plaintiff was entitled to the proceeds in the hands of the mortgagee *Union Guardian Trust Co. v. Detroit Creamery Co.*, (Mich. 1933) 251 N.W. 797.

A trustee in bankruptcy is in the position of a creditor armed with judicial process. 11 U.S.C.A. 75 (c. 541, s. 47, 30 Stat. 557; as amended by c. 412, s. 8, 36 Stat. 840). A judgment creditor of the seller can reach the goods or the pro-

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. Hetszel*, 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. Hetszel*, 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 DEWITT.

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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