

Book Review

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Book Review

TRUST RECEIPTS.—The Variations in Their Legal Status. By George B. McGowan. The Ronald Press Co., 1947. Pp. VIII, 198. \$4.00.

There are probably few transactions in the field of commercial law that are more difficult for the uninitiated to understand than the trust receipt transaction and the law governing these transactions. Accordingly, any publication that helps to explain the trust receipt transaction, its uses and proper functions, the pitfalls to be avoided, and the prevailing law on the subject should be welcomed by all business men who deal, or might care to deal, in this type of chattel security device. Likewise, lawyers whose clients are involved in these transactions can find much of practical knowledge in such a publication. Mr. George B. McGowan of The Corn Exchange Bank Trust Company, New York, has written such a book. The author has lived up to his stated attempt to supply a guide which will explain trust receipts to laymen in their own language.

The book is divided into eight chapters, plus an appendix which contains a sample trust receipt form, a bibliography, a table of cases and a table of states which have adopted the Uniform Trust Receipt Act. The index at the back of the book runs to a little over twenty-one pages, which is satisfactorily extensive for a book of this size.

The first chapter discusses generally title retaining instruments including chattel mortgages and conditional sales. The next two chapters are devoted to the trust receipt's function, its origin and evolution. Chapter Four takes up nearly half of the book, explaining and analyzing the Uniform Trust Receipt Act, which at the time the book was written, had been enacted in twenty-five states, including Maryland. To the lawyer or layman who may feel bewildered when first reading the uniform act with its detailed ramifications this chapter can be of great benefit. It is the reviewer's opinion that while the Uniform Trust Receipt Act is perhaps difficult at first to understand, nevertheless, when it is once comprehended it, in general, fairly and fully covers the conflicting rights of the parties to the trust receipt transaction and third parties such as creditors and purchasers of the trustee. Chapter Five purports to be a summary of various court decisions since 1934, when

the Uniform Trust Receipt Act was first enacted by New York. There is much useful practical advice in the last three chapters, headed "Reality Versus Misconception", "Conclusion", and "Postscript", respectively.

Perhaps one of the things that makes the trust receipt transaction and its attendant law rather complicated is that it is not a static form of security such as a warehouse receipt, but a dynamic form of security bottomed on goods moving to the market. The author is keenly aware of this distinction, and of the situations when a trust receipt is an appropriate vehicle of security, and when it is not.

Generally, Mr. McGowan keeps a reasonable and objective view of the Uniform Trust Receipt Act and does not fail to point out the parts which he thinks are undesirable from the general point of view. He points out the possibility, under Sec. 2 (1b) of the Uniform Trust Receipt Act, that a borrower, by warehousing goods and exhibiting the warehouse receipt to a financing house and then borrowing money or obtaining credit by signing a trust receipt, may be able to effect what is in reality nothing but a chattel mortgage under the protection of the Act, relieved of the necessity of filing as a chattel mortgage.

His criticism of Section 6(5) of the Act, which permits forfeiture of the trustee's interest of articles manufactured by style or model, seems to be sound.

The author is of the opinion that the protection for thirty days without filing given to the entruster is entirely too long and unnecessary. The filing of the statement of trust receipt financing in one central place in the state instead of in the county where the trustee has his principal place of business is also not approved by the author.

With sound business statesmanship, Mr. McGowan comes to the conclusion that organizations which finance trust receipt transactions should realize that the benefits they obtain, through legislation too favorable to the entrusters, may be the means by which they may suffer loss in the capacity of pledges, mortgagees and unsecured creditors. "In other words", says the author, "sound and impartial trust receipt legislation should be the aim of everyone who is in the business of lending money on credit".

On pages 64-70 he draws attention to the possibility, under the language of the Act, of protecting purchasers in the ordinary course of trade from taking subject to recorded chattel mortgages of which they have no actual knowledge.

The reviewer does not recollect any discussion or concern on the part of the author as to the effect, possibly

quite damaging to the trust receipt as a security device, of the Federal Bankruptcy Act, as amended in 1938, on the Uniform Trust Receipt Act enacted by the various states. For example, Section 10 of the Uniform Act purports, under certain circumstances, to give the entruster a priority in the event of the trustee's bankruptcy. This priority at the time the Uniform Act was drafted could have been of some value to an entruster, because Section 64 of the Bankruptcy Act at that time gave priorities in bankruptcy to "debts owing to any person who by the laws of the states or the United States is entitled to priority". However, when the Bankruptcy Act was amended in 1938, Section 64 was changed, and it makes no provision for giving priorities in bankruptcy to priorities established by state laws except in the case of rent owing to landlords.

Also, the author apparently did not perceive the possibly explosive effect of the *Klauder* case (*Corn Exchange National Bank v. Klauder*, 318 U. S. 434 (1943)), on the trust receipt security device in the event of the trustee's bankruptcy. This has been a matter of deep concern to some persons interested in trust receipt transactions. Although the *Klauder* case dealt with the assignment of accounts receivable, it is possible under the Supreme Court's construction of Section 60a, as amended in 1938, dealing with preferences, that the entruster, in the event of the trustee's bankruptcy, might be relegated to the status of an unsecured creditor, since the entruster is not protected against bona fide purchasers for value in the ordinary course of trade under the Uniform Trust Receipt Act. Although this apprehension should be somewhat allayed by an opinion of Referee Paul Kach (not reported officially) in a bankruptcy proceeding of the United States District Court for Maryland, it still must continue to haunt entrusters until there has been a determination at perhaps the highest judicial level.

However, despite the blind spot as to bankruptcy, the author has served a useful purpose in writing this book. He has given the reader the benefit of his practical experience as a banker and his understanding of the operation of the law. Although the book does not specifically state whether or not Mr. McGowan is a lawyer, he has obviously acquainted himself with much of the legal writing on the subject, and has particularly drawn on the law review articles of George W. Bacon and Karl T. Frederick as source material.

If, and until, new legislation, such as perhaps the proposed Commercial Code, may put this book out of date, it will be a handy and useful volume for anyone interested in trust receipt transactions to have on his bookshelf.

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