NOTE

Pawnbroker Regulation and the Pennsylvania Act

Many of the legal aspects of the pawnbroking business and its regulation involve the practical application of well-settled principles of wider fields of law. The law of pledges, for instance, having had its origin in this business [1] still plays an important part in the pawnbroker's conduct. A full treatment of this subject, however, would be impossible here, and an inadequate study one of little value. Moreover, recent judicial and legislative action has not produced material changes. The bulk of this note will be concerned with the more controversial issues of regulation which are now being discussed by the appellate courts and which will confront them in the future.

Fundamentally, the contention over regulation has sprung from the relationship of the social and economic objectives of pawnbroking legislation and the efficacy of the legislation enacted for these purposes. For example, it is admitted that the pawnbroker and his customer are not on equal bargaining terms.[2] The pawnbroker's place of business is generally known as the "poor man's bank".[3] Ordinarily the pledger is one whose capital is insufficient to enable him to borrow money from banks or small loan companies, and who by necessity must use his personal belongings to acquire cash. The usual pledge is one urged by immediate need. Because of this the customer is likely to sacrifice fair value and reasonable terms for a ready advance.[4] So the first objective of the regulation of pawnbrokers is to protect the poor from harsh contract terms.[5] But, as we shall see, in protecting the poor, the freedom of conducting business is restricted for the loan brokers; and, as in most cases of restraining legislation, issue is taken as to whether the interests of both parties have been adequately considered.[6]

Very often the courts maintain that the sole reason for regulation is crime prevention.[7] The nature of the pawnbroking business is such that it is often employed by thieves to dispose of the fruits of their crimes.[8] Since the pawnbroker has no certain means of knowing the true owner of the

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1. *See* Foster's Application, 23 Pa. Dist. 558, 559 (1914); see COBBETT, THE LAW OF PAWNS OR PLEDGES (1841) 1; TURNER, THE CONTRACT OF PAWN (2d ed. 1883) 1-6.

2. *See* Lowry v. Collateral Loan Ass'n., 172 N. Y. 394, 398, 65 N. E. 206, 207 (1902); *Ex parte* Lichtenstein, 67 Cal. 359, 361, 7 Pac. 728, 730 (1885).

3. Equitable Loan Society v. Bell, 14 A. (2d) 316, 323 (Pa. Sup. Ct. 1940).

4. "Men driven by the necessities of their situation resort to the pawnbroker, and pledge any and all articles in their possession in order to raise money, and they are not particular about the rate of interest charged them." Morrison, *C. J.*, in *Ex parte* Lichtenstein, 67 Cal. 359, 361, 7 Pac. 728, 730 (1885).

5. See graphic description of the purposes of small loan legislation in RYAN, USURY AND USURY LAWS (1924) 13, 15, and a discussion in Lowry v. Collateral Loan Ass'n., 172 N. Y. 394, 398, 65 N. E. 206, 207 (1902). See also the report of the English Select Committee of 1870 on Pawnbroking in BELLOT, BARGAINS WITH MONEY-LENDERS (2d ed. 1906) 26; *cf.* PRENTICE, POLICE POWER (1894) 43.

6. In holding invalid a regulation which prohibited pawnbrokers from selling pledges within twenty-four hours after they had been received, Morrison, *J.*, said of the rule, "This is not a regulation of the business of the pawnbroker, but an unjustifiable interference with the owner's right of property." Fulton v. Dist. of Columbia, 2 App. D. C. 431 (1894). *See* City of Butte v. Paltrovich, 30 Mont. 18, 23, 75 Pac. 521, 522 (1904); Shuman v. City of Fort Wayne, 127 Ind. 109, 116, 26 N. E. 560, 562 (1891).

7. *See* City of Wichita v. Wolkow, 110 Kan. 127, 128, 202 Pac. 632, 633 (1921); City of Grand Rapids v. Braudy, 105 Mich. 670, 675, 64 N. W. 29, 31 (1895); Elsner Brothers v. Hawkins, 113 Va. 47, 49, 73 S. E. 479, 480 (1912).

8. *See* City of St. Joseph v. Levin, 128 Mo. 588, 594, 31 S. W. 101, 103 (1895); RABY, THE REGULATION OF PAWNBROKING (1924) 5.

pawn, and the dishonest pawnbroker has little concern as to who it might be, protection of the honest pawnbroker and the public must lie behind the shield of the state and municipal police forces.[9] With the growth of organized crime in the United States more stringent police regulation is required and such protection is best provided not only by facilitating the tracing of stolen or lost property but by guaranteeing the character of the pawnbrokers themselves. This too, of course, is placing a burden on the business, and legislation must be carefully designed so as not to make the burden unreasonable.

It is a noteworthy fact that in every jurisdiction in which the pawnbroking business has flourished to any extent, it has been submitted to some form of regulation.[10] For the most part this was limited to the rates of interest charged,[11] but often it was of broader extent.[12] Not only was this the effect of the desire of legislators to protect the borrowers, but also of the popular identification of pawnbrokers with usurers, and national prejudices against pawnbrokers as a class.[13] In the United States, however, legislation, if any, has been of very limited form in the majority of states.[14] Doubtless this legislative inactivity was due to nineteenth century reluctance to restrict free enterprise in addition to the small necessity for severe regulation. Since pawnbroking thrives in metropolitan areas, it was not common in many states;[15] likewise crime was not organized on its present day scale. In recent years the increasing need for regulation has been recognized and comprehensive statutes have been enacted in the more densely populated states.[16]

In the large majority of cases, the courts have upheld the validity of even the more restrictive of the pawnbroker statutes and ordinances.[17]

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9. *See* City of Kansas City v. Garnier, 57 Kan. 412, 415, 46 Pac. 707, 708 (1896), in which Johnston, *J.*, says of the pawnbroker acts: "They are intended for the protection of the public, and they also tend to protect the pawnbroker himself from imposition and loss." See also RABY, *op. cit. supra* note 8, at 8.

10. See TURNER, *op. cit. supra* note 1, at pp. 1-24.

11. In early times pawbroking came under the general usury laws. See BELLOT, *op. cit. supra* note 5, at 2; TURNER, *op. cit. supra* note 1, at 6.

12. Even in the time of Moses pawnbrokers were forbidden to accept certain kinds of pledges. EXOD. xxii, 25, 27; *cf.* JOB, xxii, 5, 6. The first English statute dealing specifically with pawnbrokers was 1 JAC. 1, cap. 21 (a) providing that the property of the owner of stolen goods was not lost by pawning. Complete regulation was first enacted in England in 1757. TURNER, *op. cit. supra* note 1, at 9.

13. This was a result of the theory dating back to primitive civilization that it was dishonorable to charge for the loan of money, labor or a chattel to a fellow citizen. BELLOT, *op. cit. supra* note 5, at 1. The effect of this was to place the business of moneylending and pawnbroking in the hands of foreigners. The taking of interest was not permitted in England until 1546. TURNER, *op. cit. supra* note 1, at 6.

14. RABY, *op. cit. supra* note 8, at 8.

15. Of the 150 to 175 pawnbroking establishments in the State of Pennsylvania, about 100 are located in Philadelphia. Equitable Loan Society v. Bell, 14 A. (2d) 316, 317 (Pa. Sup. Ct. 1940).

16. CAL. GEN. LAWS (Deering, 1931) tit. 429, Act 5824, 5825, §§ 1-16, Act 5824 as superseded by CAL. PENAL CODE (Deering, 1931) tit. 9, c. 11, §§ 338-344, Act 5825 as amended by CAL. GEN. LAWS (Deering, Supp. 1933) tit. 429, Act 5825, §§ 1-24; ILL. REV. STAT. (Cahill, 1933) c. 74, §§ 14-25, and the latest act, PA. STAT. ANN. (Purdon, Supp. 1939) tit. 63, § 281.

17. *Ex parte* Lichtenstein, 67 Cal. 359, 7 Pac. 728 (1885) (statute limiting rate of interest held constitutional); Commonwealth v. Danziger, 176 Mass. 290, 57 N. E. 461 (1900) (license statute held valid); Grand Rapids v. Braudy, 105 Mich. 670, 64 N. W. 29 (1895) (statute requiring license and bond held valid). Similar ordinances enacted by various municipalities have also been sustained. Launder v. Chicago, 111 Ill. 291 (1884); Shuman v. Fort Wayne, 127 Ind. 109, 26 N. E. 560 (1890); Hyman v. Boldrick, 153 Ky. 77, 154 S. W. 369 (1913); St. Joseph v. Levin, 128 Mo. 588, 31 S. W. 101 (1895). But the power to regulate the pawnbroking business must have been delegated by the state. State v. Itzkovitch, 49 La. Ann. 366, 21 So. 544 (1897).

Most recently, the Pennsylvania Supreme Court so held in *Equitable Loan Society v. Bell.*[18] By virtue of their police power, it is held that the states may impose regulations on the pawnbroking business, or delegate that power to municipalities.[19] But while the courts have been definite in upholding the states' right to regulate the business, they have not clearly outlined the limitations of its exercise. Thus the basic questions arise, would the state by virtue of its police power be able to prohibit the business entirely, or impose such unreasonable regulations that they would tend to discourage anyone from entering into or continuing in that occupation? The answers to these depend in large measure upon the nature of the business. Unquestionably the state has the power to prohibit some businesses and not others.[20] How then are we to classify pawnbroking? Obviously there is an economic necessity for an agency by which persons reduced to personal possessions can borrow money.[21] But, as has been pointed out, there is a likelihood that the unequal bargaining position of pawnbroker and customer will lead to excessive terms in favor of the pawnbroker;[22] and also that the criminal will use this agency to dispose of his loot.[23] These, however, are mere possibilities—abuses that do not appear to be so intimately associated with the pawnbroking business that they can be prevented only by prohibition.[24] Justification of prohibition of a business would seem to depend more on its inherent nature.[25] But the legislature itself has recognized that lending money and taking interest are not so injurious to the public welfare that they could be abolished.[26] Not since medieval times has it been held otherwise;[27] and no jurisdiction in this country has attempted to abolish the business on these grounds.[28] Justice Butler, speaking of pawnbroking in *Asakura v. Seattle,*[29] was able to say: "We have found no state legislation abolishing or forbidding this business".[30] Of course the fact that no jurisdiction has ever attempted to abolish the business does not preclude its right to do so; and had the attempt been made some courts might not question the exercise of legislative discretion.[31] But it is submitted that in view of the innocent nature of the

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18. 14 A. (2d) 316 (Pa. Sup. Ct. 1940). See (1940) 89 U. OF PA. L. REV. 117.

19. See cases cited in note 17 *supra.* See also Wichita v. Wolkow, 110 Kan. 127, 202 Pac. 632 (1921); Elsner Brothers v. Hawkins, 113 Va. 47, 73 S. E. 479 (1912).

20. See dissenting opinion of Justice Stern in Equitable Loan Society v. Bell, 14 A. (2d) 316, 323 (Pa. Sup. Ct. 1940); 2 COOLEY, CONSTITUTIONAL LIMITATIONS (8th ed. 1927) chap. xvi and cases cited therein; FREUND, POLICE POWER (1904) §§ 58-61; TIEDEMAN, POLICE POWER (1886) § 102; Legis. (1938) 25 VA. L. REV. 219.

21. COBBETT, *op. cit. supra* note 1, at 28, 29; RYAN, *op. cit. supra* note 5, at 137, 138; TURNER, *op. cit. supra* note 1, at 24.

22. See note 4 *supra.*

23. See note 8 *supra.*

24. Dissenting opinion of Stern, *J.*, in Equitable Loan Society v. Bell, 14 A. (2d) 316, 323 (Pa. Sup. Ct. 1940).

25. If it is of such a nature that its prohibition would be for the benefit of the public health, safety, morals or general welfare, its prohibition is valid. 2 COOLEY, *op. cit. supra* note 20, at 1328; FREUND, *op. cit. supra* note 20, at 59.

26. On the contrary the legislatures have not only established legal rates of interest but provided for special higher rates of interest for small loan companies, etc., thereby encouraging this type of money-lender. RYAN, *op. cit. supra* note 5, at 138.

27. See notes 12 and 13 *supra.*

28. Note, however, that the City of Chicago was given the power to "license, tax, regulate, suppress and prohibit . . . pawnbrokers." [Launder v. City of Chicago, 111 Ill. 291, 295 (1884)] although the city did not attempt to exercise their authority to a greater extent than regulation.

29. 265 U. S. 332 (1924).

30. *Id.* at 343.

31. Courts are reluctant to upset the decision of the legislature in the exercise of its police power. 2 COOLEY, *op. cit. supra* note 20, at 1225.

business and the adequacy of regulation to eliminate the evils likely to arise, legislation prohibiting the business would be an arbitrary and oppressive exercise of the police power of the state.[32] The majority opinion in the *Equitable Loan Society* case, however, stated that the legislature could abolish the business if it desired and argued from this that it could impose unreasonable regulations.[33] This raises the second problem—must the regulations be reasonable? The argument of the Pennsylvania court that they need not since the states can abolish the business entirely is based on an assumption which, as has been shown above, has not been acted upon by a legislature or a court.[34] Even assuming the truth of the court's premise, the conclusion is not inevitable. It is entirely possible that prohibition of a business might bear a reasonable relation to the public welfare and thereby be valid, whereas regulations imposed might not and so be invalid.[35] Of course, if certain regulations were found to be necessary for the protection of the public although they were incidentally restrictive of the pawnbroking business, they would nevertheless be held valid.[36] But the fact that the courts have not upheld pawnbroker statutes or ordinances which they admitted were unreasonable[37] is not only in contradiction to the opinion of the Pennsylvania court but is an indication that such regulation is not necessary for the proper control of the pawnbroking business.[38]

Licensing and Supervision

As has been pointed out, the good character of the pawnbroker is important in the protection of the public. To insure this, much depends on

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32. *Ibid.* "The correct constitutional principle seems to be that a business serving valuable economic or social purposes may not be entirely prohibited, because it is attended with danger or liable to abuse, but that the policy of prohibition may be sustained, if the business exists only for the gratification of pleasure, or has otherwise no legitimate function." Freund, *op. cit. supra* note 20, at 54. See Legis. (1938) 25 Va. L. Rev. 219, 223.

33. "But even if confiscation had been shown, it would have made no difference, because the Commonwealth under its police power can prohibit the pawnbroking business entirely." Drew, *J.*, in Equitable Loan Society v. Bell, 14 A. (2d) 316, 318 (Pa. Sup. Ct. 1940).

Note that "unreasonable" as used in this note means unnecessarily restrictive of the pawnbroker's conduct of business rather than lacking a resonable relation to the protection of public welfare.

34. In view of the economic necessity for pawnbrokers, see note 21 *supra,* and the adequacy of regulation to check the likely abuses, see *infra.*

35. Even Justice Drew recognized the fact that although a legislature may entirely prohibit a particular business, if it chooses to regulate it the regulation must be reasonable, and not discriminatory. He qualifies his first statement, quoted in note 33 *supra,* by adding: "Plaintiffs cannot, therefore, successfully claim a violation of their fundamental rights because of a regulation, falling short of complete suppression, which is not *arbitrary,* nor *discriminatory,* and which bears a *reasonable* relation to a proper legislative purpose." (Italics added.) Equitable Loan Society v. Bell, 14 A. (2d) 316, 318 (Pa. Sup. Ct. 1940).

36. 2 Cooley, *op. cit. supra* note 20, at 1225.

37. Even though the City of Chicago had been delegated the power to prohibit pawnbrokers by its charter, see note 28 *supra,* nevertheless in Kuhn v. Chicago, 30 Ill. App. 203 (1889) the court upheld a pawnbroker ordinance in that city on the ground of reasonableness.

For other examples of the use of the "reasonable" standard in pawnbroking regulation, see McQuillin, *Some Observations Relative to the Regulation of Pawnbroking* (1906) 63 Cent. L. J. 107, 109; Fulton v. Dist. of Columbia, 2 App. D. C. 431, 438 (1894); Kansas City v. Garnier, 57 Kan. 412 (1896); Grand Rapids v. Braudy, 105 Mich. 670, 64 N. W. 29, 32 (1895); St. Paul v. Lytle, 69 Minn. 1, 71 N. W. 703 (1897); Butte v. Paltrovich, 30 Mont. 18, 23, 75 Pac. 521, 522 (1904).

38. "These evils, however, are amenable to corrective regulation . . .," Stern, *J.*, dissenting in Equitable Loan Society v. Bell, 14 A. (2d) 316 (Pa. Sup. Ct. 1940).

the licensing regulation.[39] Even the earliest enactments required a license as a condition precedent to pawnbroking and in many instances required a surety bond.[40] But there are many variations in present-day statutes. Some states, for example, place the issuing of licenses entirely within the discretion of municipal or county officials;[41] other states delegate this office to state departments.[42] Often both state and municipality have concurrent jurisdiction and exact license fees.[43] Some of the states vary the amount of the license and bond according to the classes of cities or towns.[44] Few of the statutes prescribe any standard by which the licensing officials are to grant or refuse permits, so that the license provisions amount to nothing more than revenue measures. The Pennsylvania Act attempted to correct this by providing:

> "The Secretary of Banking shall have the power to reject any application for license if he is satisfied that the financial responsibility, experience, character, and general fitness of the applicant or applicants is not such as to command the confidence of the community and to warrant the conclusion that the business will be operated honestly, fairly, and within the laws of this commonwealth, or if he is not satisfied that allowing such applicant to engage in business will promote the convenience and the advantage of the community. . . ." [45]

It is interesting to note that this section is more detailed than the corresponding section of the Uniform Pawnbroking Bill drafted by the National Federation of Remedial Loan Associations [46] which merely states:

> "If such application (for license) be approved by the licensing official he shall issue a license to the applicant. . . ." [47]

Despite the fact that the Pennsylvania act allows the licensing official less discretion than the Uniform Act in granting or refusing a license application,[48] this section was strongly objected to by counsel for the plaintiff

39. RABY, *op. cit. supra* note 8, at 5.

40. Typical of these was the Philadelphia ordinance of January 19, 1856, promulgated under a statute of 1823, empowering the city council to "pass such laws and ordinances as they may, from time to time deem necessary for the good government and control of pawnbrokers . . ." PA. STAT. ANN. (Purdon, 1931) tit. 53, § 7601. By this ordinance the Mayor of Philadelphia was to grant licenses upon payment of a fee of $200, the filing of a $1000 bond and $5000 insurance policy.

41. 1 CONN. GEN. STAT. (1930) § 2945; DEL. REV. CODE (1935) § 1382; ME. REV. STAT. (1930) c. 47, § 1; 2 MASS. GEN. LAWS (1932) c. 140, § 70; 8 MO. STAT. ANN. (1932) § 6171 (xvii), are a few statutes placing the duty of licensing in the hands of local authorities.

42. ARIZ. REV. CODE (Struckmeyer, 1928) § 1981 (7) and IND. STAT. ANN. (Baldwin, Supp. 1935) § 13220-3, are typical of these statutes.

43. KY. STAT. ANN. (Carroll's Baldwin, 1936) §§ 3011, 4224, specifically provides that both state and municipality may exact license fees.

44. FLA. COMP. LAWS ANN. (Skillmann, 1928) § 1237. Louisiana varies the license fee according to the amount of capital invested. 6 LA. GEN. STAT. ANN. (Dart, 1939) § 8594.

45. PA. STAT. ANN. (Purdon, Supp. 1939) tit. 63, § 281 (8).

46. This may be found reprinted in RABY, *op. cit. supra* note 8, at 32; RYAN, *op. cit. supra* note 5, at 233.

47. Uniform Pawnbroking Bill § 5.

48. The Pennsylvania Act is somewhat similar to the requirements for license under the Uniform Small Loan Laws. HUBACHEK, ANNOTATIONS ON SMALL LOAN LAWS (1938) 51. While no decision has tested the validity of the standards set forth in the statute, or the exercise of discretion of the licensing official, in view of the worthy purpose of these provisions of the statute, it is reasonable to believe that they will be upheld. Similar licensing sections in other statutes have been sustained. See cases cited *id.* at 55.

pawnbrokers in the *Equitable Loan Society* case as being an unconstitutional delegation of legislative power.[49]

Just as the regulations differ as to the requirements for a license so do they in regard to the supervision of the business. Often the licensing and regulation of the business are separated from the office of supervision.[50] And there is great variance as to the number and severity of the regulations included in the statutes. Usually they provide that a weekly report be given to the supervising official of the pledges received,[51] often loans to minors are forbidden [52] and the hours of business have been fixed. Most of these provisions have been upheld by the courts on the ground of reasonableness.[53] Several of the pawnbroker statutes not only prescribe a number of police regulations in the statute itself but allow for other rules within the discretion of the licensing or the supervising official.[54] So the Pennsylvania Act permits the Secretary of Banking to—

> "issue such general rules and regulations as may be necessary for the protection of the public and to insure the proper conduct of such business, and for the enforcement of this act, which rules and regulations shall have the force and effect of law." [55]

While no decision has tested the validity of rules ordered by a supervising official under such a statutory clause, it appears that they too would be subject to the standard of reasonableness.[56]

Naturally these regulations are burdensome to the pawnbroker causing inconvenience by frequent examination of records, and increasing clerical work by the reports required. But in view of the benefit they are designed to effect, there should be little reason for complaint unless the statutes become so burdensome that they are in effect prohibitive.[57]

Interest and Charges

Most likely to be the subject of controversy is the regulation of interest and charges. This likelihood arises not only by reason of their importance to the pawnbroker, but also from the difficulty of establishing rates which will allow him a fair return and at the same time protect the borrowers from unconscionable bargains.[58] It must be remembered that the pawnbroker lends money on a pledge of personal property, and that consequently

49. Brief for Appellants, pp. 164, 168, Equitable Loan Society v. Bell, 14 A. (2d) 316 (Pa. Sup. Ct. 1940).

50. Arizona and Louisiana, for example, require state officials to license pawnbrokers. Ariz. Rev. Code (Struckmeyer, 1928) § 1981 (7); 5 La. Gen. Stat. Ann. (Dart, 1939) tit. 47, § 65.

51. See, for example, Ariz. Rev. Code (Struckmeyer, 1928) § 4691; 1 Conn. Gen. Stat. (1930) § 2948; 2 Mass. Gen. Laws (1931) c. 140, § 79.

52. Ind. Stat. Ann. (Baldwin, Supp. 1935) § 13220-36 (1); Pa. Stat. Ann. (Purdon, Supp. 1939) tit. 63, § 281 (29). *Cf.* Uniform Pawbroking Bill § 103 (1).

53. Launder v. Chicago, 111 Ill. 291 (1884), upheld an ordinance requiring pawnbrokers to keep a register of pledges. Ordinances regulating the hours of business were sustained as reasonable in Hyman v. Boldrick, 153 Ky. 77, 154 S. W. 369 (1913); Butte v. Paltrovich, 30 Mont. 18, 75 Pac. 521 (1904). *Cf.* Uniform Pawnbroking Bill § 103 (2). Fingerprinting of pledgers was upheld as a reasonable regulation in Wichita v. Wolkow, 110 Kan. 127, 202 Pac. 632 (1921).

54. 2 Calif. Gen. Laws (Deering, 1931) Act 5825, § 15; Ind. Stat. Ann. (Baldwin, Supp. 1935) § 13220-12. *Cf.* Uniform Pawnbroking Bill § 12.

55. Pa. Stat. Ann. (Purdon, Supp. 1939) tit. 63, § 281 (8).

56. *Cf.* note 37 *supra*, and cases cited therein.

57. 2 Cooley, *op. cit. supra* note 20, at 1231.

58. How the market rate of interest fluctuates in spite of statutory maximum interest laws is shown in Ryan, *op. cit. supra* note 5, at 116, 117.

his liabilities and duties are greater by virtue of his having received the pawn than they would be on a mere loan of money. Thus, not only must he be compensated for the loan of money he has made, but, since he must properly care for the pawn and risk physical hazards as well as depreciation, there must be some allowance above interest made for storage and insurance.[59] Then too, there are more clerical duties attached to this business than that of the small loan companies and banks. For these reasons it was early recognized that the pawnbroker could not maintain his establishment under the ordinary legal contract rate of interest, and a different rate was fixed for this trade.[60] Many states have made allowance for the added costs of pawnbroking,[61] while others restrict the broker to the prevailing contract rate.[62] In states that have not provided a higher rate by statute, the difference has been made up by charges including not only the legal rate of interest, but in addition, specific fees for storage, insurance, investigation and the like,[63] so that in the usual case the cost to the pledger is heavier than that permitted under the pawnbroker statutes, depending upon the integrity of the pawnbroker. Again there is a wide division in the rates allowed in the several states, and the interest permitted by statute may range from 12 per cent. per annum [64] to 126 per cent.[65] While this last figure may seem unjustifiably high, even that may be exceeded in those states which have no statutory coverage of pawnbroking and depend merely on the contract rate of interest for protection of the borrower.[66] Most of the recent statutes have set 3 per cent. per month as the maximum charge,[67] including interest and all other fees; and this was the rate suggested in the Uniform Act.[68] This rate is sometimes varied higher or lower according to the size of the loan,[69] or the nature of the pledge.[70] The Pennsylvania act is a modification of these in that it permits but 6 per cent. per year for interest on the loan (the statutory contract rate), but establishes maximum and minimum percentages for additional charges according to both the size of the loan and the nature of the property pawned.[71] Thus the total charges

59. RABY, *op. cit. supra* note 5, at 6.

60. *Ibid. Cf.* RYAN, *op. cit. supra* note 5, at 138.

61. See, for example, 3 COLO. ANN. STAT. (Courtright's Mills, 1930) c. 122, § 5400; DEL. REV. CODE (1935) § 1389; 9 MO. STAT. ANN. (1932) c. 130, §14269; 5 NEV. COMP. LAWS (Hillyer, 1929) § 10153. Massachusetts and New Hampshire leave the regulation of the interest and charges wholly within the discretion of the licensing board or official. 2 MASS. GEN. LAWS (1931) c. 140, § 72; 1 N. H. PUBLIC LAWS (1926) c. 172, § 10.

62. Alabama, Arkansas, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, West Virginia, Wisconsin and Wyoming have not as yet a special interest rate for pawnbrokers.

63. Sometimes the statutes make a distinction between the rate of interest and other charges; and while the interest allowed is limited to the ordinary contract rate, a certain percentage of the principal amount is permitted as compensation for the other charges. PA. STAT. ANN. (Purdon, Supp. 1939) tit. 63, § 281 (12); TENN. CODE ANN. (Michie, Supp. 1937) § 6733.

64. By Act of Congress of February 4, 1913, 37 STAT. 657, the District of Columbia allows only 1% per month for pawnbrokers with extra charges forbidden.

65. VA. CODE ANN. (Michie, 1936) app. § 191.

66. See notes 62 and 63 *supra.*

67. 5 ORE. CODE ANN. (Supp. 1935) § 22-2826.

68. § 59.

69. See CONN. GEN. STAT. (1930) § 2950; OHIO CODE ANN. (Throckmorton's Baldwin, 1940) § 6339-3; R. I. GEN. LAWS (1938) c. 364, § 14.

70. VA. CODE ANN. (Michie, 1936) app. § 191.

71. PA. STAT. ANN. (Purdon, Supp. 1939) tit. 63, § 281 (12), makes three classifications of charges: (a) on loans on jewelry in excess of $50, (b) loans on jewelry of less than $50, and (c) all other loans.

vary between 18 and 36 per cent. per annum of the principal amount, at the discretion of the supervising official.[72]

No attempt will be made at this point to suggest what the proper rate of interest and charges might be. There are many fluctuating factors involved. The costs of taking and caring for a pledge, the availability of small loans in the locality in which the pawnbroking business is to be regulated and a reasonable return for the lender are but a few of the factors which must be studied in detail to determine an equitably accurate rate.[73] The question of what is a reasonable return [74] for the pawnbroker was in issue in the *Equitable Loan Society* case, for the objection was made that the rates of the Pennsylvania act were confiscatory.[75] But the court in that case avoided the issue by declaring that it was not necessary to decide whether or not the rates were confiscatory inasmuch as the state could not only regulate but abolish the business entirely.[76] It is worthless to speculate what a court which restricted the regulation of pawnbroking to reasonable regulation would decide as to the Pennsylvania rates. It is sufficient to point out here, that in such a court such a test would be applied to interest and charges rates and that there is no precedent [77] by which the results of such a test can be shown.

Relation to the Small Loan Laws

A most important and as yet little discussed problem involved in the regulation of pawnbroking is its relation to small loan legislation. Few fields of law have increased to as great an extent as small loan legislation since the turn of the century. More than two-thirds of the states now have small loan laws fashioned on the model of the Uniform Small Loan Act.[78] Often the small loan laws are supplemented by other acts providing a slightly wider coverage or applying to a particular type of lender. Thus in Pennsylvania, there is extant not only the Pawnbroker Act, a small loan law applying generally to loans up to $300,[79] and a Consumer Discount Company act for loans up to $1000,[80] but there are also other acts pertaining to such lenders as banks and building and loan companies.[81] Within such a mass of legislation on collateral subjects there is likely to be an overlapping or even a direct conflict, especially when the statutes have been enacted at different times or without thought or reference to the others.

72. The Secretary of Banking is given the power to set the rates within the statutory figures. *Ibid.* This also was objected to as an unconstitutional delegation of legislative power and a denial of due process. Brief for Appellants, pp. 150-162, Equitable Loan Society v. Bell, 14 A. (2d) 316 (Pa. Sup. Ct. 1940).

73. For a discussion of the factors involved in "consumers loans rates", see Ryan, *op. cit. supra* note 5, at 145, 146.

74. What is a reasonable return was discussed at length in the railroad "rate" cases. See Hendricks, The Power to Regulate Corporations and Commerce (1906) 347-355; Taylor, Due Process of Law (1917) §§ 188-190.

75. Brief for Appellants, pp. 34-76, Equitable Loan Society v. Bell, 14 A. (2d) 316 (Pa. Sup. Ct. 1940).

76. See notes 33 and 35 *supra.*

77. In *Ex parte* Lichtenstein, 67 Cal. 359, 7 Pac. 728 (1885), the court sustained a statute limiting the interest and charges of pawnbrokers to 2% per month. However, the states right to impose *any* limitation and not the reasonableness of the rates imposed was in issue. For this reason and because of the fluctuation of the interest rates, this case can not be cited as establishing a reasonable rate for present-day pawnbrokers.

78. Two excellent treatises on the statutes and cases in this field are Camalier, Digest of Personal Finance Laws (1932) and Hubachek, *op. cit. supra* note 48.

79. Pa. Stat. Ann. (Purdon, 1939) tit. 7, §§ 751-761.

80. Pa. Stat. Ann. (Purdon, 1939) tit. 7, §§ 761 (1 to 19).

81. Camalier, *op. cit. supra* note 78, at 841.

Also there is always the danger of violation of the equal protection guarantee. Much of this depends on careful legislative draftsmanship, but even with this, contention is probable. For example, the three Pennsylvania laws (Small Loan, Consumer Discount Company and Pawnbroker License Acts) were enacted by the same legislature in the same year.[82] By the Consumer Discount Company Act, the licensed lender is permitted

> "A. To lend money, credit, goods or things in action in amounts not exceeding one thousand dollars ($1,000) and charge interest and fees herein provided.
>
> B.To lend money on the security of real or personal property or without security." [83]

By the Small Loan law as amended in the same year in which the above act was passed, the licensee can

> ". . . make a loan of money, credit, goods or things in action, in the amount or of the value of three hundred ($300) dollars or less either with or without security. . . ." [84]

and the Pawnbroker License Act defines pawnbroker as one who,

> "(1)engages in the business of lending on the deposit or pledge of personal property, other than choses in action, securities, or written evidence of indebtedness. . . ." [85]

The confusion that is likely to result from these sections is obvious. On pledges or loans on the security of personal property up to three hundred dollars, any of the acts might be applied, depending on what the lender is called. This anomalous situation was realized in part when the amendment to the Small Loan Law came before the legislature [86] and they included in that act with respect to licensing:

> ". . . the Secretary of Banking shall have the power to reject any application for license . . . if it shall appear . . . that the business of the applicant is, or is to be, substantially that generally conducted by pawnbrokers." [87]

And with regard to interest and charges in the Small Loan bill

> "In the case of loans made upon the security of tangible personal property, physical possession of which is taken by the licensee, the licensee shall not charge interest at a rate in excess of such rates as are provided for by the act, approved the sixth day of April (Pawnbroker's License Act) . . . for loans of a similar character. . . ." [88]

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82. 1937. Note that the Small Loan Act was an amendment of the previous Act of June 4, 1919, P. L. 375 [PA. STAT. ANN. (Purdon, 1930) tit. 7, § 751].

83. PA. STAT. ANN. (Purdon, 1939) tit. 7, § 761 (13).

84. *Id.* at § 751.

85. PA. STAT. ANN. (Purdon, Supp. 1939) tit. 63, §§ 281- .

86. After discussing the similarity of the provisions of the Small Loans Act and the Pawnbroker Act, Senator Shapiro of Philadelphia, speaking before the legislature, concluded: "Unless, therefore, House Bill No. 4410 (Pawnbroker Act) and the Small Loans Bill are properly amended, one of two conditions will occur: either the Small Loan broker will become a pawnbroker in fact, or the pawnbroker will become a small loan broker as well, by merely paying a small additional license fee, he will be observing the Pawnbroker's Act on one side of his house, and legally violating its terms on the other side. Obviously the legislature should not permit such an anomalous result; and in my opinion it can be prevented only by simultaneous consideration of both bills, since they both strike at the same evil." Pa. Legis. J., March 8, 1937, vol. 1, p. 1.

It is important to note that the senator made no reference to the similarity of the provisions of the Pawnbroker Act and the Consumer Discount Company Act.

87. PA. STAT. ANN. (Purdon, 1939) tit. 7, § 752.

88. *Id.* at § 755.

But while the legislature was aware of the overlap of the small loan act and the Pawnbroker License Act, and while they attempted a remedy, apparently no thought was given to that of the Consumer Discount Company Act and the Pawnbroker Act,[89] for the Consumer Discount Act permits those companies licensed to make loans identical with those allowed under the Small Loans Act and Pawnbroker Act. Yet while the legislature revised the Small Loan Act to avoid this conflict, they did not include the same provision in the Consumer Discount Company Act. The problem of such an omission is created by the fact that the Consumer Discount Company Act permits a higher rate of interest and charges than the Pawnbroker Act permits on identical pledges.[90] Equal protection of the laws would only be saved if the difference between the two acts can be said to be a reasonable classification. To begin with, it must be repeated that the regulation of the *rates* of both businesses is for the purpose of protecting the poor from unfair bargains. What then can be said to be the basis for classification of the two businesses in respect to rates when the very same transaction is permissible under both statutes?[91] Not only does this difference seem to rest on the difference in the letters of each name, but seems to bear very little relation to the purpose of the statute, i. e. protection of the poor.

The court in the *Equitable Loan Society* case did not answer this directly. Meeting the classification objection, it stated, without proof, that the legislature was aware of the common features of the statutes,[92] and then added: "In view of the conditions and temptations known to exist in that business (pawnbroking), we cannot label the classification unreasonable."[93] To be at all relevant the "conditions and temptations" must have referred to the interest and charges imposed by pawnbrokers. It is difficult to perceive how the same "conditions and temptations" would not be present for the Consumer Discount companies in respect to usury when the loan transaction and the customer are exactly the same as for the pawnbroker. If the court's fact assumption is true this would seem to be a better argument for the more careful supervision of pawnbrokers than for such classification; and, moreover, such a decision would appear to increase the "temptations" of pawnbrokers to exceed the legal rate of interest and impose the same amount as rival consumer discount companies are allowed by law. No doubt the greater part of the consumer discount business is not in transactions similar to those common to the pawnbroking business, and on that basis the courts might sustain the conflicting provisions of the two measures as reasonable classification, the legislature being permitted

89. There is no evidence that the legislature was aware of it. See note 86 *supra.*

90. See a comparative table of rates under both acts in Brief for Appellants,, pp. 174, 175, Equitable Loan Society v. Bell, 14 A. (2d) 316 (Pa. Sup. Ct. 1940).

91. While HUBACHEK, *op. cit. supra* note 48, at 127, 130, cites a long list of cases upholding the classification between the small loan laws and other types of lenders, he states as a general principle: ". . . a state may deal with different classes of lenders or borrowers or loan transactions in different ways provided that there is nothing apparently unreasonable in the distinctions made between the different classes and that all members of each class are treated alike." *Id.* at 127.

92. "The legislature was fully aware of the features now urged as being common to all three businesses." Equitable Loan Society v. Bell, 14 A. (2d) 316, 320 (Pa. Sup. Ct. 1940). In support of this statement the court cites the page of the Pennsylvania Legislative Journal, quoted from note 86 *supra.* As stated in that note there is no mention of the Consumer Discount Company Act in the senator's speech. It is significant too, that the Small Loans Act was amended (notes 87 and 88 *supra*) after this speech was made. So the authority that the court cites not only fails to prove the court's statement but is a strong indication that if the legislature had been made aware of the conflict as they were in regard to the Small Loan Act they would have amended it.

93. Equitable Loan Society v. Bell, 14 A. (2d) 316, 320 (Pa. Sup. Ct. 1940).

a wide latitude of judgment in this matter.[94] It is sufficient to point out that by sustaining such differentiation as this a more direct competition is encouraged with the advantage on one side. Furthermore it would seem valueless for a court to attempt to justify such action by the legislature, when there is no convincing proof that they were aware of the result.[95]

This particular instance of statutory overlapping and the decision treating of it are dealt with at length here as an example of problems which will arise in the future in other jurisdictions. More than likely they are even more perplexing than those which faced the Pennsylvania court, for in this state the three laws were enacted within a short period of time, while in other states some fields of law are more comprehensively treated than others according to the ages of the statutes. This misallocation of burdens is the seed of equal protection and due process problems.

As to limits of classification, some indication as to results of cases in the pawnbroking field is given by the decisions under the small loan laws.[96] Thus it has been held that classification based upon the size of the loan [97] or the nature of the security pledged [98] is valid. Likewise different interest rates may be established for the licensed or unlicensed lender,[99] although the more recent statutes forbid business entirely without a license. Finally, classification according to the population of the various parts of the state have been upheld.[100]

Conclusion

One of the few generalizations that can be made of the existing pawnbroker statutes is that they are in need of reform.[101] The necessity of some regulation is clear; and the right of the states to regulate under their police power has been sustained often. The difficulties are mainly delineation of the limits of regulation and synchronization with the other small loan laws. As regards the pawnbroker statutes themselves, the largest defects are the inadequacy of some of the statutes in preventing the likely abuses, and the severity of others in dealing with particular aspects of the business. With but a few exceptions, the general legislative attitude towards pawnbrokers has been either one of ignorance of their existence (except for purposes of exacting a heavy license tax), or of reform of their evils resulting in such severe regulation that they have resorted to the courts for relief. The former case is by far the most prevalent. This is surprising in view of the long historical precedent both for the need of regulation and regulation itself, and because the very jurisdictions which have paid scant attention to pawnshops have enacted detailed statutes regulating small loan companies. Why the small loan broker has not resorted to the disguise of the pawnbroker in these states is not clear. The fact remains that this might be done and it is evident that the public welfare would best be served by subjecting both businesses to similar regulations.

The Pennsylvania legislature recognized both the necessity for regulation of pawnbrokers and the equity of harmonizing small loan legislation. It cannot be denied that they adequately provided for the regulation of

94. Beasley v. Cahoon, 109 Fla. 106, 147 So. 288 (1933); People v. Stokes, 281 Ill. 159, 118 N. E. 87 (1917).

95. See note 92 *supra*.

96. In general see cases in Hubachek, *op. cit. supra* note 48, at 37-40, 127, 130.

97. Cole v. Franklin Plan Co., 176 Ga. 561, 168 S. E. 261 (1933); Commonwealth v. Puder, 261 Pa. 129, 104 Atl. 505 (1918).

98. Ravitz v. Steurele, 257 Ky. 108, 77 S. W. (2d) 360 (1934).

99. Family Finance Co. v. Allman, 174 Ga. 467, 163 S. E. 143 (1932); People v. Stokes, 281 Ill. 159, 118 N. E. 87 (1917).

100. State v. Wickenhoefer, 6 Penne. 120, 64 Atl. 273 (Del. 1906).

101. Raby, *op. cit. supra* note 7, at 8, 9.

pawnbrokers and avoided most of the defects of other statutes. The sections in the act concerning the pawnbroker's care of the pledge, the sale of the pledge and the loss of the pawn ticket are fashioned after similar provisions in the Uniform Pawnbroking Bill [102] and there is no doubt as to the legality of their purposes. The licensing and supervision sections and those specifying the records to be maintained are analogous to corresponding sections in the Small Loan Act, and like the last named sections would be held constitutional if they were in issue. With the possible exception of the interest and charges provision the Pennsylvania act would serve as a desirable model for future legislation in other states.

The constitutionality of two things in the 1937 small loan legislation in Pennsylvania is likely to be questioned in the future, for it is not apparent and it was not conclusively decided by the *Equitable Loan Society* case. The first concerns the interest and charges permitted by the Pawnbroker Act and the second the relation of the Pawnbroker Act to the Consumer Discount Company Act. The interest and charges section, in establishing a minimum of eighteen and a maximum of 36 per cent. per annum may be shown to deny a fair and reasonable return to the pawnshop owner. Upon conclusive proof of this, it is submitted that sustaining the rates would be a denial of due process. The obstacle to the production of such evidence is the statement in the *Equitable Loan Society* case that because the state can prohibit the business it may impose confiscatory rates. But since neither precedent nor logic appear to support this conclusion of the Pennsylvania court, it is submitted that evidence as to the reasonableness of the rates should be allowed.

Even though the rates are held to be reasonable, there remains the other problem of distinguishing the rates of the Consumer Discount Act. Cases under the small loan laws indicate that the courts depend more on policy than logic to uphold collateral statutes. By analogy to them it is probable that the distinction between consumer discount companies and pawnbrokers in general would be considered sufficient to justify a classification such as that made in the Pennsylvania statutes, even though some of the particular transactions of both companies could not be differentiated. If it is believed that allowing a higher rate to consumer discount companies would not destroy the efficiency of the pawnbroker act, the classification of the acts would be sustained in the majority of courts.

Even though a suggestion that the provisions of the Uniform Pawnbroking Bill or the Pennsylvania act be adopted verbatim as law in the various states would be a futile gesture, it is important to mention a few essential requirements for effective pawnbroking regulation. First, there is a definite need for more exacting qualifications for licensees. Secondly, the administration of licensing and supervision should be placed in the hands of a state official or department. Third, detailed records and reports of the pledges received and the sales made should be required. These three things are directed at crime prevention and the tracing of stolen goods. Because crime has been organized on a national scale in recent years, the states should attempt to enact uniform provisions on these matters to avoid lending advantage to the criminal by location. For the protection of the pawnbroker's customer it is suggested fourthly to regulate the interest and charges of the broker, but allowing the pawnbroker a fair return on the capital invested. Identical transactions by the pawnbroker and any other loan broker should be treated alike in the statutes.

P. P. L. III.

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102. *Id.* at 36.