Bankruptcy and the Automobile Dealer

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INTRODUCTION

The competitiveness and growth, which have come to be characteristic of the automotive industry today, give rise to a possibility that may be encountered with more frequency in the future—the automobile dealer in bankruptcy. With this possibility in mind, the purpose of this paper is to discuss the problems that might be encountered by the trustee in bankruptcy upon such a dealer being adjudicated a bankrupt.

The majority of automobile dealers find it either impractical or impossible to finance their purchases of new cars. To do so would require extremely large capital resources and necessitate tying up those resources for long periods of time. Therefore, in most cases, new cars found in the automobile dealer's showroom and on his lots will be financed by means of some form of "floor plan" agreement with a commercial financing institution. On the other hand, used cars are usually not financed, partly because they are frequently acquired as "trade ins" in connection with the sale of new cars, and partly because of the reluctance of financing institutions to finance used cars. However, in some instances used cars are financed.

The actual operation of a "floor plan" agreement, in its basic principle, is fairly uniform throughout the trade. The basis for a floor plan will be an agreement between the financing institution, or lender, and the dealer, whereby the lender agrees to finance the dealer's purchases of new cars from the manufacturer for stipulated charges and under prescribed conditions. When cars are purchased under this agreement, the manufacturer, upon shipment of the cars, makes out a bill of sale, draws a draft on the lender for the price of the cars, and forwards these with a bill of lading through banking channels to the lender. The

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1 The majority of new car purchases, or wholesale financing, is done by commercial financing companies, with a small percentage being financed by banks. Three nation wide finance companies that emphasize this form of financing are General Motors Acceptance Corporation, Universal CIT and Commercial Credit Co. Regional companies are numerous.

2 In many instances the dealer may desire to finance only a part of his used car inventory, and he is quite likely to utilize local banks, finance companies, or any financial institution that is willing to undertake such a transaction.

3 The normal situation will find the manufacturer demanding immediate payment for cars shipped. But see, Universal Credit Co. v. Botetourt Motors, 180 Va. 159, 21 S. E. 2d 800 (1942).
lender pays the draft and receives the bill of sale and the bill of lading. Upon obtaining from the dealer promissory notes for the amount of the purchases and finance charges, along with trust receipts or other security instruments, the lender turns over to the dealer the bill of lading, thereby enabling him to get possession of the cars.4

Thus, this general background data in regard to the acquisition of the dealer's inventory illustrates that in the majority of cases the trustee in bankruptcy of an automobile dealer can expect that creditors of the bankrupt will claim liens on many, if not all, of the cars in the dealer's possession. In determining the validity of these liens, the general nature of the various credit instruments used in connection with these floor plan agreements and other financing done by automobile dealers, and state law relating thereto, become important in the application of the bankruptcy law. Therefore, it would be advantageous to consider these factors briefly before examining the sections of the Bankruptcy Act.

**Trust Receipts**

The trust receipt is the most widely employed security device used by the larger finance companies in the floor plan type of financing transaction.5 Normally, the trust receipt contemplates a tripartite agreement, as illustrated in the case of the lender financing cars purchased from a manufacturer by a dealer. In such a situation, title passes to the lender from the manufacturer, and the lender retains title and entrusts only possession to the dealer, or trustee, to be held by him subject to the terms of the trust receipt.6 Some courts have held, considering the theory of the transactions—that title never passes to the dealer, or buyer—that the transaction is valid against subsequent lien creditors without recordation of the trust receipt.7 However, other jurisdictions have held trust receipts to be chattel mortgages, conditional sales,8 etc., which must be recorded in accordance with statutory provisions relating to those instruments.

4 This of course is only a skeleton outline. The details and particulars are susceptible to variation between different finance companies. For an interesting discussion of a typical agreement between a finance company and a dealer see, Houck v. General Motors Acceptance Corp., 44 F. 2d 410 (W. D. Pa. 1930).

5 But see Universal Credit Co. v. Botetourt Motors, 180 Va. 159, 21 S. E. 2d 300 (1942).

6 For an interesting discussion of trust receipts see In re James Inc., 30 F. 2d 555 (2d Cir. 1929); Bacon, A Trust Receipt Transaction, 5 Fordham L. Rev. 17 (1936).

7 See In re Bell Motor Co., 45 F. 2d 19 (8th Cir. 1938), where the court recognizes the validity as against creditors of an unrecorded trust receipt.

8 In General Motors Acceptance Corp. v. Mayberry, 195 N. C. 508, 142 S. E. 767 (1928), the North Carolina Supreme Court held a trust receipt transaction is a conditional sale, and consequently must meet the recordation requirements for a conditional sale.
In addition to its use in the normal tripartite situation, is also in bipartite transactions. In this situation, the dealer has already gained title and possession of the chattels and thereafter, in consideration for a loan, he executes to the lender a bill of sale for the chattels plus trust receipts and retains only possession of the chattels. This form of trust receipt financing, in absence of express statutory provision, has almost always been held to require recordation in order to be valid against subsequent lien, or other classes of creditors.  

In a majority of the states today, the Uniform Trust Receipts Act has been adopted. This Act recognizes both tripartite and bipartite transactions and specifically requires recording. However, the recordation required is not of the individual trust receipts but a filing of a statement of the transaction of the trust receipt financing with a designated state official within a period of thirty days after delivery of the goods to the trustee, or borrower.

**Conditional Sales**

Though the conditional sale might conceivably be used in the floor plan type of financing, it is mainly used in the automotive field to secure sales by the dealer to an ultimate purchaser. Thus, the conditional sale probably will not concern the trustee of a bankrupt automobile dealer as frequently as will chattel mortgages or trust receipts. However, in some jurisdictions trust receipts are held to be conditional sales and since the possibility exists of their use in other types of financing of the automobile dealer, the general law concerning them will be reviewed.

The conditional sale is more closely related to the trust receipt than to the chattel mortgage in that the seller seeks to reserve title to the goods while transferring possession and use to the buyer. In view of the fact that the seller conveys only a beneficial interest to the buyer while retaining complete legal title, some states have held that the conditional vendor will prevail over a subsequent lien creditor even without recordation of the conditional sale. Other jurisdictions require

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8 See *In re James*, Inc., 30 F. 2d 555 (2d Cir. 1929).
10 Uniform Trust Receipts Act §§ 8, 13.
11 See *General Motors Acceptance Corp. v. Mayberry*, 195 N. C. 508, 142 S. E. 767 (1928).
12 The majority view is, that unless recording of conditional sales is specifically required, the conditional vendor will prevail over subsequent lien creditors. *Williston, Sales §§ 324, 325 (2d ed. 1924).*
recording in order that the conditional vendor prevail over a subsequent lien or other classes of creditors.15

**Chattel Mortgages**

In financing new cars purchased from other dealers rather than the manufacturer, a chattel mortgage will usually be used to secure that transaction. The chattel mortgage will also be used, generally, where the dealer finances the used cars which are in his possession.

The chattel mortgage, in contrast to the conditional sale, contemplates that the complete title to the chattel is in the debtor, who transfers a security interest to the lender. As title is originally in the debtor and he retains possession after the chattel mortgage is executed, almost all states require some form of recordation for the chattel mortgage to prevail over certain classes of subsequent creditors.16 Again, the states take various views as to the effect of lack of recordation; however, probably a majority hold that the unrecorded chattel mortgage will prevail over some classes of creditors but will not prevail as to subsequent lien creditors.17

From the above it can be seen that two important questions must be determined in relation to credit transactions before the applicable bankruptcy sections can be considered. These are: (1) What will the court label the particular transaction? (2) What are the requirements of the particular jurisdiction as to recordation, and what effect does the instrument have if unrecorded? The above discussion also shows that no generalities can be drawn as to what the result will be; but because of the great differences in the statutes and decisions of the various states, the particular law for each jurisdiction must be examined.

**The Trustee's Rights Under Section 60**

The trustee has available three sections of the Bankruptcy Act which afford him with affirmative means of attacking the transfers and obligations of the bankrupt. These are sections 60, 67, and 70. Section 60 of the Act makes preferential transfers made or suffered by the bankrupt voidable.

Section 60 a (1) of the Act defines the transfers which will be considered preferential under the Act.18 Basically, the elements of a

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15 N. C. GEN. STAT. § 47-20 (1953) provides that conditional sales shall be valid to pass any property as against lien creditors from the vendee but from the time of registration thereof. See Uniform Conditional Sales Act § 6-9, for requirements of those states having adopted the Act. See also Hetherington and Sons v. Rudisill, 28 F. 2d 713, 715 (4th Cir. 1928).

16 4 COLLIER, BANKRUPTCY ¶ 70.81 (14th ed. 1942).

17 3 COLLIER, BANKRUPTCY ¶ 60.42 (14th ed. 1950).

18 For the purposes of this article, sections cited shall refer to sections of the Bankruptcy Act, unless otherwise indicated.
preferential transfer are: (1) the debtor making or suffering a transfer of his property, (2) to or for the benefit of a creditor, (3) for or on account of an antecedent debt, (4) while insolvent, (5) within four months of bankruptcy and (6) the effect of which will be to enable the creditor to obtain a greater portion of his debt than some other creditor of the same class.\(^\text{19}\) If all the above elements are present in a transfer and the creditor receiving the preference had reasonable cause to believe, at the time of the transfer, that the debtor was insolvent, then, under Section 60 b,\(^\text{20}\) the transfer is voidable by the trustee in bankruptcy.\(^\text{21}\)

The trustee, in considering whether the transactions under which creditors claim liens are voidable as preferential transfers, must analyze them to determine if they contain all the above elements. These various elements will now be considered in some detail.

Under the Bankruptcy Act, transfer is defined as including:

"The sale and every other and different mode, direct and indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by other without judicial proceedings, as a conveyance, sale, assignment, payment, pledge, mortgage, lien, encumbrance, gift, security or otherwise; the retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor."\(^\text{22}\)

It is readily apparent that the above language is inclusive enough to cover the three types of credit transactions which the trustee is likely to encounter most frequently as a result of the dealer's having financed the automobiles in his possession.

The next element of a preferential transfer is that it must be to or for the benefit of a creditor. This is fairly self-explanatory. It simply takes out of the purview of the section any transfer made to one who is not a creditor of the bankrupt.\(^\text{23}\)

The transfer must be for or on account of an antecedent debt.\(^\text{24}\) This

\(^{19}\)§ 60 a (1).

\(^{20}\)§ 60 b.

\(^{21}\)It is apparent that the invoking of § 60 by the trustee involves the necessity of proof of several elements, this will probably make it the least preferable means of attacking a transaction, if there is any other section of the Act by which the trustee can avoid the transfer.

\(^{22}\)§ 1 (30).

\(^{23}\)See Bank of Anchorage v. Conroy, 284 Fed. 929, 931 (9th Cir. 1922).

\(^{24}\)From this wording has arisen the implication that the result of the transfer must be to diminish the bankrupt's estate. Bachner v. Robinson, 107 F. 2d 513 (2d Cir. 1939).
element is subject to some difficulty in determination and requires a more detailed consideration. By the wording of the section, a transfer which is made in consideration of a debt which arose at a date prior to the transfer is a transfer for or on account of an antecedent debt. To state it otherwise, it is a transfer not made for a contemporaneous consideration.\textsuperscript{25}

In order to determine if the debt was prior in time to the transfer, it becomes necessary to determine the date or time of the transfer. Section 60 a (2) provides that a transfer of property, other than real property, shall be deemed to have been made or suffered at the time it becomes so far perfected that no subsequent lien upon such property obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.\textsuperscript{26} The determination of when a transfer becomes so perfected is almost completely dependent upon the law of the state in which the transfer took place.\textsuperscript{27}

Therefore, the trustee must ascertain the law in his jurisdiction in regards to the requirements for perfecting of credit instruments so that they will be superior to liens obtainable by legal or equitable proceedings. The requirements of the various jurisdictions for such a degree of perfection differ greatly both as to the various credit instruments within the same jurisdiction and as to the same credit instrument in different jurisdictions. Generally speaking, it may be said that if some act, such as recordation is required before the transaction will be deemed superior to subsequent liens then under Section 60 a (2), the time of the transfer will be, not as of the date of the original transaction, but as of the date of recordation or whatever other act that is necessary to perfect the instrument against subsequent lien holders. However, this general rule is subject to the very important exception provided by Section 60 a (7).

This section provides that if the applicable state law requires a transfer of personal property for a new and contemporaneous consideration to be perfected by recordation in order to prevent other liens from becoming superior to the rights of the transferee therein, the time of transfer shall be determined by the following rules: (a) where the applicable state law specifies a stated period of time of not more than twenty-one days after the transfer within which recordation, or some other act is required, and compliance is had therewith within such stated period of time; or (b) the applicable law specifies no such stated period of time or where such stated period of time is more than twenty-one days and

\textsuperscript{26}§ 60 a (2).
\textsuperscript{27}The doctrine Erie R. R. v. Tompkins, 304 U. S. 64 (1938), dispelled any question about the applicability of state law in this situation. And see Corn Exchange Nat'l Bank & Trust Co. v. Klauder, 318 U. S. 434, 438 (1943).
compliance therewith is had within twenty-one days after the transfer (original transaction), the transfer shall be deemed to be made or suffered at the time of the transfer (original transaction). However, if compliance is not had within the specified time, the transfer will be deemed to have been made or suffered at the time of compliance.

"Relation back" is provided for in most jurisdictions. The normal provision is that if the instrument is recorded within a specified number of days or a "reasonable time," such recordation will "relate back" to the date of the original transaction, and thus no liens can attach during the interim between the giving of the instrument and the time of its recordation. However, some states have no such provision for "relation back." For the purposes of the Bankruptcy Act, Section 60a (7) provides that if in any situation the instrument is recorded within twenty-one days, or within a lesser period if the state statute so provides, the transfer will be deemed made or suffered at the date of the original transaction.

Therefore, if the instrument comes within the purview of Section 60a (7) the transfer will be deemed made at the time of the giving of the instrument and as the debt for which the instrument is given arose at the same date there will be no transfer for or on account of an antecedent debt, and consequently no preference. But if the provisions of Section 60a (7) are not complied with, the transfer will not be deemed made until recordation of the instrument and therefore at a time subsequent to the creation of the debt.

The next element of a preferential transfer is that the transfer must take place within four months of bankruptcy. This time interval, generally speaking, is computed by counting back four months from the date of the filing of the petition initiating the proceeding under the Bankruptcy Act. The conception of what constitutes a transfer and the time at which it will be deemed to have been made in relation to security devices was discussed above and should be referred to.

Section 60a (1) also stipulates that the transfer must occur while the debtor is insolvent. The Act provides that a person is insolvent whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, etc., shall not at a fair

28 § 60a (7).
29 § 60a (7).
30 It should be noted that North Carolina is such a state. N. C. GEN. STAT. § 47-20 (1953) provides that the chattel mortgage or conditional sale will be valid against lien creditors from the time of recordation.
31 § 60a (7).
32 Computation of the four month period is made according to the calendar month and not by counting days. Bell v. West, 44 F. 2d 161 (4th Cir. 1930).
33 Intentional delay on part of the debtor in filing a voluntary petition until the expiration of four months after the transfer of securities does not affect the character of the transaction. Bank of Sturgeon v. Stewart, 13 F. 2d 138 (D. Neb. 1926).
valuation be sufficient to pay his debts. The language of Section 60 a (1) clearly indicates that the debtor must have been insolvent at the time the transfer was made. Thus, again, the determination of the time of the transfer is of vital importance.

The last element required by Section 60 a (1) is that the result of the transfer must be to enable the creditor to obtain a greater percentage of his debt than some other creditor of the same class. This language has been the subject of criticism and is not altogether clear at first glance. However, without a detailed discussion of this provision it can be said, generally speaking, that "class" means those creditors who are entitled to receive the same percentage upon their claims out of the estate of the bankrupt. The time for determining whether or not a creditor has received a greater percentage is of the date of bankruptcy.

In considering the avoidability of a transfer by virtue of Section 60, the trustee must find present in the transaction all of the above elements. Then, if at the time the transfer was made, the creditor receiving the transfer had reasonable cause to believe that the debtor was insolvent, the trustee can avoid the transfer, as provided in Section 60 b.

As illustrated in the discussion of the bankruptcy provisions the time at which a transfer by security instrument will be deemed to have been made is determined by local credit transaction law. Further, it must be kept in mind that the determination of the time of transfer is an essential part of all the elements of a preferential transfer except the determination of whether the creditor has received a greater portion of his debt than other creditors of the same class. This being true, an effort will now be made to tie the general rules relating to credit instruments discussed at the outset in with the provisions of the Bankruptcy Act discussed above. In doing so, the three credit instruments predominately in use by automobile dealers will be discussed separately.

**THE CHATTEL MORTGAGE AS A PREFERENCE**

As pointed out earlier, the majority of states require some form of recordation of chattel mortgages in order for them to be superior to the claims of certain classes of subsequent creditors of the mortgagor. Thus, at the time the mortgagor receives the chattel mortgage instrument from the mortgagor he, according to the majority view, still does

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34 § 1 (19).
36 Swarts v. Fourth Nat'l Bank, 117 Fed. 1 (8th Cir. 1902).
38 § 60 b.
39 See note 27, supra.
not have a lien on the mortgaged property superior to liens of subsequent creditors until he complies with the particular jurisdiction's recordation requirements; and therefore, by virtue of Section 60 a (2) there has been no transfer. Only when the chattel mortgagee performs the act, which by state law will make the chattel mortgage superior to the claims of subsequent lien creditors, will there be a transfer under the provision of Section 60 a (2). This is, of course, subject to the exception of 60 a (7), under which a subsequent recordation will relate back to the original transaction in certain cases. After the time of transfer has been determined by application of the state law as prescribed by Section 60, the determination of whether the transfer has been within four months of bankruptcy and whether it was for or on account of an antecedent debt is a relatively simple matter. Some hypothetical fact situations will serve to illustrate these problems.

A, an automobile dealer, has on his lot a new car that he has purchased from another dealer. In consideration for the value of the car, A gives to X, finance company, a chattel mortgage on the car. The state's statutes provide that an unrecorded chattel mortgage is void against subsequent lien creditors, and further provide that a chattel mortgage, if recorded within fifteen days will be deemed made as of the date the chattel mortgagee received the instrument. If X waits for two months before he records the chattel mortgage, then clearly, under the provisions of Section 60 a (2), the date of the transfer will be the date of recordation. Section 60 a (7) does not alter this, since the recordation took place more than fifteen days after the execution of the chattel mortgage. Therefore, if the recordation took place within four months of A's bankruptcy, there would be both a transfer within four months of bankruptcy and a transfer for or on account of an antecedent debt, since the transfer took place two months subsequent to the creation of the debt for which it was consideration. And, assuming the other elements of a preference persent, the chattel mortgage would be void as to the trustee.

However, assuming the same fact situation, suppose that ten days after the chattel mortgage was executed, X duly recorded it. Further assume that two months after the execution of the chattel mortgage A is adjudicated a bankrupt. Is there a preferential transfer? The answer is no. Here, Section 60 a (7) has been complied with and therefore the transfer is deemed made as of the time of the original transaction. There is then, a transfer within four months of A's bankruptcy, but it is not for an antecedent debt, since the debt arose on the same date

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40 See the discussion on the application of Section 60 a (7), supra.
41 If the state's specified period for recordation is less than 21 days, then the shorter period must be complied with. § 60 a (7).
that the transfer is deemed to have been made.\textsuperscript{42} Although this
discussion has not scratched the surface of the innumerable problems that
might arise in regards to determining whether chattel mortgages are
preferences, it is hoped that it does illustrate the main area in which
they might be declared voidable preferences.

\textbf{The Trust Receipt As a Preference}

In the discussion of trust receipts earlier, it was pointed out that
some states may hold them to be valid against subsequent lien creditors
without recordation; in others, recordation of each instrument is re-
quired as in the case of chattel mortgages;\textsuperscript{43} and in those states, having
adopted the Uniform Trust Receipts Act, there must be a filing of a
statement of the trust receipt transaction between the lender and bor-
rrower with a designated state official.\textsuperscript{44} Also, some states hold a trust
receipt to be a conditional sale, a sale with a mortgage back, or one of
various other forms of credit instruments. In such states, the law
applicable to the particular instrument which the trust receipt is held
to be will be applicable.

In case the jurisdiction is one of the minority which hold the trust
receipt valid against subsequent lien creditors without recordation\textsuperscript{45} the
time of the transfer will be the time of the original transaction. In such
a situation there will be no possibility of a preferential transfer, provided
the trust receipts are given by the debtor at the same time his debt is in-
curred, since there is no possibility of the transfer being deemed to have
been made at a later date by virtue of later recordation. Consequently
there is no transfer for or on account of an antecedent debt.

If the state law requires some form of recordation, then the same
problems, as have been discussed in regard to the chattel mortgage, arise
in determining the time when the transfer will be deemed to have been
made, and in determining whether there has been a transfer for or on ac-
count of an antecedent debt. That is, the transfer will be deemed to have
been made upon the date of recordation, unless the provisions of Section
60 a (7) are met, and if after determining the date of transfer, it is
found to be subsequent to the date on which the debt arose, the transfer
will be for an antecedent debt.

The Uniform Trust Receipts Act, as noted above, specifically re-
quires filing of a statement of the agreement to finance in order that

\textsuperscript{43} N. C. GEN. STAT. 47-20 (1953) requires recordation of conditional sales
contracts and chattel mortgages in order for them to prevail over subsequent
creditors. This requirement extends to trust receipts inasmuch as they are treated
as conditional sales contracts by the North Carolina Supreme Court. General
Motors Acceptance Corp. v. Mayberry, 195 N. C. 508, 142 S. E. 767 (1928).
\textsuperscript{44} Uniform Trust Receipts Act §§ 8, 13.
\textsuperscript{45} See note 8, supra.
the trust receipt will prevail over subsequent lien creditors. However, the Uniform Act provides thirty days in which this may be done and the transfer still be deemed made at the date of the original transaction. The determination of the time of transfer and whether the transfer is for an antecedent debt will still be controlled by the twenty-one day maximum period allowed by Section 60 a (7).

To illustrate, if A, an automobile dealer, executes trust receipts to X, a finance company, for cars financed by X, and X waits twenty-nine days to file the statement of the transaction with the designated state official, even though the Uniform Act provides a thirty day filing period, the transfer would be deemed, for the purposes of Section 60, made as of the date of filing and if this date were within four months of bankruptcy would constitute that element of a preferential transfer. Also, since the date of the transfer would be twenty-nine days subsequent to the arising of the debt, there would be a transfer for an antecedent debt.

The Conditional Sale As a Preference

The determination of whether a conditional sale constitutes a preferential transfer will, to a large extent, turn upon the same factors discussed in connection with the chattel mortgage and trust receipt. Again, the state law governing conditional sales must be ascertained, and the time of the transfer determined thereunder. Also, the determination of whether the transfer was for an antecedent debt will be made in the same manner.

It should be remembered that some jurisdictions consider the conditional sale as being valid against subsequent lien creditors without recordation. In such jurisdictions, as long as the conditional sale is given at the same time the obligation for which it is consideration is incurred, there is no possibility of a preferential transfer, since the transfer will not be for an antecedent debt.

Reserve Accounts

In the recent case of Carusoe v. Associates Discount Corp.,47 under a typical trust receipt “floor plan” agreement between the finance company and the automobile dealer, the finance company required the dealer to maintain with it a reserve account for the protection of the finance company in the event of any losses on any of its financial transactions.

47 See Coin Machine Acceptance Corp. v. O'Donnel, 192 F. 2d 773 (4th Cir. 1951). Here, the court holds a trust receipt, properly filed under the Uniform Trust Receipts Act not a preference within § 60. The court gives an enlightening discussion of the history of judicial attitude toward trust receipts under the Bankruptcy Act.

The finance company by means of threats and intimidation had required the dealer to execute an instrument within four months of bankruptcy assigning the reserve account to the finance company. The court held, in a memorandum decision, without citing any authority either under the Bankruptcy Act or judicial decisions, that the instrument assigning the reserve was void as to unsecured creditors and the amounts assigned were improperly retained by the finance company.

As this point is of vital interest to the trustee in bankruptcy of an automobile dealer, it is unfortunate that the court did not set forth its basis for holding the assignment void as to the trustee. Although it is not clear from the facts given whether all the elements of a voidable preference were present, it seems fairly inferable that that assignment was voidable by the trustee as a preferential transfer. There was certainly a transfer by the debtor to the creditor for an antecedent debt. It appears probable that at the time of the transfer the debtor was insolvent, and that it enabled the finance company to obtain a greater portion of his debt than other creditors of the same class. Also, it is reasonable to assume that the creditor knew of the dealer's financial condition.

There has been no discussion of assignments of accounts receivable in relation to Section 60, as, normally this means of financing will be seldom used in financing the purchase of automobiles. Generally speaking, in case of such assignments, some type of notice to third persons is required, and similar considerations to those discussed in regards to the credit transactions taken up will determine if assignments of accounts receivable are voidable preferences.

In conclusion, the predominate way in which Section 60 can be utilized by the trustee in bankruptcy of an automobile dealer is where the law in the jurisdiction in which the transaction took place requires some form of recordation or perfection in order that the credit transaction be valid against certain classes of subsequent creditors, and that recordation or perfection is delayed so as to fall within four months of the initiation of proceedings in bankruptcy against or by the dealer.

THE TRUSTEE'S RIGHTS UNDER SECTION 70

Another means available to the trustee to attack the validity of obligations and transfers of the bankrupt is furnished by Section 70 of the Bankruptcy Act. It appears to be a common practice of finance companies to require reserves of this nature.

Although it seems likely that the assignment was void as a preferential transfer under § 60, as discussed, since the court speaks of the assignment being void as to unsecured creditors, it is possible that the court considered the assignment voidable under § 70 c.
Bankruptcy Act, subsections (c) and (e). Since the purposes and intended effect of the two provisions are different, they will be considered separately.

Section 70 c provides that the trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitation, statutes of fraud, usury, and other personal defenses; a waiver of any such defense by the bankrupt shall not bind the trustee. Further, and of most importance to the trustee of a bankrupt automobile dealer, this section provides that the trustee, as to all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings at the date of bankruptcy, shall be deemed vested as of such date with all the rights, remedies, and powers of a creditor then holding a lien thereon by such proceedings, whether or not such a creditor actually exists.\(^5\)

Under the wording of the section, the trustee is vested, as of the date of the filing of a petition under the Bankruptcy Act, with a lien obtainable by legal or equitable proceedings.\(^6\) The date upon which the trustee's lien is deemed to vest is of great importance in determining its priority over other liens. Thus, as the trustee has a vested lien as of the date of the filing of a petition under the Act, the next question is over what liens claimed by the bankrupt's creditors will the trustee prevail? In considering this question, it may again be desirable to consider separately the three predominate credit instruments which an automobile dealer might use.

Again, it should be emphasized that in considering a particular transaction it is of importance to determine first exactly what label the state court will put on the transaction. Having determined this, then the law of the particular jurisdiction as to that form of credit transaction can be ascertained.

**The Chattel Mortgage Under Section 70 c**

If the instrument in question is a chattel mortgage, then, under Section 70 c the trustee, by virtue of his position as a lien creditor, will have a superior claim to the chattel encumbered by the chattel mortgage, whenever under the law of the State in which the mortgage was executed, a creditor who without notice had successfully levied on the property at the date of bankruptcy would have had such a claim.\(^7\)

To illustrate, if the chattel mortgage in question is unrecor...
the law of the state provides that an unrecorded chattel mortgage is void against creditors of the mortgagor, then certainly, a creditor of the mortgagor could obtain a lien by legal or equitable proceedings which would be superior to the chattel mortgage, and thus, the trustee, given such a lien by Section 70 c, will prevail over the unrecorded mortgage. If, as is the case in many states, the statute provides that an unrecorded chattel mortgage will prevail over all creditors except those who levy before recordation, the trustee will again prevail since 70 c provides him with a lien at the date of bankruptcy when the chattel mortgage is still unrecorded.

Improper or ineffective recordation is, of course, of no greater effect than lack of recordation and will constitute grounds for attack by the trustee under the provisions of Section 70 c. Some examples of requirements of recordation statutes, failure of compliance with which renders the recordation ineffective, are: (1) certain affidavits must accompany the recorded instrument (2) chattel mortgages must be acknowledged to give effective notice to third parties and (3) recordation must be made in specific counties, townships, etc. Another problem affecting the validity of the recordation may arise when the encumbered chattel is removed from the county in which the mortgage is recorded. If moved to another part of the same state, many states require a re-filing within a specified number of days in the new county to which the chattel is moved. Generally speaking, if the chattel is moved from the state in which the chattel mortgage is recorded, the law of the state in which the chattel mortgage is executed will govern as to recordation requirements.

If there has been effective recordation of any sort, such recordation if had prior to the filing of the petition in bankruptcy, will make the chattel mortgage unsusceptible to attack by Section 70 c, since the lien obtained by the recordation will be prior to that obtained by the trustee.

The Conditional Sale Under Section 70 c

If the transaction involved is a conditional sale, against which the trustee in bankruptcy seeks to assert his lien under Section 70 c, similar

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53 Such is the provision of N. C. Gen. Stat. § 47-20 (1953).
55 Albert Pick & Co. v. Wilson, 19 F. 2d 18 (8th Cir. 1927).
56 See N. C. Gen. Stat. § 47-20.2 (1953) for requirements as to place in which credit instruments must be recorded.
57 In North Carolina where a chattel mortgage or conditional sales contract is registered in the proper county, subsequent change of residence of the mortgagor or vendee, or subsequent removal of the property to another county of the state, does not affect the lien, there being no requirement of a second registration in this state in either of these events. Montague Bros. v. Shepherd Co., 236 N. C. 551, 58 S. E. 2d 118 (1950).
58 In re Neil, 44 F. 2d 666 (W. D. Wash. 1930).
considerations as those discussed in relation to chattel mortgages will be present. It must be determined what type of transaction will be considered a conditional sale and what the law of that state is as to perfection the conditional sale against subsequent creditors. As has been previously pointed out, some states recognize the validity of a conditional sale against all classes of creditors without recordation, but the majority require recordation or perfection of some sort. Therefore, if the jurisdiction requires some form of perfection or recordation before the transaction will prevail over a subsequent lien creditor, and that recordation has not been had, or is defective for some reason, the trustee may assert the lien provided by Section 70 c against the unrecorded conditional sale and prevail over it.60

If the applicable state law provides that the conditional sale, unrecorded, will prevail over all but subsequent bona fide purchasers and encumbrancers for value, the trustee under Section 70 c will probably not prevail, since he is only in the position of a judgment creditor with a lien and not an encumbrancer for value.61

If under the terms of the conditional sale it is provided that upon certain conditions the vendor may repossess the chattel, and if, in fact, he does so repossess, some courts hold that such repossession is an effective substitute for recordation. Possession by the vendor is considered effective notice to third persons of the encumbrance and therefore eliminates the necessity for recordation. Such repossession, as prior recordation, may therefore render ineffective the trustee's lien under Section 70 c.

The Trust Receipt Under Section 70 c

The diversity of legal effect given to trust receipts can be summed up as follows: (1) the trust receipt is valid as to subsequent lien creditors without recordation or perfection, (2) each individual trust receipt must be recorded in a manner similar to the recordation required for chattel mortgages and conditional sales, and (3) under the Uniform Trust Receipts Act, a filing of a statement of the transaction with some designated state official is necessary for the trust receipt to prevail over subsequent lien creditors.

In the first situation, it is apparent that normally the trustee's lien will not prevail over the trust receipt, as the trust receipt is valid against subsequent lien creditors from its inception without recordation.62 However, in either of the last two, the trustee may prevail if there has

60 McKay v. Trusco Finance Co., 198 F. 2d 431 (5th Cir. 1952).
61 Ibid.
62 In re Bell Motor Co., 45 F. 2d 19 (8th Cir. 1930).
been either lack of recordation, improper recordation, or some other fatal defect in perfection of the trust receipt.\textsuperscript{63}

It should be noted in regards to attacking all three types of credit instruments by means of Section 70 c that in some states there are "traders acts" or "sign statutes" which require specific notice or publicity to be given where one trades or deals under his own name in goods not actually his own. These may operate independently of recording provisions and it is possible that some states will hold that failure to comply with these provisions will make any one of the three credit instruments invalid as to certain classes of creditors.\textsuperscript{64} It is possible that the trustee by virtue of his lien as of the date of bankruptcy might prevail over a particular credit transaction, where these statutes have not been complied with.

\textbf{Trustees Rights Under 70 e}

Section 70 e of the Bankruptcy Act affords a second affirmative means for the trustee to attack transfers and obligations of the bankrupt. Subsection (1) of this section provides that a transfer made or suffered or an obligation incurred by a bankrupt debtor, which under any federal or state law, is fraudulent as against, or voidable for any other reason by any creditor of the debtor having a claim provable under the Act, shall be null and void as against the trustee of such debtor.

Two provisions of the above subsection are important. First, the section makes void as against the trustee any obligation or transfer which is fraudulent, under federal or state law as to any creditor of the debtor. This provision supplements Section 67,\textsuperscript{65} which defines and enumerates obligations and transfer which will be deemed fraudulent by virtue of the Bankruptcy Act. Whereas Section 67 sets out detailed criteria for determining whether a transfer is fraudulent under that Section, the determination of whether a transfer is fraudulent under Section 70 e is based entirely upon state law, the Bankruptcy Act furnishing no criteria. Further, under Section 70 e, in contrast to Section 67, there must be in actual existence at the time of bankruptcy a creditor as to whom the particular transfer was fraudulent having a claim provable under the Act.\textsuperscript{66} A few situations in which transactions are generally held fraudulent under state law are illustrated below.

Generally, lack of recordation of credit instruments is not of itself fraudulent. However, in many states the transaction will be considered

\textsuperscript{63} In re McManus Motors, 27 F. Supp. 113 (D. Mass. 1939). See also Crusoe v. Associate Discount Corp., 129 F. Supp. 598 (N. D. Fla. 1955) where the court held trust receipts not meeting requirements of the Uniform Trusts Receipts Act void as to creditors and thus voidable by the trustee.

\textsuperscript{64} See, Note, 26 Va. L. Rev. 962 (1941).

\textsuperscript{65} To be discussed, infra.

\textsuperscript{66} § 70 e (1).
fraudulent if there is an agreement between the debtor and creditor that the creditor will not record the instrument. For example, where a finance company agrees with an automobile dealer not to record trust receipts given to it by the dealer to prevent public notice of financial difficulty of the dealer, such an agreement might be held fraudulent and therefore the trust receipts would be voidable by the trustee in bankruptcy.

The majority of states hold that a transfer of security in which the transferor reserves the right to dispose of the property and apply the proceeds as he sees fit is fraudulent and void. This rule is commonly applied to pledges, assignments or mortgages of "stocks in trade or merchandise." However, if the proceeds from the sale of the stock or merchandise are to be turned over to the mortgagee and applied in payment of the debt, the transaction will be sustained in the absence of other fraudulent circumstances.

The above is in no way intended to be an exhaustive discussion of the possible situations in which the trustee can invoke Section 70 e to have a transaction declared fraudulent and thus void as to him. The situations in which, by statute or court decision, a particular transaction or obligation entered into by the automobile dealer will be deemed fraudulent are innumerable. Therefore, in order to utilize this section to its fullest extent the trustee must thoroughly familiarize himself with the law of his state concerning fraudulent transactions.

In addition to the provision for attacking a transaction as being fraudulent under federal or state law, Section 70 e provides that a transfer or obligation which under state law is void as to creditors for any other reason shall be void as to the trustee.

Section 70 contains no time limit or period of time within which transfers or obligations affected are deemed voidable. Hence, it must be determined under state law whether at the time of bankruptcy the creditor, whose rights the trustee seeks to assert, could have avoided the transfer. Also, as under other sections of the Act, the recordation provisions of the various states play an important role in the application of Section 70 e. Because of this, a brief restatement of some of the factors set out earlier will be helpful.

Three situations exist as to when the recordation of credit instruments made subsequent to the original transaction will be deemed to have

67 In re Gill, 92 F. 2d 810 (5th Cir. 1937).
69 Ibid.
70 An action under § 70 e is not subject to the time limitations of §§ 60 and 67.
71 Thus, where the creditor's remedy is barred by the running of the statute of limitations prior to bankruptcy, the trustee is likewise barred. Heffron v. Duggins, 115 F. 2d 519 (9th Cir. 1940).
been made at the time of the original transaction. These are: (1) Within a stipulated number of days. Here, if recordation is had within the stipulated number of days, there will be no possibility of a subsequent creditor securing a prior lien during the time between the original transaction and the recording thereof, since the recordation relates back to the date of the original transaction when made within the stipulated time. (2) Within a reasonable time.\textsuperscript{72} If recordation is had within a reasonable time, there is, again, no chance for a creditor to secure a prior lien during the interim between the transactions and the recordation since the recordation will relate back to the date of the original transaction. (3) Where no time limit is set. Under this classification, as no time limit is set there can be no relation back.\textsuperscript{73} Therefore, if any creditor is successful in attaching a lien before the instrument is recorded, and recordation is required against subsequent lien holders, his lien will be prior in time to the one obtained by the later recordation.

In relation to the above, it should be noted that Section 60 a (7) providing for relation back when recordation is had within twenty-one days of the original transaction, has no application in determining the rights of the trustee under Section 70 e. That section is applicable only in determining the date on which the transfer will be deemed to have been made in so far as the Bankruptcy Act is concerned. Under Section 70 e the trustee's rights are wholly governed by state law. Thus, if the state law provides a period of any number of days in which an instrument may be recorded and still relate back to the date of the original transaction, that specified number of days will govern, and not the time limit imposed by Section 60 a (7). This may be of particular concern in those states having adopted the Uniform Trust Receipts Act, since the time limit imposed by that act is thirty days, or nine days in excess of the maximum time limit allowed by Section 60 a (7).

As pointed out earlier, if there has been no recordation or an ineffective recordation prior to bankruptcy, the trustee may utilize the lien provided him by Section 70 c to attack the transaction. But if there has been any form of effective recordation, Section 70 c will not be applicable. In numerous situations where recordation has taken the transaction out of the purview of Section 70 c and the elements necessary for

\textsuperscript{72}The holdings of the state courts must be looked to in order to determine what is deemed a reasonable time. See R. F. C. v. Weiner, 192 F. 2d 666 (2d Cir. 1951), where the court holds, under New York lien law that filing within seven days is reasonable, and General Motors Acceptance Corp. v. Collier, 106 F. 2d 584 (6th Cir. 1939) in which the court holds a delay of six days in recording a chattel mortgage unreasonable. In Zamore v. Golblatt, 194 F. 2d 933 (2d Cir. 1952) the court holds a delay of twenty-nine days not reasonable under New York lien law.

\textsuperscript{73}Such is the case in North Carolina where N. C. GEN. STAT. § 47-20 (1953) provides that chattel mortgages or conditional sales will be valid against lien creditors only from the time of the recording thereof.
a voidable preference, under Section 60, are not present, the trustee will be able to utilize effectively Section 70 e.

For instance, in the first two categories discussed above, if recordation is not made until after the stipulated number of days, or until after a "reasonable time" has elapsed, then, the transfer is not deemed made until the date of recordation. And, if a creditor, under the law of the state, was successful in obtaining a lien thereon prior to recordation, his lien will be superior because of its priority in time. Thus, to that creditor the transaction will be void, and the trustee under Section 70 e may avoid the transaction as to himself by asserting the creditor's rights.

This illustrates how the trustee may utilize Section 70 e, and points up the necessity that there be a creditor in existence at the time of bankruptcy who has a claim provable under the Act, and as to whom the transaction is voidable for some reason under state law.

**Chattel Mortgage Under 70 e**

In considering the means by which Section 70 e can be utilized in attacking the validity of a chattel mortgage, the same general principles of state law already discussed will be applicable. Since normally recordation of some form is always required in order to perfect a chattel mortgage against certain classes of creditors, one of the important considerations, here, is what classes of creditors will prevail over an unrecorded chattel mortgage. As previously stated, the law of different states varies widely on this point. Some provide that only lien creditors and bona fide purchasers can prevail over the unrecorded chattel mortgage; others provide that general creditors may prevail over the unrecorded chattel mortgage. These provisions are important, for where general creditors are permitted to prevail over the unrecorded mortgage, it is apparent that there is a much greater possibility of the existence of a creditor having a claim provable under the Act against whom a particular chattel mortgage is void, and thus the trustee's chances of utilizing Section 70 e are thereby increased.

Some states require the refiling of a chattel mortgage after a specified period of time has elapsed from the date of original recordation. If

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74 See N. C. GEN. STAT. § 47-20 (1953).

75 In North Carolina, as previously pointed out, a chattel mortgage or conditional sale (or trust receipt by court decision) is void as to lien creditors until recorded. If the holder of the security instrument waits for a period of time before recording, it is possible that a creditor might obtain a lien on the chattel by levy under execution. However, before the trustee can attack the particular transaction, there must be in existence, at the time of bankruptcy, a creditor who, in fact, was successful in attaching a lien on the property. This is true, because unless the creditor had obtained a lien prior to recordation by the holder of the instrument, once the holder does record, the creditor is barred from thereafter obtaining a lien by levy under execution. This situation greatly decreases the chances of having a particular credit instrument avoided by the trustee under § 70 e. See M & J Finance Co. v. Hodges, 230 N. C. 580, 55 S. E. 2d 201 (1949).
the refiling is delinquent, there arises the possibility that during the interim between the time when refiling was required and the time when it was actually accomplished the chattel mortgage became void as to some creditor.\(^{76}\) Any of these possibilities, if they actually occur as to a creditor, can be taken advantage of by the trustee in bankruptcy.\(^{77}\)

To illustrate a situation in which the trustee could attack a chattel mortgage by virtue of Section 70\(e\), assume that a debtor, in consideration for a loan, gives the lender a chattel mortgage to secure the obligation. Further assume that in the particular jurisdiction a chattel mortgage must be recorded in order to prevail over general creditors of the debtor, and that a period of ten days is allowed in which the mortgage may be recorded and relate back to the date of the giving of the instrument. In this situation, suppose the creditor, or mortgagee, waits twenty days before he records, and during this period a creditor, without notice of the chattel mortgage, extends credit to the debtor. It would follow, from the assumptions above, that as to this creditor the chattel mortgage, even though now recorded, would be void. Therefore, the trustee could assert this creditor's rights against the chattel mortgagee and have the chattel mortgage declared void as to the trustee.\(^{78}\)

**Conditional Sales and Trust Receipts Under 70\(e\)**

Essentially the same general principles would be applicable to conditional sales and trust receipts. If some form of recordation is required against certain classes of creditors and that recordation is not had within the time specified, the transaction may be void as to some creditor by virtue of the delinquent recordation, and therefore, will be avoidable by the trustee. In prior discussion, it has been pointed out that in the states having the Uniform Trust Receipts Act that recordation of the agreement between the parties is necessary in order for the transaction to be valid against lien creditors, and a time limit of thirty days is stipulated in which recordation will relate back to the time of the original transaction. It is evident that in this situation, if the proper recordation is not had until after a period of thirty days, a creditor might be successful in attaching a lien on the chattels held under the trust

\(^{76}\) *In re Robertson Co.*, 26 F. Supp. 870 (N. D. N. Y. 1938).

\(^{77}\) If the state provides that such transactions, unrecorded, are void only as to bona fide purchasers for value, there is practically no chance of the trustee being able to assert this provision of the Act in attacking the credit instrument, since the trustee is not in the position of a bona fide purchaser or encumbrancer for value. See *In re James*, 30 F. 2d 555 (2d Cir. 1929).

\(^{78}\) Here, in contrast to note 74, *supra*, in states providing that unrecorded credit instruments are void as to general creditors, or creditors who extend credit during the period of lack of recordation, the existence of such a creditor with a claim provable as of the time of bankruptcy will enable the trustee to invoke that creditor's rights and avoid the transaction. That is, in such state, all that is required is that there be a creditor or an extension of credit and the unrecorded instrument is void as to him, regardless of subsequent recordation.
receipts, which would make the trust receipts void as to him, and consequently to the trustee under the powers granted him by Section 70 e.

**DOCTRINE OF MOORE v. BAY**

It should be emphasized that if a transaction is fraudulent or void as to one creditor, and the trustee can assert that creditors' rights and have the transaction declared void as to the trustee under Section 70 e, then the effect is that the transaction is void as to all the creditors. That is, in asserting Section 70 e, the trustee is not protecting only the rights of the creditor to whom the transaction is void, but is avoiding it as to all the creditors of the bankrupt. This doctrine was firmly established by the United States Supreme Court in the case of *Moore v. Bay*. Although subject to some criticism, the holding of that case has been followed uniformly by the courts.80

To illustrate the import of this doctrine, perhaps a hypothetical fact situation would be helpful. Suppose that in consideration of a loan of $5,000, the debtor executes to the lender a chattel mortgage on certain of the debtor's personal property. The law of the state requires recordation within ten days in order for the recordation to relate back to the date of the original transaction and provides that unrecorded chattel mortgages are void as to lien creditors. Then, suppose that the lender does not record the chattel mortgage until twenty days after the date of the execution of the instrument, and fifteen days after the execution of the chattel mortgage, X, who has been awarded judgment on a contract claim for $100 against the debtor, obtains a lien on the personal property covered by the chattel mortgage by levy under execution of the judgment. Under the facts assumed, the chattel mortgage is void as to X, since he has obtained a lien on the property prior to the recordation of the chattel mortgage, and the trustee can assert X's rights and have the chattel mortgage declared void as to him.81 Even though X's claim is for only $100, under the doctrine of *Moore v. Bay*, the chattel mortgage would be void *in toto*, and the surplus over $100 would be distributed among the other creditors of the bankrupt.82

**SECTION 67**

The final section of the Act to be considered, under which the trustee is provided with an affirmative means to avoid transfers or obligations

79 284 U. S. 4 (1931).
81 § 70 e.
82 See General Motors Acceptance Corp. v. Collier, 106 F. 2d 584 (6th Cir. 1939); See also Zamore v. Golblatt, 194 F. 2d 933 (2d Cir. 1952), where the court, in holding a chattel mortgage void as to the trustee said that the fact that the trustee represented only one small creditor was immaterial, and cited Moore v. Bay, 284 U. S. 4 (1931).
of the bankrupt, is Section 67. This section, in subsection (a), invalidates liens obtained through judicial processes within four months of bankruptcy against the debtor's property under certain conditions. Subsection (d) of Section 67 sets up certain objective standards and denounces as fraudulent every transfer made within one year of bankruptcy which does not meet these standards. Further, provision is made for the invalidation of such transfers by the trustee.

Due to the nature of the section and the belief that it does not, generally speaking, apply with particular reference to an automobile dealer in bankruptcy, no attempt will be made to discuss the provisions of the section in any detail. However, parts of Section 67 d which might with some frequency be of avail to the trustee in bankruptcy of an automobile dealer will be set out.

Section 67 d (1) consists of definitions of words and phrases used in the section and specifies that they are for the purposes of and exclusively applicable to subsection d.

Section 67 d (2) provides:

"Every transfer made and every obligation incurred by a debtor within one year of the filing of a petition initiating a proceeding under this Act by or against him is fraudulent
a. as to creditors existing at the time of such transfer or obligation, if made or incurred without fair consideration by a debtor who is or will be thereby rendered insolvent, without regard to his actual intent.

b. as to then existing creditors and as to other persons who become creditors during the continuance of a business or transaction, if made or incurred without fair consideration by a debtor who is engaged or is about to engage in such business or transaction, for which the property remaining in his hands is an unreasonably small capital, without regard to his actual intent.

c. as to then existing and future creditors, if made or incurred without fair consideration by a debtor who intends to incur or believes that he will incur debts beyond his ability to pay as they mature.

d. as to then existing and future creditors, if made or incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either existing or future creditors."

It is apparent that a chattel mortgage, conditional sale or trust receipt transaction could contain the elements enumerated in one of the above subsections and thus be deemed fraudulent under the Section. In each

\[88\] An automobile dealer who obtained automobiles from a finance company under trust receipts, binding him to resell for cash and to exercise good faith in protecting
situation, the trustee should look to the provisions of this section and
determine if any of the bankrupt transactions contain the requisite ele-
ments of a fraudulent transfer or obligation.

Section 67 d (3) provides:
"Every transfer made and every obligation incurred by a debtor
who is or will thereby be rendered insolvent, within four months
prior to the filing of a petition initiating a proceeding under this
Act by or against him is fraudulent as to then existing and future
creditors: (a) if made or incurred in contemplation of the filing
of a petition initiating a proceeding under this Act by or against
the debtor or in contemplation of liquidation of all or the greater
portion of the debtor's property, with intent to use the considera-
tion obtained for such transfer or obligation to enable any creditor
of such debtor to obtain a greater percentage of his debt than
some other creditor of the same class, and (b) if the transferee or
obligee of such transfer or obligation, knew or believed that the
debtor intended to make such use of such consideration."

It seems that there will be few occasions when the trustee of a bank-
rupt automobile dealer will find present in a transaction all the requisite
elements of this section, but cognizance must be taken of it in order that
the trustee exhaust all possibilities against transfers and obligations of
the bankrupt. It is again possible that a chattel mortgage, conditional
sale or trust receipt transaction would fall within the purview of this
section.

Section 67 d (5) provides in essence, that a transfer, for purposes of
this section only, will not be deemed to have been made until it becomes
perfected against a bona fide purchaser from the debtor, and that if
the transfer is not so perfected before bankruptcy, it will be deemed
to have been made immediately before the filing of the petition in bank-
ruptcy. The contrast between the perfection test under Section 67 and
that of Section 60 should be noted. Under Section 67, by making per-
fecion against a bona fide purchaser the test of when a transfer will be
deemed to have been made, the chances are greatly increased that
perfection, to such a degree, will not be accomplished until within the
stipulated period prior to bankruptcy.

Section 67 d (6) provides that a transfer or obligation which is
deemed fraudulent under this section against creditors of the debtor,
having claims provable under the Act, shall be deemed null and void

the finance company's interest, but who resold for credit and transferred the notes
to another finance company, was held to have transferred or conveyed his property
with the intent to hinder, delay or defraud creditors within the statutory definition
against the trustee, except as to a bona fide purchaser, lienor, or obligee for a present fair equivalent value.

It is to be noted that Section 67 sets up standards peculiar to the Bankruptcy Act by which transfers and obligations will be adjudged fraudulent, whereas Section 70 e provides that any transfers or obligations which under state law would be void as to any creditor, are void as to the trustee. Therefore, in considering the applicability of Section 67, the trustee need only look to the provisions of the Act in determining whether or not a particular transaction can be adjudged fraudulent.

CONCLUSION

We have seen that the trustee of the bankrupt automobile dealer may be confronted with creditors who claim liens on the automobiles in stock either by virtue of trust receipts, conditional sales or chattel mortgages. We have also seen that the validity of the claimed liens will vary even under the same circumstances depending on the requirements of state law. And we have finally seen that the trustee has three sections of the Bankruptcy Act, 60, 67 and 70, under which he may possibly defeat the claim of the alleged lien creditor.

The possibility of increasing instances of automobile dealers in bankruptcy gives added importance to these three sections, since thorough knowledge and understanding of them is essential to those who as trustees in bankruptcy are charged in the future with the administration of the estates of automobile dealers.