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TRUST RECEIPTS- RIGHTS AS BETWEEN THE PARTIES

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TRUST RECEIPTS — RIGHTS AS BETWEEN THE PARTIES — The defendant financed purchases of automobiles by plaintiff, a retail dealer, in the following manner. The manufacturer would send the bill of lading and draft on plaintiff to a bank acting as agent for defendant. The bank would advance the amount of the draft and deliver the bill of lading to plaintiff, taking a trust receipt on the cars. This trust receipt recited that defendant was the owner of the

automobiles and might retake possession at any time. On breach of the agreement, defendant retook possession of the cars with plaintiff's consent and thereafter sold them without plaintiff's knowledge. Plaintiff sued for conversion. *Held*, that the transaction constituted a chattel mortgage and that defendant, though having taken possession of the cars rightfully, became liable for conversion when he sold them without complying with the statutory requirements for foreclosure of chattel mortgages. *McLeod Nash Motors v. Commercial Credit Trust*, (Minn. 1932) 246 N. W. 17.

The trust receipt as a security device is most often called into question in a controversy between the holder of the receipt and creditors, purchasers, or the trustee in bankruptcy of the signer.¹ It has generally been assumed that as between the parties it is valid, even without recording.² The principal case necessitated the determination of what effect the transaction should be given between the immediate parties thereto. Undoubtedly an instrument purporting to be an absolute conveyance may, in spite of the parol evidence rule, be shown (certainly in equity and perhaps in law) to be a mere mortgage.³ Similarly, a trust receipt, though not purporting to be a conveyance, may be shown to be merely security for a loan, the signer of the receipt being the equitable owner of the goods.⁴ The cases in which such statements are found, however, apply general equitable principles and do not attempt to enforce specific statutory provisions. The few cases, other than the principal one, involving the question of the effect of a trust receipt between the immediate parties have taken a strict view of the terms of the instrument. In *General Motors Acceptance Corp. v. Dunn Motors, Inc.*,⁵ it was held that the receiptor could not recover damages for conversion against the holder who had taken possession after breach. The court refused to listen to plaintiff's contention that the defendant had never had title to the goods. In *Moors v. Drury*,⁶ the Massachusetts court held that the holder of the trust receipt, being the owner of the goods, did not need to comply with the statutory requirements for presentation of secured claims against the trustee in bankruptcy of the receiptor. In a recent case,⁷ an action on a guarantee of "merchandise purchased," it was held that the guarantor was not liable for goods taken on a trust receipt since the transaction amounted to a bailment and not a sale. The court in the principal case lays considerable stress on the fact that the holder of the receipt had no title to the automobiles except as it passed through the signer, the factor that is often made a point of distinction in considering the necessity of recording the transaction. It is submitted, however, that this is not a vital point

¹ See Frederick, "The Trust Receipt as Security," 22 COL. L. REV. 395 and 546 (1922); Hanna, "Trust Receipts," 29 COL. L. REV. 545 (1929) and 19 CALIF. L. REV. 257 (1931); 31 MICH. L. REV. 558 (1933).

² In re Bell Motor Co., (C. C. A. 8th, 1930) 45 F. (2d) 19.

³ 5 WIGMORE, EVIDENCE, 2d ed., sec. 2437 (1923); JONES, CHATTEL MORTGAGES, 5th ed., sec. 22 (1908); Smith v. Pfluger, 126 Wis. 253, 105 N. W. 476, 2 L. R. A. (N. S.) 783, 110 Am. St. Rep. 911 (1905).

⁴ In re James, (C. C. A. 2d, 1929) 30 F. (2d) 555; Charavay & Bodvin v. York Silk Mfg. Co., (C. C. S. D. N. Y. 1909) 170 Fed. 819.

⁵ 172 Ga. 400, 157 S. E. 627 (1931).

⁶ 186 Mass. 424, 71 N. E. 810 (1904).

⁷ Holcomb & Hoke Mfg. Co. v. N. P. Dodge Co., (Neb. 1932) 242 N. W. 367.

in determining the validity between the parties. The reasoning of the court is still further weakened by its reliance on specific statutory provisions for the foreclosure of chattel mortgages. But the result reached is equitable and probably accords with the real intention of the parties in awarding plaintiff the difference between the market value of the cars and the amount of his debt.

K. K.
