North Dakota Law Review

Volume 16 | Number 12 Article 4

1939

Trust Receipt

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feasibility is debatable. The cases construed under it are merely considered in an attempt to determine the results which have been accomplished. It is found that since the amendment thirty-five cases have come before the Supreme Court for an interpretation as to constitutionality. Thirty of these cases were held to be constitutional by the necessary majority of the judges; twenty were so decided by the unanimous decision of the court. Contrawise, four of the five cases which were invalidated by the decision of the court were done so unanimously. Only three instances are on record in North Dakota in which a law has been upheld by reason of a failure to obtain the necessary concurrence of the judges. Daly v. Beery, 45 N. D. 287, 178 N. W. 104 (1920); Wilson v. Fargo, 48 N. D. 447, 186 N. W. 263 (1921); State ex rel. Sathre v. Board of University and School Lands, 65 N. D. 682, 262 N. W. 60 (1935). In effect then, eighty-six per cent of the acts which have been construed have been upheld as constitutional, by opinion of the court. This leaves, out of a total of thirty-five cases, only eight per cent which have failed to obtain the necessary concurrence, and have passed by operation of this amendment. The amendment, therefore, is not a threat to the presumption of constitutionality. Rather, it is meritorious in furthering that presumption. The effect of the amendment is to limit the powers of the court to declare a law unconstitutional. So far nothing of extraordinary importance has been accomplished by requiring this increased majority in the court on questions of constitutionality. Cushman, Constitutional Decisions by a Bare Majority of the Court, 19 Mich. L. Rev. 771 (1920). But, the amendment may be defended on several grounds. It takes the power of invalidation out of the hands of one or two individuals, it operates as a substantial check upon the exercise by the courts of the power to invalidate laws; thereby fewer statutes will be declared unconstitutional, it tends to increase the popular confidence in the court, and stimulates new respect for its decisions on constitutional questions.

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TRUST RECEIPT

Trust Receipt — Chattel Mortgage, Conditional Sale, Bailor-Bailee Relationship. — An automobile manufacturer transfers title to an acceptance corporation of a number of cars. These cars are then delivered to a retailer who in turn gives a so-called trust receipt to the corporation which specifies that the cars belong to the corporation with power to the retailer of merely displaying them with no authority to sell until the purchase price is remitted to the holder of the "trust receipt." Attached to the "trust receipt" is a promissory note in favor of the corporation. The retailer makes a sale of one of the cars and deposits the money in the bank and writes a check to the corporation. In the meantime the retailer dies and the bank refuses to honor the check,

holding it for the estate of the deceased retailer. Held, to be a trust receipt in fiduciary capacity. Judgment reversed. General Motors Acceptance Corporation v. Thompson, 292 N. W. 85 (N. D. 1940).

The courts have been puzzled whether to label these commercial instruments as chattel mortgages. General Motors Acceptance Corporation v. Berry et al, 86 N. H. 280, 167 Atl. 553 (1933); Commercial Investment Trust Corporation v. Wilson, 58 F. (2d) 910 (Ky. 1932); In re Draughn & Steele Motor Company, 49 F. (2d) 636 (Ky. 1931); General Motors Acceptance Corporation v. Sharp Motor Sales Company et al, 233 Ky. 290, 25 S. W. (2d) 405 (1930); Motor Banker's Corporation v. C. I. T. Corporation, 258 Mich. 301, 241 N. W. 911 (1932); Smith v. Commercial Credit Corporation, 113 N. J. Eq. 12, aff'd. 115 N. P. Eq. 310, 170 tAl. 607 (1933); Karuff v. Mutual Securities Company et al, 108 N. J. Eq. 128, 148 Atl. 159 (aff'd, 108 N. J. Eq. 128, 148 Atl. 160) (1928); General Contract Purchase Corporation v. Bicket et al, 10 N. J. Misc. 958, 161 Atl. 830 (1932); Garris v. Commercial Credit Company et al, 149 S. C. 498, 147 S. E. 601 (1929); General Motors Acceptance Corporation v. Bettes et al, 57 S. W. (2d) 263 (Tex. 1933); Conditional Sales, General Motors Acceptance Corporation v. Whitely, 217 Iowa 998, 252 N. W. 779 (1934); General Motors Acceptance Corporation v. Mayberry et al, 195 N. C. 508, 142 S. E. 767 (1928); In re Collinwood Motors Sales, Inc., 72 F. (2d) 137 (Ohio, 1934); General Motors Acceptance Corporation v. Kline, 78 F. (2d) 618 (Wash. 1935), cert. den. 296 U. S. 655, 56 Sup. Ct. 381, 80 L. Ed. 466; Maxwell Motors Sales Corporation v. Banker's Mortgage & Securities Company, 192 N. W. 19 (Iowa 1923); Universal Credit Company v. Big Sandy Auto Co., 250 Ky. 557, 63 S. W. (2d) 607 (1933); In re Sweet's Estate, 224 Iowa 589, 277 N.W.712 (1938); or as establishing a bailor-bailee relationship, General Motors Acceptance Corporation v. Hupfer, 113 Neb. 228, 202 N. W. 627 (1925); Globe Securities Company v. Gardner Motors Co., Inc., et. al, 337 Mo. 177, 85 S. W. (2d) 561 (1935); Oil City Motor Company v. C. I. T. Corporation, 76 F. (2d) 589, 104 A. L. R. 240 (Okla. 1935). "Legend theory is in an unsettled state, and as one court fastens on one aspect of the situation and another on a different one, a discordant mess of precedents accumulates which lead to confusion and uncertainty. The oracle has yet to speak." Hanna's Cases and Materials on Security, p. 201. However, in General Motors Acceptance Corporation v. Hupfer, supra, although the trust receipt was the same as in our principal case, there was no promissory note attached, and it is stated in Bentley et al v. Snyder et al, 101 Iowa 1, 69 N. W. 1023 (1897); "The most infallible test by which to determine under which class the contract falls is to ascertain whether there is a promise by the purchaser to pay for the goods delivered. If there is such promise, then, no matter under what form the transaction is disguised, it is held to be a conditional sale, and not a bailment." Also in Harvey v. Wheeler Transfer & Storage Company, 277 N. W. 627 (Wis. 1938) ". . . we do not

find anything to the contrary in the Nebraska case (General Motors Acceptance Corporation v. Hupfer, supra). In that case only the so-called trust receipt was under the consideration of the court. No promissory note attended the receipt in that case."

It would seem that from the growth of cases the courts are beginning to place the trust receipt in the category of a conditional sale or chattel mortgage in order that they be recorded to protect the rights of bona fide purchasers. Motor Banker's Corporation v. C. I. T. Corporation, supra; Burroughs Adding Machine Co. v. Wieselberg, 230 Mich., 15, 203 N. W. 160 (1925); Nelson v. Viergiver, 230 Mich. 38, 203 N. W. 164 (1925). "The question in this case is how far a serviceable nag may be ridden, or, less metaphorically, may the so-called 'trust receipt,' highly useful in certain kinds of commercial transactions, and which the courts have in consequence struggled to sustain, in spite of its apparent conflict with recording laws, be upheld when the principal, if not the sole, reason for resorting to it, is to escape from those very statutes." In re Cullen, 282 Fed. 902 (Md. 1922). Although most courts will enforce the trust receipt as to the original parties it is the intervention of a third party that causes the confusion. In our case there is no bona fide purchaser or creditor of the buyer concerned so the home court has as yet not put a definite label on this so-called trust receipt. Nevertheless, because of the conflicting law among the states, the uncertain law within the states, the highly complex and technical practice, a field steadily increasing in importance since 1880 and a field in which the trust receipt device performs a legitimate and needed function, and in which certainty and uniformity are badly needed, — the National Conference of Commissioners on Uniform State Laws adopted in 1933 the Uniform Trust Receipt Act which has since been adopted in California, Connecticut, Illinois, Indiana, Massachusetts, New Hampshire, New Jersey, New York, Oregon, and Tennessee. 9 U. L. A. '39 pp. 239, 241. Our conclusion in view of these decisions and statutes is that if we are to be in accord with the increasing modern trend should we not treat these commercial instruments as conditional sales or chattel mortgages and require that they be recorded? Or better still—adopt the Uniform Trust Receipt Act which requires that trust receipts be recorded.

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OUR SUPREME COURT HOLDS

In E. B. Isakson, Plft. and Applt., v. State of North Dakota and John Gray, State Tax Commissioner, Defts. and Respts.

That Chapter 249, Session Laws of North Dakota, 1937, as amended by Chapter 234, Session Laws of North Dakota, 1939, known as the Sales Tax Act, exempts from the sales tax retail sales of alcoholic beverages specified in the Liquor Control Act (an initiated measure approved November 5, 1936).

That the combining of nonalcoholic ingredients with alcoholic beverages that have been taxed under the Liquor Control Act, to form what are com-