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TRUST RECEIPTS

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A note published in 1927[1] expressed the hope that the course of legal development in the state of Washington would result in recognition of the trust receipt as "an instrument *sui generis*, perfectly effective within its limits."[2] Recent doubts as to the fulfilment of this hope make it desirable to examine the question more closely. The purpose of the present paper therefore is to inquire into the function of the trust receipt as an instrument of the law merchant, and to determine if possible how that function may be most satisfactorily exercised under existing conditions.

Trust receipts appear to have been first used in connection with the financing of imports.[3] The main objective was to preserve a measure of security to the financing bank even after delivery to the importer of the goods imported. In a typical transaction the foreign seller shipped goods under a letter of credit and drew a draft on the issuing bank. This draft was accompanied by a shipper's order bill of lading appropriately indorsed either in blank or to the order of the bank. On honoring the draft, usually by acceptance, the bank acquired possession of the bill of lading. Between the time of acceptance and the date of maturity a period intervened, often ninety days, during which in the ordinary course the importer could not get the documents, and through them the goods, without reimbursing the bank under the terms of the agreement by which the letter of credit had been established. If it chose to do so, however, the bank might release the docu-

[1] 2 WASH. L. REV. 125.

[2] *Id.* at 128.

[3] The first case in which the expression "trust receipt" is found seems to be Barry v. Boninger, 46 Md. 59 (1877). Other early cases are Farmers and Mechanics' National Bank v. Logan, 74 N. Y. 568 (1878); Moors v. Kidder, 106 N. Y. 32 (1887); New Haven Wire Company Cases, 57 Conn. 352, 18 Atl. 266 (1888); and Drexel v. Pease, 133 N. Y. 129, 30 N. E. 732 (1892).

ments to the importer without reimbursement, and it became common practice to surrender documents in this way against the signing of a trust receipt. By the terms of this receipt the importer acknowledged the title of the bank to the goods, and undertook to hold them or their proceeds for the bank's account, admitting in the meantime the right of the bank to cancel the receipt at any time and to resume possession of goods or proceeds.[4]

Salient features of the trust receipt transaction as thus outlined stand out sharply. In the first place, it is noteworthy that the security title to the goods passes to the bank from the seller and not from the buyer; the latter indeed never acquires any such title until the trust receipt has been retired. There is thus a clear distinction between a trust receipt transaction and either a chattel mortgage or a conditional sale, for in the case of a chattel mortgage the security title is given by the borrower to the lender, while in a conditional sale the security title to the goods is retained by the seller. In the second place, it is to be remarked that the obligation to account for the goods or for their proceeds connotes the power to sell the goods, or even to merge them with other goods and to change their identity in process of manufacture. The reason for this power is obvious: the financing bank is not in the merchandising business, and its interest in the goods is purely as security for a loan. The buyer is the person best situated to realize on the goods for the joint advantage of both. In the third place, the power to sell necessarily must carry with it the ability to convey a good title to *bona fide* purchasers. It follows that the use of the trust receipt cannot be intended to protect the bank against dishonesty by the buyer in disposing of the goods to such purchasers, but must be designed primarily to afford protection against creditors of the buyer in the event of his insolvency.

In the final result therefore the trust receipt transaction as originally devised was one in which the bank financing a purchase of goods acquired a security interest in the goods from the seller and retained it for certain purposes until the buyer's indebtedness was extinguished. From the point of view of the buyer the transaction meant a continuation of credit extension to include the period of possession and resale. The transaction was thus self-liquidating in that the proceeds of the goods furnished the means of wiping out the obligation. The commercial desirability of this means of financing incoming stock was gen-

[4] More detailed accounts of typical trust receipt transactions may be found in the following articles: Frederick, *The Trust Receipt as Security* (1922) 22 COL. L. REV. 395, 546; Hanna, *Trust Receipts* (1929) 29 COL. L. REV. 545; Vold, *Trust Receipt Security in the Financing of Sales* (1930) 15 CORN. L. Q. 543; Bacon, *A Trust Receipt Transcation* (1936) 5 FORDHAM L. REV. 17.

erally admitted, and did not pass unremarked by the courts. In *Century Throwing Co. v. Muller*,[5] the court said:

> "We can readily understand how the business of foreign importation by merchants, and especially by manufacturers, is facilitated and enlarged by making available to those of small means the credit of banking capital. The business of importation is thus extended, by not being confined to those concerns having large capital and established foreign trade. The exigencies of trade and commerce have caused many exceptions to be made to the rigid rule founded on the policy underlying the statute of frauds, by which the divorce of title from possession is declared either evidence of fraud or to be fraudulent *per se*."[6]

That the effect of the trust receipt transaction was to create a secret lien in favor of the financing bank was not regarded as a matter of importance in the mercantile world, for "creditors of persons in the business of importing are aware of the course of business and of the existence of the banks' liens even when the liens are secret."[7] Any recording of trust receipts was therefore deemed to be unnecessary, particularly as the great majority of transactions were of a short time nature.[8]

Within the framework described courts tended, on one ground or another, to uphold the efficacy of trust receipts in line with commercial understanding. Here and there a trust receipt transaction was held to be a chattel mortgage[9] or a conditional sale,[10] and hence to come within the provisions of the recording acts. In general, however, courts were "astute to protect the rights of the banker"[11] in the event of the importer's insolvency, for "it would be most inequitable that the bankrupt or his trustees should escape from the performance of this obliga-

[5] 197 Fed. 252 (C. C. A. 3d, 1912).

[6] *Id.* at 258.

[7] Handbook of the National Conference of Commissioners on Uniform State Laws (1927) 609.

[8] The goods covered by trust receipt were bought for resale, not as fixtures or equipment in the buyer's establishment, nor for his permanent use. The time during which financing facilities were required was, therefore, limited to the period needed to accomplish the resale, often only a matter of days.

[9] Bacon, *A Trust Receipt Transaction, supra,* note 4, says at page 39: "Were it not for the fact that by mortgage law a chattel mortgagee is defeated, as against innocent purchasers, pledgees, or creditors of the mortgagor, unless he assumes possession or files a record, the writer believes that the trust receipt transaction would have been declared to be a chattel mortgage long ago, although he does not believe that it necessarily is one. In other words, the courts have resorted to some astuteness to avoid declaring the transaction to be a mortgage. A few of the case opinions admit that it is 'very like' or 'in the nature' of a mortgage." 1 WILLISTON, SALES (1924) 654, and Frederick, *The Trust Receipt as Security, supra,* note 4, take the view that a trust receipt is, in substance, a chattel mortgage. It is noteworthy, however, that both state that it is not an ordinary chattel mortgage.

[10] New Haven Wire Company Cases, *supra,* note 3; *In re* Bettmann-Johnson Co., 250 Fed. 657 (C. C. A. 6th, 1918); Maxwell Motor Sales Co. v. Bankers' Mortgage & Securities Co., 195 Ia. 384, 192 N. W. 19 (1923).

[11] *In re* Cattus, 183 Fed. 733 (C. C. A. 2d, 1910) at 735.

tion for the benefit of anyone except a *bona fide* purchaser for value or creditors protected by statute."[12] Numerous decisions affirmed the right of the financing bank to the goods[13] or to their proceeds[14] as against general creditors of the importer. On the other hand, purchasers from the importer in good faith and for value were allowed to prevail over the bank.[15]

Trust receipts, however, did not continue to be restricted to importing. Their equal adaptability to purely domestic transactions was manifest, and received the blessing of the Circuit Court of Appeals for the Second Circuit in a case where the general set-up was similar to that already described.[16] Said the court:

> "It has been recognized that there are sound business reasons why it is unnecessary to record trust receipts, and also that they should have superior protection as compared with an unrecorded chattel mortgage, when they are given to a lender of money by some one other than the debtor, and where either the delivery or possession against trust receipts is made to the debtor."[17]

The introduction of trust receipts into the domestic field was nevertheless not without complicating features. In many instances the financing arrangements in use were not the same as those encountered in importing,[18] and in others the situation involved only two parties without the intervention of a third.[19] Zealous lawyers also contributed to the confusion often hedging the domestic trust receipt transaction about with so many elaborate safeguards in the interests of their clients that its real nature was left open to doubt. In at least one case such

[12] *Ibid.*

[13] See for example *In re* Cattus, *supra*, note 11; Century Throwing Co. v. Muller, 197 Fed. 252 (C. C. A. 3d, 1912); *In re* Killian Manufacturing Co., 215 Fed. 82 (C. C. A. 3d, 1914); *In re* K. Marks & Co., 222 Fed. 52 (C. C. A. 2d, 1915); *In re* Ford-Rennie Leather Co., 2 F. (2d) 750 (D. C. Del. 1924); Brown Bros. & Co. v. Billington, 163 Pa. St. 76, 29 Atl. 904 (1894).

[14] See for example *In re* K. Marks & Co., *supra*, note 13; *In re* Ford-Rennie Leather Co., *supra*, note 13; *In re* E. Reboulin Fils & Co., 165 Fed. 245 (D. C. N. J., 1908); Mershon v. Moors, 76 Wis. 502, 45 N. W. 95 (1890).

[15] See for example Blydenstein v. New York Security & Trust Co., 67 Fed. 469 (C. C. A. 2d, 1895); Commercial National Bank v. Canal-Louisiana Bank & Trust Co., 239 U. S. 520 (1916); Baker Company v. Brown, 214 Mass. 196, 100 N. E. 1025 (1913).

[16] *In re* James, Inc, 30 F. (2d) 555 (C. C. A. 2d, 1929).

[17] *Id.* at 558.

[18] In the ordinary importing transactions the financing was handled by banks. The development of acceptance and credit corporations and of other types of financing companies introduced new factors into domestic transactions, operating in different ways.

[19] See for example American & British Securities Co. v. American & British Manufacturing Corporation, 275 Fed. 121 (S. D. N. Y. 1921); Commerce Guardian Trust & Savings Bank v. Devlin, 6 F. (2d) 518 (C. C. A. 6th, 1925); Keystone Finance Corporation v. Krueger, 17 F. (2d) 904 (C. C. A. 3d, 1927); *In re* Sachs, 30 F. (2d) 510 (C. C. A. 4th, 1929); Commonwealth Financing Corporation v. Schutt, 97 N. J. L. 225, 116 Atl. 722 (1922); New England Auto Investment Co. v. St. Germaine, 45 R. I. 225, 121 Atl. 398 (1923).

ingenuity was its own undoing, for although the physical background was essentially the same as in *In re James, Inc.*,[20] the bank was not allowed to prevail against a trustee in bankruptcy.[21] "It will be observed," remarked a commentator, "that if the bank had required less as in *In re James, Inc.*, rather than more, it would presumably have been successful."[22]

In summarizing the situation in 1933, the prefatory note to the final draft of the Uniform Trust Receipts Act[23] stated that:

> "the majority of the cases in which the validity of the unrecorded security-interest was tested, up to 1929, held the financing agency's interest valid as against the dealer's creditors or his trustee in bankruptcy, but invalid as against a *bona fide* purchaser from the dealer in regular course of trade. Since 1930, the decisions have tended definitely to deny validity as against creditors. The courts show strong objection to the secrecy of the financing agency's interest. As a result we have as hopeless and divided a set of authorities as one can expect to find."[24]

The clear cut outlines of the import trust receipt transaction had become blurred. Ambiguous situations were created, and whatever might be said commercially as to trust receipt policy in connection with them, it at least was apparent that the use of the instrument could not be supported by the same technical reasoning formerly employed.[25]

With matters in this pass the first case concerning a trust receipt came before the Supreme Court of Washington.[26] The transaction involved was domestic, and the dispute was the familiar one between receiver and finance company in regard to cars that had been in the stock of an insolvent dealer. The cars were shipped by the manufacturer under bills of lading naming the shipper both as consignor and consignee, with instructions to notify the dealer. The finance company meanwhile had opened a credit covering the shipment, and drafts, to which were attached bills of sale, were drawn on it by the manufacturer for the amount of the price. On payment of these drafts the bills of sale and bills of lading were delivered to the finance company, which

[20] *Supra*, note 16.

[21] Jordan v. Federal Trust Co., 296 Fed. 738 (D. Mass., 1924).

[22] Hanna, *Trust Receipts, supra*, note 4, at p. 548.

[23] Handbook of the National Conference of Commissioners on Uniform State Laws (1933) 246.

[24] *Ibid*

[25] In two party transactions, for instance, it was impossible to argue that the financing agent was retaining a security interest acquired from the seller. The situation usually was such that courts construed the transaction as a chattel mortgage, as in the cases cited in note 19, although sometimes the circumstances pointed rather to a conditional sale: *In re* Shiffert, 281 Fed. 284 (E. D. Penn., 1922); *In re* Ford-Rennie Leather Co., *supra*, note 13; Maxwell Motor Sales Corp. v. Banker's Mortgage & Securities Co., *supra*, note 13.

[26] Ivy v. Commercial Credit Company, 173 Wash. 360, 23 P. (2d) 19 (1933).

thereupon turned the cars over to the dealer in exchange for a trust receipt.[27] Subsequently the dealer became insolvent, and the cars were repossessed by the finance company. The receiver brought an action against the finance company for conversion. A judgment for defendant was affirmed, Mitchell, J., saying:

> "The argument is that the transactions were contrary to the recording statutes and the decisions of this state against secret liens in chattel property. However, as we understand, appellant . . . assumes that it was intended, and that the legal effect of the transactions here was, that the [dealer] got title to the automobiles, and by its trust receipts gave the [finance company] security for the purchase price. The assumption goes too far, in our opinion . . . Certainly, the cars were not shipped to the [dealer]; they were shipped by the owner to itself, accompanied by bills of sale to the [finance company] upon it paying drafts for the value of the car . . . If the total transaction in each case, by which the original

[27] This instrument read as follows: "Received from . . . Commercial Credit Company . . . the following described motor vehicles, complete with all standard catalogue attachments and equipment as a component part thereof, herein called 'Cars,' shipped or delivered to Undersigned under credit opened by Commercial Credit for account of Undersigned . . . [Six automobiles, describing them]. In consideration thereof, Undersigned agrees to hold said cars in trust for Commercial Credit as its property, and to return all or any of said cars to Commercial Credit upon demand; Commercial Credit at any time may examine said cars and the books or records of Undersigned with reference thereto. Commercial Credit may at any time cancel this trust and may take possession of said cars without notice or demand, and for such purpose it or its representatives may enter any premises at any time without legal process. Undersigned shall not lend, rent, mortgage, pledge, encumber, operate, use or demonstrate said cars, but may drive them from the place where delivery or custody is taken hereunder direct to Undersigned's place of storage where Undersigned shall keep the same properly housed without expense or liability to Commercial Credit. Undersigned does indemnify and hold harmless Commercial Credit from damages or liabilities of any nature, if any, while Undersigned is so driving said cars to said place of storage. Undersigned, before the termination of this trust, may sell said cars for cash for not less than the sum or sums mentioned in the 'Wholesale-storage' record of such cars, given by Commercial Credit to Undersigned, and immediately after such sale Undersigned shall deliver the proceeds thereof to Commercial Credit, and until delivery shall hold said proceeds in trust for Commercial Credit separate from the funds of Undersigned. The acceptance of a time draft by Undersigned or the negotiation of same and the assignment of this trust receipt shall not affect or terminate this trust, the intention being to preserve unimpaired the title and rights of Commercial Credit in and to said cars. If Undersigned fails to sell said cars or to pay said time draft or breaches this trust receipt, then Commercial Credit may retain any sums paid by Undersigned as a consideration for the privilege of displaying said cars and offering the same for sale. Commercial Credit shall insure said cars against the hazards of fire and theft while held by Undersigned hereunder for not less than the wholesale price thereof, f. o. b. factory. Undersigned shall pay all costs and expenses, including attorney's reasonable fees, if permitted by law, that Commercial Credit may incur or pay to protect or enforce its rights hereunder, whether by legal proceedings or otherwise. This trust receipt shall bind and inure to the benefit of the successors and assigns of Commercial Credit and Undersigned."

> vendors shipped the cars to Yakima, was originated by the efforts of the [finance company], nevertheless there is no evidence of any understanding, other than that carried out, as expressed in the written instruments themselves, to the effect that the [finance company] would buy and pay for the automobiles and deliver them into the possession of the [dealer] upon the terms set out in the trust receipts. By the trust receipts, the [dealer] admits that the automobiles belonged to the [finance company], which company had the right to take possession of the automobiles at any time it saw fit. In the trust receipts no promise is made to pay anything whatever for the automobiles, unless and until they were sold by the [dealer]. Trust receipts are in no way defined in the statute, and are to be interpreted according to the rules applicable to written instruments generally."[28]

Two years later an instrument designated as a trust receipt figured in a case before the Circuit Court of Appeals for the Ninth Circuit.[29] Once again the struggle was between the receiver and the finance company, and the action, as before, was brought by the former for conversion. In most respects the background was similar to that in *Ivy v. Commercial Credit Company*.[30] At least two differences, however, were to be noted. In the first place, the dealer executed promissory notes for the value of the cars in favor of the finance company; and in the second place, the trust receipt itself contained a provision that the dealer was not to sell the cars until the amounts due were paid. In reversing a judgment for the plaintiff receiver, the court ignored this latter provision, dismissed the first point as immaterial, cited *Ivy v. Commercial Credit Company*,[31] and concluded "that under the law of the state of Washington the automobiles in question belonged to the appellant, and that it is not liable for conversion thereof."[32]

After a lapse of two more years another case involving the same general situation was heard by the Supreme Court of Washington.[33] This time the action was brought in replevin by the finance company to recover cars in the possession of the assignee of the dealer for the benefit of the general creditors. As in *General Motors Acceptance Corporation v. Kline*,[34] the dealer had signed promissory notes in favor of the finance company, and the trust receipt was in a similar form.[35]

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[28] Ivy v. Commercial Credit Company *supra*, note 26, pp. 364-366.

[29] General Motors Acceptance Corporation v. Kline, 78 F. (2d) 618 (C. C. A. 9th, 1935).

[30] *Supra*, note 26.

[31] *Supra*, note 26.

[32] General Motors Acceptance Corporation v. Kline, *supra*, note 29, at p. 622.

[33] General Motors Acceptance Corporation v. Seattle Association of Credit Men, 190 Wash. 284, 67 P. (2d) 882 (1937).

[34] *Supra*, note 29.

[35] The instrument read as follows: "Received of General Motors Acceptance Corporation the motor vehicles described above. I (we) hereby

The lower court gave judgment for the plaintiff. The Supreme Court reversed the judgment. Speaking for the court, Main, J., said:

> "In determining the meaning and intent of the parties, courts look beyond the form and from the evidence determine what the real transaction was. Secret liens whereby rights are acquired or attempted to be acquired or retained at the expense of general creditors are not favored in the law. Upon the question of whether the trust receipt is superior to the rights of general creditors, under facts like, or substantially like, those presented in this case, the authorities are not in harmony . . . It is not necessary here to determine whether the correct view is that of a chattel mortgage or a conditional sale, because, if either, under the recording laws of this state, the trust receipt not being recorded or filed for record, the rights of general creditors are superior to the rights of one claiming under the trust receipt. There are a number of Federal circuit court cases, as well as two or three Federal district court cases, which hold, unequivocally, that the trust receipt protects the right of the holder, even though the recording laws are not complied with . . . So far as we are informed no state court of last resort, under facts which are comparable to those which are presented in this case, has sustained the right of the holder of the trust receipt as being superior to that of the general creditors or subsequent purchasers of an insolvent debtor . . . One of the principal tests by which to determine whether a document or transaction results in a security, or there is retention of ownership, is a binding promise to pay on the part of the dealer . . . After reading and considering the authorities representing the different views, we conclude that the [finance company], in this case, held the trust receipt as security . . . We now come to the case of *Ivy*

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acknowledge that said motor vehicles are the property of said General Motors Acceptance Corporation and agree to take and hold the same, at my (our) sole risk as to all loss or injury, for the purpose of storing said property; and I (we) hereby agree to keep said motor vehicles brand new and not to operate them for demonstrating or otherwise, except as may be necessary to drive said motor vehicles from freight depot or from above city to my (our) place of business, with all due care, at my (our) risk en route against all loss and damage to said motor vehicles, persons or property, and except as I (we) may be allowed by you in a special case to use the same for demonstrating upon our compliance with the conditions expressed in your instructions to us, and to return said motor vehicles to said General Motors Acceptance Corporation or its order upon demand at any time and for any reason; and pay and discharge all taxes, encumbrances and claims relative thereto. I (we) hereby agree not to sell, loan, deliver, pledge, mortgage or otherwise dispose of said motor vehicles to any other person until after payment of amounts shown on dealer's record of purchase and release of like identification number herewith. I (we) further agree that the deposit made by me (us), in connection with this transaction, may be applied for reimbursement for any expense and/or loss incurred by General Motors Acceptance Corporation, in the event of breach of this trust or repossession of said motor vehicles. It is further agreed that no one has authority to vary the terms of this trust receipt."

> *v. Commercial Credit Company,*[36] upon which much reliance has been placed by the respondent. That case came here upon the findings of fact alone. No evidence was brought to this court. There was nothing in the record, as brought here, from which the court could look through the form as it appeared in the trust receipt, and determine from the evidence the exact nature of the transaction. There was in that case no finding (a) that the cars were ordered by the dealer direct from the manufacturer; (b) that the dealer made any down payment; or (c) that a negotiable promissory note was given for the balance due. We do not regard the decision in that case as controlling. Here, in effect, to recapitulate, the dealer made a down payment of ten per cent which went directly to the manufacturer. It gave a negotiable promissory note for the balance due. By authority of the [finance company], it placed the automobiles on its sales floor with sales tags thereon. When a sale was made thereafter, if for cash, remittance was made to the [finance company], or if by conditional bill of sale, that document was assigned. While we recognize that the Federal courts above mentioned have taken the opposite view, we are not disposed to follow them. It is our opinion that the sound and just rule is the one for which the state courts of last resort, above cited, have given their support."[37]

In all these cases it will have been observed that the basic idea was the same: in each, a dealer was attempting to finance incoming stock through the mediation of a financing agency. In this respect there was a distinct resemblance to the typical import trust receipt transaction already described. Despite this similarity in the underlying intention of the parties, however, the finance company was allowed to prevail over the dealer's receiver in *Ivy v. Commercial Credit Company,*[38] while an opposite conclusion was reached in *General Motors Acceptance Corporation v. Seattle Association of Credit Men.*[39] Not unnaturally the result was to cast uncertainty on the effectiveness of any kind of trust receipt in the state of Washington. Further analysis of the cases is therefore called for.

We already have noted that the essence of the usual import transaction was the retention by the bank of a security interest already acquired from the seller while the possession of the goods was entrusted to the buyer for the purpose of realizing them by resale. This was substantially the situation in *Ivy v. Commercial Credit Company,*[40] although there was a complicating feature in the presence of the bill of sale given by the seller to the finance company. Viewed literally, this might be taken to indicate an outright sale, passing such complete

[36] *Supra,* note 26.
[37] General Motors Acceptance Corporation v. Seattle Association of Credit Men, *supra,* note 33, pp. 288-292.
[38] *Supra,* note 26.
[39] *Supra,* note 33.
[40] *Supra,* note 26.

property rights to the finance company that the subsequent transaction between the finance company and the dealer would have all the appearance of a conditional sale.[41] Obviously, however, the finance company is not in the business of buying and selling cars; its function is the provision of credit, and its interest in the automobiles is purely by way of security for extensions granted. More properly, therefore, the bill of sale should be construed as intended merely to pass a security interest.[42] The transaction was thus one along orthodox lines, and the decision in the case recognizes the validity of a trust receipt used under such conditions.

In *General Motors Acceptance Corporation v. Seattle Association of Credit Men*,[43] on the other hand, still further complicating features appear. Emphasized by the court was an absolute promise by the dealer to pay the finance company, through the signing of a promissory note covering the price of the cars. In itself this does not seem to introduce a sufficient distinction to warrant a decision different from that in the earlier case. As pointed out by Wilbur, Circ. J., in *General Motors Acceptance Corporation v. Kline*,[44]

> "the giving of such notes is analogous to the use of trade acceptances in connection with the trust receipts commonly used in the importation of merchandise, which constitute an obligation of the dealer, and to the time drafts or acceptances referred to in the opinion in *In Re James, Inc.*"[45]

Certainly, the ordinary import transaction, either through the terms of the credit agreement or otherwise, provided for the reimbursement of the bank by the importer; but the arrangement never was felt to derogate in any way from the efficacy of the trust receipt. The promise was not given to a seller for the price of goods, but to a lender for the repayment of an advance.[46] In the present case, however, there was another factor to be taken into consideration. The trust receipt itself

[41] This view of the matter was taken in General Motors Acceptance Corporation v. Mayberry, 195 N. C. 508, 142 S. E. 767 (1928). See also General Motors Acceptance Corporation v. Whitely, 217 Ia. 998, 252 N. W. 779 (1934).

[42] Thus Bacon, *A Trust Receipt Transaction, supra*, note 4, says at page 37: "The bank does not aim to make a seller's profit by transferring the ownership to the buyer. It acts solely as a go-between by advancing the purchase price to the real seller for the benefit of the real buyer. It is not in the business of selling goods but in that of supplying funds." See also Sullivan v. Lewis, 170 Wash. 413, 16 P. (2d) 834 (1932), where a bill of sale absolute on its face was construed as a chattel mortgage in view of the intention of the parties to pass only a security interest.

[43] *Supra*, note 33.

[44] *Supra*, note 29.

[45] *Id.* at page 622.

[46] The fact that the dealer is indebted to the finance company and has promised to pay merely emphasizes the security nature of the finance company's interest in the goods; but it furnishes no indication at all that such security interest has been acquired from the dealer rather than from the original seller.

provided expressly that the dealer was not to sell the cars until the amount due was paid.[47] Taken in conjunction with the promise to pay at all events this provision afforded clear evidence of an intention quite foreign to the accepted idea of a trust receipt transaction, for the effect was to divorce payment from the proceeds of resale and thus to destroy utterly the self-liquidating feature inherent in that idea.[48] Whatever the resulting situation might be, it obviously was something very different from that disclosed by the record in *Ivy v. Commercial Credit Company*,[49] and the so-called trust receipt was really not a trust receipt at all. The court decided rightly that the finance company should not be protected in its claim to the cars.

The two decided cases just discussed admittedly provide only a slight basis for forecasting the probable future course of judicial opinion in the state of Washington in regard to trust receipts. It nevertheless does not seem unfair to conclude that in a case involving the procedure of the orthodox trust receipt transaction, as taken over from importing, the effectiveness of the trust receipt as an instrument *sui generis* will be upheld; in a case, that is, where a financing agent acquires a security interest in goods from the seller, and retains it while surrendering possession of the goods to the buyer for the purpose of resale in order to provide the means of liquidating an advance. This was the situation in *Ivy v. Commercial Credit Company*,[50] and was not the situation in *General Motors Acceptance Corporation v. Seattle Association of Credit Men*.[51] The language of Main, J., in the latter case, should not be understood as reflecting on the use of the trust recipt in its proper sphere, but solely with reference to the factual set-up that was before the court.

Although there is thus hope that trust receipts, within the limits described, may find support from the Washington court, modern commerce, as already noted, has found other uses for the instrument which do not fall inside these limits. "Meantime the device, or something called by the same name, has spread into many more phases of financing. From automobile financing it has spread to most other articles sold to the consumer on the installment plan—radios, etc. Stockbrokers taking collateral out in the morning, under agreement to return an equivalent value before close of business, commonly sign 'trust receipts.' Central bankers who loan on collateral to other banks, when they release the collateral notes as they mature and return them to

[47] See note 35.
[48] It is noteworthy that Sec. 2 of the Uniform Trust Receipts Act restricts a trust receipt transaction to a situation in which the resale of the goods entrusted is contemplated.
[49] *Supra*, note 26.
[50] *Supra*, note 26.
[51] *Supra*, note 33.

the borrowing bank for collection or renewal, commonly do so against their customer bank's 'trust receipt.' And so on. In a word, whenever anyone who is not a consumer needs temporary possession of goods or securities theretofore in the possession of a financier who holds a security interest in them, the trust receipt or some instrument like it is being used—and needs to be used."[52] It well may be, from the point of view of commercial convenience, that the use of the trust receipt device in situations such as those enumerated is eminently desirable. The fact remains, however, that these extensions into new fields involve departures from the essential features of the orthodox trust receipt transaction. If such departures are worth taking, the query may be raised whether provision for them should not be made through legislation.[53]

To summarize the position: We have seen that the trust receipt performs a useful function in facilitating the short term financing of a dealer's incoming stock under circumstances that make it possible to use the proceeds of the stock to pay off the indebtedness. We have noted further that when so used, along the clear cut lines of the typical importing transaction, the trust receipt is readily explainable as an instrument *sui generis*. The extension of the trust receipt device to various sorts of domestic transactions has complicated the picture. In some instances the essential features of the orthodox transaction have been preserved; in others they have been lost, either wholly or in part. In the former case, it is submitted that there should be no difficulty in upholding the effectiveness of the instrument according to its terms. In the latter, the real question is whether the use of the device is so commercially desirable in the situations involved as to warrant the adoption of legislation making it possible.

[52] Handbook of the National Conference of Commissioners on Uniform State Laws (1933) 246.

[53] The Uniform Trust Receipts Act, recommended for adoption in 1933, makes such provision. The Handbook of the National Conference of Commissioners on Uniform State Laws (1933) at page 249 states the general theory of the Act as follows: "The Act accepts the desirability of protecting the new financing of a dealer's incoming stock (or the release of security to a pledgor) while allowing possession to be in the dealer (or pledgor of securities) for legitimate purposes looking toward realization or substitution of the security. This accords both with business practice and business needs. The Act proceeds on the theory that the entruster in such case is entitled to protection only against honest insolvency of the trustee. Dishonest action of the trustee is a credit risk, and bona fide purchasers are to be protected against the entruster who has taken that risk by entrusting." The Act has been adopted in ten states. It has been well received by commentators, even the most friendly of whom, however, have pointed to ambiguities and inconsistencies, and to its complicated structure.