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Sales—Validity of Unrecorded Trust Receipt Against Trustee in Bankruptcy.

By virtue of an unrecorded trust receipt, the plaintiff, a finance corporation, claimed title and right to possession of automobiles as against the trustee in bankruptcy of a local dealer. *Held*, for plaintiff, even if the trust receipt be construed as being within the conditional sales recording act, since no other creditors intervened between the giving of the trust receipt and the filing of the petition in bankruptcy.¹

The trust receipt as an independent security device which vests and retains title in the holder thereof until the advances secured by same are paid, when not violative of the local recording act, has been generally upheld as against the trustee in bankruptcy of the person executing the trust receipt by both state² and federal³ courts.

In transactions which are in effect domestic trust receipt transactions, but which were not designated or recognized as such, the federal courts hold that the unrecorded instrument given by the dealer to the finance company is invalid as against the dealer's trustee in bankruptcy.⁴ The tripartite trust receipt transaction should be

¹ *In re Bell Motor Co.*, 45 Fed. (2d) 19 (C. C. A. 8th, 1930). For form of trust receipts, see Hanna, *Trust Receipts* (1931) 19 CALIF. L. REV. 256.

² *Brown v. Billington*, 163 Pa. 76, 29 Atl. 904, 43 Am. St. Rep. 780 (1894); *Baring v. Galpin*, 57 Conn. 352, 18 Atl. 266 (1888); *Merston v. Wheeler*, 76 Wis. 502, 45 N. W. 95 (1890); *Mohr v. First Nat'l Bank of Hartford*, 69 Cal. App. 756, 232 Pac. 748 (1924); *Moors v. Kidder*, 106 N. Y. 32, 12 N. E. 818 (1887) (in effect importation trust receipt transaction); *Peoples Nat'l Bank v. Mulholland*, 228 Mass. 152, 117 N. E. 46 (1917).

³ *In re Killian Mfg. Co.*, 209 Fed. 498 (E. D. Pa. 1913); *In re Cattus*, 183 Fed. 733 (C. C. A. 2nd, 1910); *Charavay & Bodvin v. York Silk Mfg. Co.*, 170 Fed. 819 (S. D. N. Y. 1909); *In re Mulligan*, 116 Fed. 715 (D. Mass. 1902); *In re E. Reboulin Fils & Co.*, 165 Fed. 245 (D. N. J. 1908); *In re Coe*, 183 Fed. 745 (C. C. A. 2nd, 1910); *Roth v. Smith*, 215 Fed. 82 (C. C. A. 3rd, 1914); *In re K. Marks & Co.*, 222 Fed. 52 (C. C. A. 2nd, 1915); *Vaughn v. Mass. Hide Corp.*, 209 Fed. 667 (D. Mass. 1913); *In re James, Inc.*, 30 F. (2d) 555 (C. C. A. 2nd, 1929); *Houck v. General Motors Acceptance Corp.*, 44 F. (2d) 410 (W. D. Pa. 1930). *Contra: In re Richeimer*, 221 Fed. 16 (C. C. A. 7th, 1915); *In re Bettman-Johnson Co.*, 250 Fed. 657 (C. C. A. 6th, 1918); *Industrial Finance Corp. v. Cappleman*, 284 Fed. 8 (C. C. A. 4th, 1922) (credit advanced between receipt of goods and bankruptcy of dealer).

⁴ *In re West York Motor Co., Inc.*, 17 F. (2d) 276 (M. D. Pa. 1927); *Commerce-Guardian Trust & Savings Bank v. Devlin*, 6 F. (2d) 518 (C. C. A. 6th, 1925); *In re Cullen*, 282 Fed. 902 (D. Md. 1922); *In re Mass. Motor Co.*, 294 Fed. 98 (D. Mass. 1923); *In re Schuttig*, 1 Fed. (2d) 443 (D. N. J. 1924) (cars shipped to the order of the dealer). *Contra: Guaranty & Security Corp. v. Reed*, 299 Fed. 265 (C. C. A. 1st, 1924); *cf. Frederick v. Motors Mortgage Corp.*, 1 F. (2d) 438 (W. D. Pa. 1924) (holder of trust receipt retook the cars more than eight months before the dealer went bankrupt); *Federal Finance Corp. v. Reed*, 296 Fed. 1 (C. C. A. 1st, 1924) (instrument executed by the dealer called bill of conditional sale, recorded and held valid);

distinguished from bipartite transactions which are held to be chattel mortgages and within the recording acts.⁵

State courts have, in some instances by classification of the transaction, held unrecorded trust receipts invalid as against bona fide purchasers from the importer⁶ or dealer,⁷ bona fide purchasers⁸ and pledgees⁹ of negotiable warehouse receipts obtained by the importer upon warehousing the goods, bona fide purchasers from the importer of negotiable bills of lading covering the goods,¹⁰ mortgagees holding recorded mortgages,¹¹ and the trustee in bankruptcy of the dealer.¹² State courts have held unrecorded trust receipts valid as against bona

In re Hallbauer, 275 Fed. 126 (S. D. Fla. 1920) (recorded chattel mortgage on cars in show room held invalid); *In re* Mitchell Motor & Service Co., Inc., 274 Fed. 492 (W. D. Wash. 1921) (recorded chattel mortgage held valid).

⁵ *In re* A. E. Fountain, Inc., 282 Fed. 816 (C. C. A. 2nd, 1922); American & British Securities Co. v. American & British Mfg. Corp., 275 Fed. 121 (S. D. N. Y. 1921); *In re* Gerstman, 157 Fed. 549 (C. C. A. 2nd, 1907); *In re* Ford-Rennie Leather Co., 2 F. (2d) 750 (D. Del. 1924).

⁶ Brown v. William Clark Co., 22 R. I. 36, 46 Atl. 239 (1900) (not classified); Foreign Trade Banking Corp. v. Gerseta Corp., 237 N. Y. 265, 142 N. E. 607 (1923) (not classified). *Contra*: Canadian Bank of Commerce v. Baum, 187 Pa. 48, 40 Atl. 975 (1898) (not classified).

⁷ Commercial Acceptance Trust v. Bailey, 87 Cal. App. 117, 261 Pac. 743 (1927); Jones v. Commercial Investment Trust, 64 Utah 151, 288 Pac. 896 (1924) (not classified); Glass v. Continental Guaranty Corp., 81 Fla. 687, 88 So. 876 (1921) (not classified); Clark v. Flynn, 195 N. Y. S. 583 (1923) (not classified); Ohio Savings Bank & Trust Co. v. Schneider, 202 Ia. 938, 211 N. W. 248 (1926) (by dicta trust receipt held conditional sale); *cf.* Perkins v. W. A. Lippincott Co., 260 Pa. 473, 103 Atl. 877 (1918) (not classified—holder of trust receipt recovered from the assignee of the importer, a bank account consisting of cash from a sale of the goods obtained under the trust receipt); Commonwealth Finance Corp. v. Schutt, 97 N. J. L. 225, 116 Atl. 722 (1922) (in effect domestic trust receipt transaction); State v. Caperam, 71 Utah 68, 262 Pac. 294 (1927) (in effect domestic trust receipt transaction).

⁸ New York Security & Trust Co. v. Lipman, 157 N. Y. 551, 52 N. E. 595 (1899) (not classified); *cf.* *In re* Richeimer, *supra* note 3.

⁹ General Motors Acceptance Corp. v. Sharp, 233 Ky. 290, 25 S. W. (2d) 405 (1930) (not classified); Arbuthnot, Latham & Co. v. Richeimer & Co., 139 La. 797, 72 So. 251 (1916) (not classified); Karuff v. Mutual Securities Co., 148 Atl. 159 (N. J. 1928) (trust receipt as chattel mortgage—holder of warehouse receipt would have won but for estoppel).

¹⁰ Roland M. Baker Co. v. Brown, 214 Mass. 196, 100 N. E. 1025 (1913) (not classified); *cf.* Munroe v. Philadelphia Warehouse Co., 75 Fed. 745 (E. D. Pa. 1896).

¹¹ General Motors Acceptance Corp. v. Boddeker, 274 S. W. 1016 (Tex. Civ. App. 1925) (trust receipt as chattel mortgage); Commercial Investment Trust Co. v. Albemarle Motor Co., 193 N. C. 663, 137 S. E. 874 (1927) (trust receipt as conditional sale). *Contra*: General Motors Acceptance Corp. v. Huffer, 113 Neb. 228, 202 N. W. 627 (1925) (trust receipt as bailment for sale).

¹² Acceptance Corp. v. Mayberry, 195 N. C. 508, 142 S. E. 767 (1928) (trust receipt as conditional sale); General Motors Acceptance Corp. v. Boddeker, *supra* note 11.

fide lienors of importer,¹³ purchasers from dealer with notice,¹⁴ mortgagee with notice,¹⁵ and as against the dealer himself.¹⁶

In the principal case the court based its decision on the ground that no credit was extended to the bankrupt while the trust receipt remained unrecorded. When the court refused to restrict the usefulness of the trust receipt by bringing it within the purview of the local conditional sales recording act, it followed the general trend of the state¹⁷ and federal¹⁸ decisions and preserved the integrity of the trust receipt as a commercially desirable financing device.

It seems desirable to uphold the trust receipt as a highly useful independent security device in financing both foreign and domestic purchases, and at the same time give creditors of and purchasers from the importer or dealer notice of its use. To this end it has been suggested that, instead of requiring the recordation of each individual trust receipt, the general plan of financing under which the goods are purchased be recorded, once and for all.¹⁹

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Taxation—Constitutionality of Income Allocation Formulae as Applied to Corporations.

The North Carolina allocation formula for determining the taxable income of a foreign corporation was, in a recent Federal Supreme Court decision,¹ held to result in a tax on income not rea-

¹³ *T. D. Downing Co. v. Shawmut Corp.*, 245 Mass. 106, 139 N. E. 525 (1923) (not classified); *International Trust Co. v. Webster Nat'l Bank*, 258 Mass. 17, 154 N. E. 330 (1926) (not classified); cf. *Century Throwing Co. v. Muller*, 197 Fed. 252 (C. C. A. 3rd, 1912).

¹⁴ *Ohio Savings Bank & Trust Co. v. Schneider*, *supra* note 7 (trust receipt as conditional sale).

¹⁵ *Commercial Credit Co. v. Schlegelstorseth Motor Co.*, 23 S. W. (2d) 702 (Tex. App. 1930) (not classified).

¹⁶ *Industrial Finance Co. v. Turner*, 215 Ala. 460, 110 So. 904 (1926) (trust receipt as conditional sale); *Commercial Credit Co. v. Peak*, 195 Cal. 27, 231 Pac. 340 (1924) (trust receipt as bailment); *Brown v. Green Hickey Leather Co.*, 244 Mass. 169, 138 N. E. 714 (1923) (not classified).

¹⁷ Cases cited, *supra* note 2.

¹⁸ Cases cited, *supra* note 3.

¹⁹ Vold, *Trust Receipts Security in Financing Sales* (1930) 15 CORN. L. Q. 543.

¹ *Hans Rees' Sons Inc. v. State of North Carolina ex rel Maxwell*, 51 Sup. Ct. 385 (April 13, 1931). Appellant, a New York corporation, operated a leather tannery in North Carolina. It applied to the Commissioner of Revenue for the readjustment of its income tax assessment. Revision was disallowed, and appeal taken to the Superior Court where evidence was excluded which would have shown the corporation's income to be divided into profits from buying, manufacturing, and selling, and that only 17 per cent of the entire net profit was due to manufacturing within North Carolina, but 80