LEGISLATION

THE UNIFORM TRUST RECEIPTS ACT—When possession of property is divorced from ownership, it becomes essential to determine whether preference is to be given to the interest of the titleholder in maintaining his ownership unimpaired or to the interest of those who expend value in reliance upon the belief that ownership of the property is actually in its possessor. The legal superiority of the one interest must be ascertained by weighing the two interests and the relative advantages and disadvantages of such preferential treatment, ultimately resolving itself into a question of social expediency. In the ordinary case, the interest of the titleholder of personal property is protected, but where the person in possession has actual or apparent authority to sell, the purchaser is safeguarded. Personalty is of value, not alone because of saleability, but for its collateral worth as security for the acquisition of credit. When the conditional sale and chattel mortgage came into use, the separation of possession from the security interest was considered fraudulent as to creditors of the possessor. This left the interest of the titleholder without protection until statutes were passed for the purpose of protecting the security interest as against creditors of the possessor [1] if the owner filed the chattel mortgage [2] or conditional sale agreement [3] in a designated place of record. The latest effort to safeguard security interests in personal property is the *Uniform Trust Receipts Act,* the final draft of which has been recently approved.[4]

Trust receipt transactions are most commonly employed by importers and automobile dealers who have insufficient funds to finance the purchase of merchandise, and insufficient financial standing to acquire credit except through utilization of the merchandise purchased as collateral. These transactions have been classified as bipartite and tripartite.[5] In the bipartite transaction, a financ-

[1] In the case of personalty, the recording requirements have been for the protection of the titleholder as against creditors of the possessor. The recording statutes with reference to land were, in contrast, for the protection of the creditor of, or prospective purchaser from, the possessor. For an extensive survey of the history of recording systems, see Hanna, *The Extension of Public Recordation* (1931) 31 COL. L. REV. 617.

[2] Practically every state has a statute providing for recordation of chattel mortgage agreements. The statutes are far from uniform in their minute details. *E. g.,* see the provision in the Pennsylvania statute that the debt secured must amount to at least $100. See PA. STAT. ANN. (Purdon, 1930) tit. 21, § 861.

[3] About three-fourths of the states provide for the recording of conditional sale agreements. See PA. STAT. ANN. (Purdon, 1930) tit. 69, § 361 *et seq.* The Ohio act provides for certain types of trust receipt transactions along with the conditional sale provisions. It states that the conditional sale provision shall not require filing of trust receipts (a) for any goods imported for sale or manufacture, or (b) for a readily marketable staple, wherever purchased for sale or manufacture. The person to whom such trust receipt is issued shall file with the county recorder an affidavit setting forth the fact that such signer has arranged for financing the purchase of certain goods by trust receipts. The filing of such an affidavit shall have the effect of imparting to all creditors notice of all trust receipts during a period of three years. OHIO CODE (Throckmorton, 1930) § 8568.

[4] This Act was finally approved by the National Conference of Commissioners on Uniform State Laws at the forty-third annual conference at Grand Rapids, Michigan, August 22-28, 1933. It was subsequently approved by the American Bar Association.

[5] In many of the cases, the brevity of the statements of facts given by the courts makes it impossible to determine whether the transaction was bipartite or tripartite. See *In re* Draughn & Steele Motor Co., 49 F. (2d) 636 (E. D. Ky. 1931); Armstrong v. Greenwich Motors Corp., 116 Conn. 487, 165 Atl. 598 (1933). For this reason the status of the tripartite domestic transaction is uncertain. Some courts have intimated that the distinction between bipartite and tripartite transactions would not be extended to domestic transactions. Motor

ing agency supplies the credit, and title to the merchandise passes from the seller to the dealer or importer. The latter executes a trust receipt stipulating that title to the merchandise is henceforth to be in the finance company until the indebtedness is repaid. In the tripartite transaction, title passes from the seller to the finance company. The dealer or importer executes a trust receipt agreement providing that title to the merchandise is to remain in the finance company until the indebtedness is repaid. In either situation, the trust receipt authorizes the dealer or importer to process or display the goods for sale, and usually gives him the right to sell them.[6]

The *Uniform Trust Receipts Act* provides that the person who has or takes a security interest in the goods, documents or instruments under a trust receipt transaction is designated the "entruster", while the person having or taking possession of them is designated the "trustee".[7] A brief summary of the general provisions of the Act reveals the fundamental relationships involved. The entruster's security interest may be derived by pledge, transfer of title or otherwise from any person, including the trustee.[8] If the entruster sells the goods after the trustee has defaulted, the trustee receives any surplus over his indebtedness and is liable for any deficiency.[9] Where the articles are to be manufactured by style or model, the trust receipt may provide for forfeiture of the trustee's interest in the event of his default.[10] An entruster undertaking or contemplating trust receipt transactions covering documents or goods may, at his option, file a statement that he is or expects to be engaged in financing under trust receipt the acquisition of goods by the trustee.[11] Taking of possession by the entruster has the effect of filing so long as such possession is retained.[12] Where there has been delivery to the trustee, the entruster's security interest is valid without filing as against all creditors of the trustee for thirty days after the delivery.[13] If thirty days have elapsed without a statement having been filed, new lien creditors without notice who acquired their lien thereafter and before filing, are protected.[14] New lien creditors include assignees for benefit of creditors, receivers in equity, and trustees in bankruptcy or insolvency.[15] Where the trustee has liberty of sale,[16] a buyer who gives new value in good faith and without actual knowledge

Bankers' Corp. v. C. I. T. Corp., 258 Mich. 301, 241 N. W. 911 (1932). But *cf.* General Motors Acceptance Corp. v. Dunn Motors, Inc., 172 Ga. 400, 157 S. E. 627, 43 Ga. App. 275, 158 S. E. 626 (1931). The federal courts seem to make the distinction. *In re* James, Inc., 30 F. (2d) 551 (N. D. N. Y. 1927); *In re* Otto-Johnson Mercantile Co., 52 F. (2d) 678 (D. N. M. 1928).

[6] The majority of the courts have upheld the entruster's interest, as against creditors of the trustee and purchasers with notice, when the transaction was tripartite. Houck v. General Motors Acceptance Corp., 44 F. (2d) 410 (W. D. Pa. 1930); Brown Bros. & Co. v. Billington, 163 Pa. 76, 29 Atl. 904 (1894). When the transaction was bipartite, the entruster's interest has been upheld as between the original parties, but otherwise only if recorded. Ohio Sav. Bank & Trust Co. v. Schneider, 202 Iowa 938, 211 N. W. 248 (1926); *cf.* McLeod Nash Motors v. Commercial Credit Trust, 187 Minn. 452, 246 N. W. 17 (1932), (1933) 32 MICH. L. REV. 127.

[7] UNIFORM TRUST RECEIPTS ACT § 1.

[8] *Id.* § 2 (1).

[9] *Id.* § 6 (3) (b).

[10] *Id.* § 6 (5). Section 5 provides for validity of the trust receipt provisions between the entruster and trustee, but, except as provided in Section 6 (5), ". . . no provision for forfeiture of the trustee's interest shall be valid. . . ."

[11] *Id.* § 13 (1).

[12] *Id.* § 7 (2).

[13] *Id.* § 8 (1).

[14] *Id.* § 8 (2). "Where a creditor secures the issuance of process which within a reasonable time . . . results in attachment of or levy on the goods, he is deemed to have become a lien creditor as of the date of the issuance of the process." *Id.* § 8 (3) (a).

[15] *Id.* § 8 (3) (b).

[16] Liberty of sale exists if granted by the entruster, or if he consents to the displaying of the goods in the trustee's stock in trade or sales rooms. *Id.* § 9 (2) (c).

of any limitation on the trustee's liberty of sale, takes free of the security interest whether or not filing has occurred.[17] A pledgee, mortgagee, or one other than a buyer takes free of the security interest, if, before filing, he gives new value before expiration of the thirty days or value thereafter, and obtains delivery of the goods from the trustee in good faith and without notice of the entruster's security interest.[18]

As between the entruster and those persons against whom his security interest was valid at the time of disposition of the property by the trustee, the entruster may claim the debts owing the trustee by reason of such disposition.[19] The entruster may claim proceeds received by the trustee within ten days of application for a receiver for the trustee or of the filing of a petition in bankruptcy or insolvency or of a demand by the entruster for a prompt accounting, whether such proceeds are or are not identifiable. The entruster may also claim identifiable proceeds received before the ten days.[20] The Act also provides that an attempted pledge unaccompanied by delivery of possession and not fulfilling trust receipt requirements, shall be valid against creditors of the pledgor for ten days after new value is given by the pledgee, or after the pledgee returns the goods to the pledgor for a temporary and limited purpose. Where the value is not new, or where there is a lapse of ten days, the pledge is valid against those lien creditors without notice who became such as of the time the pledgee takes possession.[21]

Under Section 2 of the Act a trust receipt transaction may exist if the entruster has a security interest in the subject matter prior to the transaction, or if the entruster for new value acquires by the transaction a security interest. The question then arises as to what is part of the transaction and what is prior thereto. It would seem that all the negotiations among the seller, the entruster and the trustee would be part of the entire transaction. The Act, however, defines the transaction as the delivery of the subject matter to the trustee. If the transaction is merely the delivery and that which is subsequent thereto, then so long as the entruster gets title before the trustee acquires possession, it is a trust receipt transaction; but if the entruster's title results from the delivery, new value must have been given. If, however, the transaction is meant to include the negotiations between seller and entruster, it is a trust receipt transaction only if new value was given, or if the entruster had a security title apart from the transaction.

A situation not covered by the Act exists where the entruster acquires his security interest as a result of the transaction but where the consideration is an antecedent or preëxisting debt. Courts have differed[22] widely in their interpretations of transactions in which trust receipts have been used. Some courts have refused to distinguish those cases in which the security interest of the entruster was derived from a third person, from those in which the interest came from the trustee,[23] and have considered both situations as coming within the

[17] *Id.* §§ 9 (1) and 9 (2) (a).
[18] *Id.* § 9 (2) (b).
[19] *Id.* § 9 (3).
[20] For the entruster's right to proceeds, see *id.* § 10.
[21] The situations existing where a pledge is attempted to be created or continued without delivery or retention of possession is covered by Section 3.
[22] See Frederick, *The Trust Receipt as Security* (1922) 22 COL. L. REV. 395 *et seq.*, 546 *et seq.*; Vold, *Trust Receipt Security in Financing of Sales* (1930) 15 CORN. L. Q. 543; (1933) 82 U. OF PA. L. REV. 73.
[23] Smith v. Commercial Credit Corp., 113 N. J. Eq. 12, 165 Atl. 637 (1933); General Motors Acceptance Corp. v. Bettes, 57 S. W. (2d) 263 (Tex. Civ. App. 1933); see Harding v. First-Mechanics Nat'l Bank of Trenton, 166 Atl. 142, 144 (N. J. 1933); Hanna, *New Jersey Law of Trust Receipts* (1933) 2 MERCER BEASLEY L. REV. 1. In Hamilton Nat'l Bank v. McCallum, Chattanooga Finance Co. v. McCallum, 58 F. (2d) 912 (C. C. A. 6th,

statutory definition of a conditional sale [24] or a chattel mortgage.[25] Other courts, making the distinction,[26] have labeled the tripartite transaction as a situation *sui generis*,[27] and have designated the bipartite transaction as a conditional sale [28] or chattel mortgage.[29] Passage of the Act should not alter this status of the law with regard to the situation existing when the security interest results from the transaction but no new value is given. However, in jurisdictions where the tripartite transaction is considered *sui generis*, some of the courts may say, since the Act has defined a trust receipt transaction and since the definition has not included this particular situation, the statute changes the law so that the unique character of this transaction is destroyed and the bipartite law is, therefore, to be applied to it.[30]

The subject matter of a trust receipt transaction is defined in Section 2 of the Act as goods, documents or instruments. The provision for filing and refiling, however, is limited to transactions covering documents or goods. The entruster's security interest in instruments under a trust receipt is valid under the Act against all creditors of the trustee for thirty days.[31] Subsection 2 of Section 8 provides that the security interest of the entruster is void as to lien creditors who become such after the thirty days without notice of the security interest and before filing. Since there is no filing provision for instruments, it follows that, after the thirty-day period, lien creditors without notice are protected against the security interest of the entruster. In other words, there is no way by which the entruster can protect his security interest in instruments as against

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1932), there was a typical tripartite trust receipt agreement, and later, some used cars having been accepted by the trustee from his vendees in lieu of cash, the trustee executed trust receipts for them to the entruster. These latter receipts would seem to be bipartite, but the court upheld the security interest of the entruster on all the trust receipts as against the trustee in bankruptcy of the trustee. This case is classified as bipartite in Note (1933) 31 MICH. L. REV. 558.

[24] Ohio Sav. Bank & Trust Co. v. Schneider, *supra* note 6. In Commercial Inv. Trust Corp. v. Wilson, 58 F. (2d) 910 (C. C. A. 6th, 1932), the trust receipt was labeled a chattel mortgage; but in White v. General Motors Acceptance Corp., 2 F. Supp. 406 (E. D. Ky. 1932) it was decided after passage of the Uniform Sales Act that, since the real transaction is a conditional sale, it must be recorded as such.

[25] General Motors Acceptance Corp. v. Sharp Motor Sales Co., 233 Ky. 290, 25 S. W. (2d) 405 (1930), (apparently the state law has not been modified by the Sales Act, but see *supra* note 24, where the federal district court felt otherwise); General Contract Purchase Corp. v. Bickert, 10 N. J. Misc. 958, 161 Atl. 830 (1932); *cf.* General Motors Acceptance Corp. v. Berry, 167 Atl. 553 (N. H. 1933), (1933) 82 U. OF PA. L. REV. 73.

[26] *In re* Cattus, 183 Fed. 733 (C. C. A. 2d, 1910); Century Throwing Co. v. Muller, 197 Fed. 252 (C. C. A. 3d, 1912); *In re* James, Inc., *supra* note 5; Houck v. General Motors Acceptance Corp.; Brown Bros. & Co. v. Billington, both *supra* note 6.

[27] Text writers have differed in their classification of the trust receipt. Hanna considers it as a pledge. Hanna, *Trust Receipts* (1931) 19 CALIF. L. REV. 257. Frederick treats it as a chattel mortgage given special consideration in the light of business convenience. Frederick, *supra* note 22.

[28] Commercial Acceptance Trust v. Bailey, 87 Cal. App. 117, 261 Pac. 743 (1927); *cf.* *In re* Bettman-Johnson Co., 250 Fed. 657 (C. C. A. 6th, 1918).

[29] *In re* A. E. Fountain, Inc., 282 Fed. 816 (C. C. A. 2d, 1922); McLeod Nash Motors v. Commercial Credit Trust, *supra* note 6.

[30] Again the definition of the word "transaction", as used in the Act, becomes important. If the transaction is confined to the delivery to the trustee and that which is subsequent thereto, and the entruster acquires his title as a result of the delivery and execution of the trust receipt by the trustee, the transaction is bipartite. The above discussion is relevant only if the transaction is defined to include all negotiations among seller, trustee and entruster, in which case it is possible for the entruster's security interest to result from the transaction and at the same time for the transaction to be tripartite.

[31] The Act provides: ". . . But where the trustee at the time of the trust receipt transaction has and retains instruments, the thirty days shall be reckoned from the time such instruments are actually shown to the entruster or from the time that the entruster gives new value under the transaction, whichever is prior". UNIFORM TRUST RECEIPTS ACT § 8 (1).

lien creditors of the trustee after the thirty-day period. There appears to be no valid reason why the entruster should not be given the protection of the filing provision when the subject matter of the trust receipt is negotiable instruments.

Subsection 4 of Section 13 provides that presentation for filing and payment of the fee shall constitute filing as to any documents or goods which have been, within thirty days previous to such filing, or are within a year thereafter, the subject matter of a trust receipt transaction. It seemingly infers that this will not constitute filing under the Act if the documents or goods have been the subject of a trust receipt transaction for more than thirty days. However, subsection 1 (b) of Section 7 is to the effect that filing after the thirty-day period shall be valid, but the security interest is deemed created at the time of filing. This provision will probably be held to govern the situation because the language used is more express. There is present, nevertheless, a possibility for difference of opinion. The filing provisions of the Act suggests that the statement be filed with the secretary of state. Perhaps filing in the county where the trustee's chief place of business is located, or where the subject matter of the transaction is to be located, would be more satisfactory as this would afford greater convenience to those for whose protection the filing provision exists.

The entruster's security interest is valid as against all creditors of the trustee for thirty days,[32] but it is void as against lien creditors who thereafter become such [33] without notice of the entruster's interest and before filing.[34] From this it is reasonable to infer that as to other than lien creditors the security interest remains valid irrespective of filing. In subsection 1 (b) of Section 7 it is provided that if filing takes place after the thirty days, the entruster's security interest shall be deemed to be created at the time of filing as against all persons not having notice thereof. This seems to imply that, after the thirty-day period and before filing, the security interest is non-existent as to persons lacking notice thereof. The inconsistency between the two implications should be resolved in favor of the validity of the security interest, but it is doubtful whether courts will uniformly so hold. The wording of Section 7 (1) (b) is unfortunately very general, and at first glance would seem to negative even the thirty-day provision for validity if the trust receipt were later filed. Section 8 (1), of course, covers this very definitely.

With regard to purchasers, the transferee of a negotiable instrument, who gives value in good faith and is not a transferee in bulk, is protected irrespective of filing. The Act provides,[35] consistently with the *Uniform Chattel Mortgage Act* [36] and the *Uniform Conditional Sales Act,*[37] that where the trustee has liberty of sale—and this is defined to include consent to display in the trustee's sales or exhibition rooms—a buyer who gives new value in good faith and without actual knowledge of any limitation on the trustee's liberty of sale takes free of the entruster's security interest irrespective of filing. A mortgagee or pledgee who gives new value in good faith and without notice before expiration of the thirty-day period and before filing, and obtains delivery of the goods from the trustee before filing, holds free of the entruster's interest.[38] After the thirty-day period the value need not be new in order to protect the mortgagee or pledgee,

[32] *Id.* § 8 (1).
[33] See *supra* note 14.
[34] UNIFORM TRUST RECEIPTS ACT § 8 (2).
[35] *Id.* § 9 (2) (a) (i).
[36] HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS (1926) 419 *et seq.* (see especially § 25). Section 13 of the Act provides that trust or bailee receipt transactions shall be deemed chattel mortgages for the purpose of the Act.
[37] 2 U. L. A. § 9.
[38] UNIFORM TRUST RECEIPTS ACT § 9 (2) (b).

and a buyer who gives value, but not new value, is also protected.[39] This section of the Act covers only purchasers other than buyers in the ordinary course of trade, and apparently the rights therein given are not dependent upon the existence of any liberty of sale in the trustee. Under this section, then, a buyer who gave old value and a mortgagee or pledgee for value would be accorded rights not given to a buyer for new value. Such a result is anomalous, and it is quite probable that this section was meant to apply only where liberty of sale exists; if so, it is unfortunate that it was not stated. Otherwise, reliance on possession followed by delivery would be enough under this section to divest the entruster of his security interest. This departure from traditional law could hardly have been contemplated by the draftsmen. As to the rights of purchasers of documents of title in so far as they are not negotiable, this section of the Act is silent. The omission may be interpreted in two possible ways. Since the documents are merely representative of the goods, the provisions applicable to the goods themselves may also be applied to the documents; or, since the rights of purchasers of documents are not specifically covered by the Act, it may be said that the existing law has not been changed in this respect. The former would seem to be the better interpretation.

Section 7 (2) provides that taking of possession by the entruster shall, so long as such possession is retained, have the effect, in the case of instruments, of notice of the entruster's interest to all persons. There seems to be no necessity for the insertion of this provision, since it would appear that so long as the entruster is in possession he would be able to safeguard his security interest himself.[40] Another provision, the reason for which is obscure, is Section 6 (5), which states that the trust receipt may provide for forfeiture of the trustee's interest in articles manufactured by style or model, provided that 80 per cent. of the purchase price or original indebtedness, whichever is greater, be cancelled if the trustee defaults at maturity; or 70 per cent. in case of a first renewal; or 60 per cent. in case of further renewals. It is provided in general terms, in Section 6 (3) (b), that upon default the entruster may sell the goods, the trustee being entitled to any excess over expenses and the indebtedness, and responsible for any deficiency. This seems to be the most equitable way of dealing with the situation. It is also provided, in Section 5, that agreements for forfeiture of the trustee's interest, except as provided in Section 6 (5), shall be unenforceable. This exception created in Section 6 (5) would appear to be unwarranted.

According to Section 9 (3), as to buyers in good faith[41] without notice for new value, and other purchasers in good faith without notice for new value who in addition obtain delivery of the goods, a credit transaction is considered new value, and the entruster is entitled to any debt owing to the trustee or security therefor, subject to the debtor's right of set-off. Section 10 (a) provides that the entruster shall be entitled to the debts described in Section 9 (3) as against all classes of persons as to whom his security interest was valid, when the trustee has no liberty of sale, or, having it, is to account for the proceeds.[42] The pro-

[39] *Ibid.*

[40] A situation might exist where the entruster took possession of instruments payable to the order of the trustee, the trustee having failed to indorse them. In such a case, the entruster's interest would not be apparent on the face of the instrument, but it would still seem that the entruster would, by his possession, be able to preserve his interest.

[41] "Good faith" is a phrase with which courts find a great deal of trouble. See, for example, the confusion which has resulted from use of the phrase in the Negotiable Instruments Law. Note (1933) 81 U. OF PA. L. REV. 617. A definition of these words at the beginning of the Act might have served as a guide for the courts to use in interpreting the phrase more uniformly.

[42] It is inferable from the decision in *In re* Coe, 169 Fed. 1002 (S. D. N. Y. 1909), *aff'd* 183 Fed. 745 (C. C. A. 2d, 1910) that the trustee would be responsible criminally for misap-

vision in Section 10 (a) seems meaningless in view of the fact that Section 9 (3) applies only to cases in which the transferees hold free of the entruster's security interest. Besides, where the trustee has no liberty of sale or is to account for the proceeds, there would be no undue hardship on the transferee if the entruster were allowed to collect the debt whether or not his security interest was valid as against the transferee at the time of the disposition by the trustee. Subsection (b) of Section 10 entitles the entruster to a priority over persons as to whom his security interest was valid at the time of disposition by the trustee, if the proceeds were received by the trustee within ten days before receivership, bankruptcy or insolvency proceedings were commenced by or against the trustee. If the entruster's security interest was valid against all the trustee's creditors or invalid against all of them, this provision would not be difficult to apply. When the creditor group is comprised of some of each, it is illogical to say that the entruster is entitled to priority only over those against whom the security interest was valid, and at the same time that those against whom the security interest was valid and those against whom it was invalid are to share *pro rata* as general creditors. The ultimate result is that the priority of the entruster must either exist or be defeated as to all the creditors, and courts will probably take the latter view.

It is significant that nowhere does the Act prescribe whether the creditor must place reliance on the subject matter of the trust receipt transaction in order to have rights superior to those of the entruster. Some courts will probably say that since reliance is not mentioned in the Act as a necessary condition precedent to the creditor's superiority, its existence need not be inquired into. Other courts may hold that, unless the creditor can show reliance, he can show no detriment or damage, and therefore will be unable to enforce a right superior to that of the entruster.

The Act provides [43] that where the transaction between trustee and entruster falls within the provisions of the Act and also of any other act requiring filing or recording, the entruster may at his election comply with either. It is difficult to see how this provision can have any application. It could not apply to the chattel mortgage or conditional sale recording provisions, because the *Uniform Trust Receipts Act,* being the latest expression of the legislature, will have defined certain transactions as being trust receipt transactions.[44] They can, therefore, no longer be considered chattel mortgages or conditional sales. The provision would not apply to an existing trust receipts act not in direct accord with the Act, because it provides,[45] for the repeal of inconsistent legislation. It could then apply only to an existing law, identical with the Act. In such case, the reënactment of the provisions would be very unlikely. A question might well arise as to what law is to be applied when the contract of purchase and sale between the original seller and buyer is made in one state, the contract between bank and purchaser is made in another, and the resale by the purchaser is effected in a third.[46] One of the three, or two of the three may have passed the *Uniform*

propriation of the proceeds. Embezzlement or larceny by bailee might occur from misappropriation when the trust receipt provides that the identical proceeds are to be kept separate and turned over to the entruster. This provision, however, might be waived by agreement or a course of conduct.

[43] UNIFORM TRUST RECEIPTS ACT § 16.

[44] In jurisdictions requiring trust receipt transactions to be filed as chattel mortgages or conditional sales, this requirement will continue to exist, after passage of the Act, as to transactions where the entruster's security interest results from the transaction and the consideration is an antecedent or preëxisting debt.

[45] UNIFORM TRUST RECEIPTS ACT § 21.

[46] Apparently the *lex loci contractus* does not govern. In Century Throwing Co. v. Muller, *supra* note 26, the contract was made in New York, but the court applied New Jersey law.

Act. In which states is the entruster entitled to file his statement? What law is to govern? The Act sheds no light on the treatment of these problems, and what the courts will do when faced with them is highly conjectural.

As has already been intimated, the expediency of having a filing or recording statute must be determined by weighing the interest of the titleholder in maintaining his ownership unimpaired and the interest of the transferee who expends value in the belief that ownership is actually in the possessor. It has been suggested [47] that in the light of business experience, recording of trust receipt transactions should not and need not be required. The Act [48] makes filing optional and allows the filing of a general statement which will protect the entruster for one year. There is the provision for validity for thirty days as to creditors, irrespective of filing.[49] This is a compromise between the rigid recording requirement and no requirement at all. There is no undue burden placed upon the entruster.[50] The interest of transferees certainly merits this protection. If the entruster wishes to carry the risk of the honesty of the trustees with whom he deals, he is not required to record the transactions. The Act in this regard is reasonable and commendable.

It is provided [51] that the Act shall be interpreted so as to effectuate its general purpose to make uniform the law of the states enacting it. The foregoing discussion has demonstrated ambiguities and inconsistencies which may cause courts to draw differing conclusions. No matter how carefully legislation is drafted, there is bound to be a phrase or sentence here and there that will be capable of more than one construction. It is hoped that the Act will be adopted widely and that the tribunals before whom the first cases are presented will interpret the it with such reasonableness as to create a foundation upon which other courts may properly build to the end that a uniformity of construction may be attained.

E. C. F.

In Glass v. Continental Guaranty Corp., 81 Fla. 687, 88 So. 876 (1921), the finance company, plaintiff, was a New York bank, the seller-manufacturer was in Indiana, and the trustee-retailer was in Florida. The law of the *forum* was applied. If the trustee becomes bankrupt, the law of the state where his business is situated has been applied. Central Acceptance Corp. v. Lynch, 58 F. (2d) 915 (C. C. A. 6th, 1932).

[47] Frederick, *supra* note 22; Hanna, *supra* note 27; Hanna, *supra* note 1; see also Note (1927) 27 COL. L. REV. 456.

[48] UNIFORM TRUST RECEIPTS ACT § 13.

[49] *Id.* § 8 (1).

[50] In general, the entruster is given as much protection under the Act, irrespective of filing, as courts give him now under the existing law. He may acquire additional protection by complying with the filing provisions of the Act.

[51] UNIFORM TRUST RECEIPTS ACT § 18. In view of the fact that trust receipt transactions often involve three parties, some or all of whom may be in different states, it is very desirable that the law of the several states be uniform.