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PHILIPPINE TRUST RECEIPTS: AN EXAMINATION OF *PHILIPPINE NATIONAL BANK v. VIUDA e HIJOS de ANGEL JOSE*

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I. *Nature, Forms and Validity of the Trust Receipt Transaction.*

What is a trust receipt? The present writer recalls that this was the first question in the Commercial Law Bar examination of 1951. He recalls too that as soon as the examinees read the question, a great many were shaking their heads, indicating that the term *trust receipt* was strange to them. Some thought it was some form of technical trust. Many equated it with the corporation voting trust.

Despite the fact that the trust receipt agreement as a security device has been used by our business and banking community since the twenties,[1] it has been hardly, if at all, discussed in our law classrooms or in commercial law and credit transactions textbooks. To be sure, there is not a piece of trust receipt legislation in our country. Whatever "law" we have on the subject may be gleaned from the reported cases. Resort to case law in a country

* LL.B., Ateneo de Manila, 1951.

[1] People v. Yu Chai Ho, 53 Phil. 874, is a 1928 criminal case involving the use of a trust receipt.

supposed to be a code jurisdiction seems rather odd indeed.

It is hard to say when the use of trust receipts was first introduced in our country. It seems certain however that trust receipts are today commonly employed by our banks, which finance the importing business.[2] The sad lack of available business statistics in our country makes it difficult to determine the approximate extent of trust receipt financing in terms of *pesos*. It is safe to assume however that the volume of import transactions done in our country by means of trust receipts is comparable to the volume of other business carried on by the use of other security devices such as chattel mortgage, conditional sale, or pledge. In view of its importance as a credit carrier, it is our purpose here to examine our concept of the trust receipt transaction as outlined in the case of *Philippine National Bank* v. *Viuda e Hijos de Angel Jose*.[3] In the course of our examination we shall make reference to American trust receipt legislation and jurisprudence, which would only be proper since the trust receipt agreement has an original American trademark.[4] It was born of American financial ingenuity seeking some form of security device responsive to import transaction needs and unencumbered by bothersome recording requirements of existing conventional chattel security devices.[5] The earliest reported case in the United States involving the use of the term *trust receipt* seems to be *Barry v. Boninger*.[6] In its orthodox or conventional form, the trust receipt transaction is a triangular affair.[7] Three characters participate in the transaction—a buyer, a lender, and a

[2] See U. S. Economic Survey Mission's Report (The Bell Report), 92-93, Phil. Book Co. (1950).

[3] 63 Phil. 814 (1936).

[4] See Vold, *Handbook of the Law of Sales*, 342-343 (Hornbook Series, 1931); Hanna, *Trust Receipts*, 29 Col. L. R. 545 (1929), Hanna, *Trust Receipts*, 19 Cal. L. R. 257, 273 (1931).

[5] *Ibid.*; "To sum up, we find that there is a business need for a short time security device which is valid against the creditors of the borrower without being recorded. The trust receipt transaction has been devised to fill this need." Lusk, *Trust Receipts*, 12 Temp. L. Q. 189, 199 (1938).

[6] 46 Md. 59 (1876); Anno., *Trust Receipts*, 49 A. L. R. 395 (1922); Frederick, *The Trust Receipt as Security*, 22 Col. L. R. 395 (1922).

[7] See In *re* Cattus, 106 C. C. A. 171, 183 F. 733 (1910), for a description of the transaction in its standard form; For a scholarly business and legal analysis, see Vold, *op. cit. supra* note 5 at 341-355.

distant seller. The buyer is ordinarily a dealer or manufacturer who will distribute the goods he imports either in their original or manufactured form to other purchasers. The lender, usually a bank or finance company, comes into the picture because the buyer needs credit to finance his importation. For this purpose the lender opens a letter of credit in favor of the distant seller. The distant seller, assuming that the terms of the letter of credit are agreeable to him, ships the goods sold to the buyer. In the process of shipment he obtains a bill of lading from the carrier (usually to his order or to the order of the lender) and other relevant shipping documents. At the same time, he draws a draft against the letter of credit for the price of the goods shipped. He then forwards the draft accompanied by the order bill of lading and the other shipping documents to the lender for presentment for payment. The lender pays the draft and takes possession of the order bill of lading and other shipping documents, in effect obtaining control over the disposition of the goods shipped. What was formerly the collateral security of the distant seller (the order bill of lading and other shipping documents) for the payment of the draft, is now, for the time being, the collateral security of the lender against the buyer for the repayment of his advances on the draft. After payment of the draft, the seller disappears from the picture. From then on, the transaction is narrowed down to the buyer and the lender. Since the main idea behind this entire transaction is for the buyer to obtain ultimate possession and disposition of the goods sold before repayment of the lender's advances, it becomes necessary for the lender to indorse the bill of lading to the buyer to enable the latter to obtain possession of the goods from the carrier. At this point, the lender is faced with the problem of losing his collateral security should he indorse the bill of lading to the buyer. A dishonest buyer may further negotiate the bill of lading to an innocent purchaser for value, thereby cutting off the lender's security interest. But as is generally the case in the field of security relationships, the trust and confidence of the lender in the borrower is a major factor for any financing arrangement to materialize. In our particular case, the lender's

risk of losing his collateral security is, to a certain extent, mitigated by his requirement that the buyer execute a trust receipt. By the terms of this document [8] the buyer acknowledges receipt of the goods and purports to recognize that title to them is in the lender. The terms of the trust receipt also recite that the buyer holds the goods in trust for the lender to use them for the purposes specified therein and after their sale to turn over such portion of the proceeds to cover the advances of the lender. Another very important provision of the trust receipt is the reservation by the lender of the right to cancel the trust receipt at any time and to repossess the goods.

The trust receipt has also been used in so-called *bipartite* security transactions rather than in the conventional *tripartite* agreement which we have just outlined. In the bipartite transaction, the distant seller forwards the bill of lading direct to the buyer. The buyer, by subsequently signing a trust receipt similar to those used in the conventional form, makes a constructive conveyance of the goods to the lender as collateral security for the latter's advances. American courts have been prone to look through the form to the substance of these supposed trust receipt transactions and refused to recognize them as such. More often than not they have been labelled chattel mortgages rather than true trust receipt security transactions, primarily because it is said that the lender gets title or ownership of the goods not from the distant seller but from the buyer.[9]

As long as the three-party pattern was adhered to, the earlier American cases were prone to validate the

[8] In the importing business, the form of the trust receipt itself as used in its early days has been practically preserved to the present time. The trust receipt used by the Philippine National Bank in the instant case and reproduced in the opinion of the court is an example of the instrument in its stereotyped form. In the automobile distribution business in the United States, there is some variation in form. One gives liberty of sale as in the importing business. The other denies the right of sale. An example of the latter is that used by General Motors Acceptance Corporation—"I (we) hereby agree not to sell, loan, deliver, pledge, mortgage, or otherwise dispose of said motor vehicles to any other person until after payment of the amounts shown on dealer's record of purchase and release of like identification number herewith." General Motors Acceptance Corporation v. Seattle Association of Credit Men, 67 P. (2d) 882, 883 (1937).

[9] See Vold, *op. cit. supra* note 5 at 365-372 and the authorities there cited for a detailed business and legal analysis of bipartite trust receipt transactions.

security interest of the lender (the entruster) against other creditors of the buyer (the trustee), and the mandatory recording requirements of chattel mortgage and conditional sales were held inapplicable to this form of security device.[10] The earlier cases distinguished the tripartite form of trust receipt transaction from the chattel mortgage by the circumstance that title in the goods got into the lender, not from the buyer, but from a third person, the distant seller.[11]

By the same token, the tripartite trust receipt transaction was differentiated from the conditional sale agreement which was characterized as a reservation by the conditional seller of the legal title as security for the purchase price, the conditional buyer obtaining the beneficial interest in the goods.[12] It was moreover argued that unlike the conditional seller, the lender (bank or finance company) in the tripartite trust receipt transaction is not in the business of selling.[13] Furthermore, while the conditional seller could repossess the goods only upon default of the conditional buyer, the lender in the trust receipt transaction could cancel the trust receipt at any time and retake the goods.[14] Where the trust receipt transaction was construed to be a form of conditional sale, it was such in those states where a conditional sale transaction was not at the time required to be recorded.[15]

Up to about 1930, the users of the trust receipt transaction as a security device, especially the banks and finance companies, were happy. They were generally assured of the validity of their unrecorded security interests as against the claims of other creditors of the buyer-trustee. Then the tide of judicial opinion turned. The favored treat-

[10] In *re* James, 30 F. (2d) 555 (1929); In *re* Fountain, 282 F. 816 (1922); In *re* Marks, 222 F. 52 (1915); In *re* Kilian Mfg. Co. (D.C.) 209 F. 498 (1914); In *re* Dunlap Carpet Co. (D.C.) 206 F. 726 (1913) *aff'd*, 210 F. 156 (1914); Century Throwing Co. v. Muller, 197 F. 252 (1912); In *re* Cattus 183 F. 733 (1910); In *re* Reboulin Fils & Co. (D.C.) 165 F. 245 (1908); Gen. Motors Acc. Corp. v. Hupfer, 113 Neb. 228, 202 N. W. 627 (1925); For a comprehensive compilation of cases, see Anno., *Trust Receipts*, 25 ALR 332, 49 ALR 282, 87 ALR 302.

[11] Cases cited preceding note.

[12] Cases cited note 10 *supra;* Vold, *op. cit. supra* note 5 at 273 citing Bogert, *Commentaries on Conditional Sales*, Sec. 29 (U. L. A. vol. 2A).

[13] Cases cited note 10 *supra;* Hanna, *Trust Receipts*, 19 Cal. L. R. 257, 267-268 (1931).

[14] Hanna, *supra* preceding note, at 268.

[15] *Ibid.*

ment of the trust receipt transaction, even in its tripartite form, was seemingly at an end. A rash of cases came up in which the courts voided the trust receipt transaction for failure to record it either as a chattel mortgage [16] or as a conditional sale.[17] The confusion which arose and the desire to save the trust receipt transaction as an independent security device impelled the National Conference of Commissioners on Uniform State Laws of the United States to draft a Uniform Trust Receipt Act which was promulgated in 1933. It has since become law in thirty states of the United States. To meet the charge of secret liens which hostile court decisions spoke about, the Act provides for the recordation of statements concerning trust receipt transactions.[18]

II. *Philippine National Bank v. Viuda e Hijos de Angel Jose: Desirable Result, Questionable Rationale.*

In this case the trust receipt agreement entered into by the parties would seem to fit the conventional tripartite form. Coleman Petroleum Products Co., Inc. of Manila was the buyer; Philippine National Bank was the lender; and Export Petroleum Company of California, Ltd. was the distant seller. Lender opened a letter of credit in favor of Seller. Seller shipped the gasoline from California, addressing same to Buyer. It also drew a draft for the purchase price and forwarded it with the bill of lading to Lender. It would seem from the facts of this case that Seller procured a straight bill of lading naming Lender as consignee. Where a straight instead of an order bill of lading is used as collateral security, the transaction has been described as a variant type of trust receipt agreement and called a bailment receipt transaction.[19] The reason put forward for the distinction is that in the variant type, since the bill of lading is non-negotiable, Lender never transfers title to Buyer by entrusting to the latter the straight bill of lading.[20] Such transfer merely authorizes Buyer to take possession of the goods from the carrier.[21] The distinction however is not important as far as our purpose here is concerned. Continuing with our fact situation, we find that Lender honored Seller's draft and made payment for the full purchase price. It is to be presumed that Lender then entrusted the bill of lading to Buyer for the latter to take delivery of the gasoline from the carrier. As we have just said, Lender by so doing did not stand to lose its security interest, since by the very nature of the straight bill of lading, Buyer could not possibly have negotiated it to an innocent purchaser for value. Contemporaneously, Lender required Buyer to execute a trust receipt in the usual form, giving Buyer liberty of sale.[22] Lender however required that the gasoline be stored in its warehouses. Buyer subsequently sold the gasoline to the Manila Railroad Company apparently with the knowledge of Lender. To assure the repayment of its advances on the gasoline, Lender notified the railroad company of its security interest by requiring the latter to make payments directly to it instead of to Buyer. For a while everything went well until plaintiff, *Viuda e Hijos* de Angel Jose, a creditor of Buyer, obtained judgment against the latter and garnished the proceeds of the sale of gasoline still in the hands of the railroad company. Lender disputed the garnishment, contending that it had a prior lien on the proceeds by virtue of its trust receipt agreement with Buyer. It should be noted carefully that the subject matter of the dispute is the proceeds of the sale of gasoline and not the gasoline itself. The question before the court was clear-cut. Under the foregoing facts, as between two creditors of the buyer-trustee, one, the lender-entruster in an unrecorded trust receipt agreement

[16] Habegger v. Skalla, 140 Kan. 166, 34 P. (2d) 113 (1934); Gen. Motors Acc. Corp. v. Berry, 86 N. H. 280, 167 A. 553 (1933); Smith v. Comm. Cred. Corp. 113 N. J. Eq. 12, 165 A. 637 *aff'd* in 115 N. J. Eq. 310, 170 A. 607 (1934); Vonhof v. Gen. Contract Purchase Corp. 115 N. J. Eq. 239, 170 A. 239 (1934); See Anno., *Trust Receipts,* 101 ALR 454.

[17] In *re* Collinwood Motor Sales (1934); C. C. A. 6th) 72 F. (2d) 137; Gen. Motors Acc. Corp. v. Mayberry, 195 N. C. 508, 142 S. E. 767 (1928); White v. Gen. Motors Acc. Corp. 2 F. Supp. 406, D.C. (1932); See Anno., *Trust Receipts,* 101 ALR 454.

[18] Uniform Trust Receipts Act, Sec. 13.

[19] Vold, *op. cit. supra* note 5 at 364-365 and the cases there cited.

[20] *Ibid.*

[21] *Ibid.*

[22] ". . . to hold said merchandise in storage as the property of said bank with the liberty to sell the same for cash for its account and to be handed the proceeds thereof to the said bank . . ."; see note 8 *supra.*

and the other, a subsequent judgment creditor without notice, who should take precedence or priority with respect to the proceeds of the sale of the subject matter of the trust receipt agreement? It is conceded by the parties to the case that the disputed proceeds in the hands of the railroad company are identifiable as those arising from the sale of the gasoline. The court upheld the security interest of the lender-entruster. On the surface the decision of the court looks good. Indeed, the result reached is commercially desirable in so far as the trust receipt transaction was declared valid. First, the court cites Article 1255 of the Spanish Civil Code[23] and finds nothing contrary to law, morals, or public order in the trust receipt transaction entered into between Buyer and Lender. It also relies on the decision in *In re Dunlap Carpet Co.*,[24] cited in the case of *People v. Yu Chai Ho*.[25] The court proceeds to say that in a certain manner, the trust receipt agreement partakes of the nature of a conditional sale as provided by the Chattel Mortgage Law in so far as the importer becomes absolute owner of the imported merchandise as soon as he has paid its price. Finally, in disposing of the problem as to which creditor should prevail or should have priority with respect to the proceeds in question, the court relies on and cites Articles 1921,[26] 1922 (2),[27] and 1926 (1),[28] of the Spanish Civil Code. At this point, the court has evidently labelled a trust receipt transaction as a form of pledge. Since a chattel mortgage is by definition a conditional sale under our Chattel Mortgage Law[29] before

23 "The contracting parties may establish any pacts, clauses and conditions they may deem advisable, provided they are not contrary to law, morals, or public order."

24 (D.C.) 206 F. 726 (1913) *aff'd*, 210 F. 156 (1914).

25 See note 1 *supra*.

26 "Credits shall be classified for their graduation and payment in the order and manner specified in this chapter."

27 "With respect to determinate personal property of the debtor, the following are preferred: ..... (2) Credits secured by a pledge in the possession of the creditor, with respect to the thing pledged and to the extent of its value."

28 "Credits which enjoy preference with respect to certain personal property shall exclude all others to the extent of the value of the property to which such preference relates. When two or more creditors claim preference with respect to the same specific personal property, the following rules shall be observed as to priority of payment: (1) Credits secured by a pledge shall exclude all others to the extent of the value of the thing pledged. ....."

29 "A chattel mortgage is a conditional sale of personal property as security for the payment of a debt, or the performance of some other obligation specified therein, the condition being that the sale shall be void upon the seller paying to the purchaser a sum of money or doing some other act named. If the condition is performed according to its terms the mortgage and sale immediately become void, and the mortgagee is thereby divested of his title."

its amendment by the Philippine Civil Code,[30] the court through no fault of its own has, in effect, also equated the trust receipt transaction with a chattel mortgage. To reduce the statements of the court to their simplest terms—a trust receipt = a pledge = a conditional sale = a chattel mortgage. Now it is generally well recognized in the field of security relationships that each of the foregoing security devices has peculiar formal characteristics which would distinguish one from the other. Basically, at least in common law, the mortgagor-borrower conveys the legal title in the chattel to the mortgagee-lender as security for a loan, whereas in a conditional sale, it is the conditional seller (the lender of credit) who reserves the legal title as security for the purchase price of the goods sold, transferring merely the beneficial ownership thereof to the conditional buyer (the borrower of credit).[31] The fact that for almost half a century a chattel mortgage was by definition considered a conditional sale under our Chattel Mortgage Law has caused a lot of unnecessary confusion. By inserting Article 2140 in the Philippine Civil Code, the Code Commission has done away with this glaring inaccuracy.[32] The Commission however failed to make any provision for conditional sales. It is elementary that under both the civil and the common law, a pledge may be distinguished from both a chattel mortgage and a conditional sale in that in the former, it is of the essence of the contract that the pledgee or a third person by mutual consent be placed in the possession of the thing pledged, the legal title to which is retained by the pledgor. As

30 "Art. 2140. By a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation. If the movable, instead of being recorded, is delivered to the creditor or a third person, the contract is a pledge and not a chattel mortgage."

31 Vold, *op. cit. supra* note 5 at 273, 357; In Bachrach Motor Co. v. Summers, 42 Phil. 3 (19—), the court said, "There is no legal analogy between the chattel mortgage and a conditional sale as understood in the civil law."

32 Said the Commission: "The definition of a chattel mortgage given in the Chattel Mortgage Law is inaccurate, for it considers a chattel mortgage as a conditional sale." Report of the Code Commission, 158, Manila, Bureau of Printing (1948).

we saw earlier, it was argued that the standard trust receipt transaction may be distinguished from all three security devices primarily by the fact that title gets into the lender not from the buyer-borrower but from a third person, the distant seller.

To label a trust receipt transaction as a conditional sale, as the court did in the instant case, would be to bring the former within the scope of our then Chattel Mortgage Law. The result would be that it becomes mandatory in order for the trust receipt transaction to be valid as against third persons that the possession of the goods constituting the security be transferred to the lender or that the transaction be recorded.[33] Since the trust receipt agreement in the present case was not recorded, it would be valid only as against the buyer-borrower (Coleman Petroleum Products Co., Inc.), its executors or administrators.[34] Since plaintiff *Viuda e Hijos* de Angel Jose (the judgment creditor) was neither the buyer-borrower nor its executor or administrator, the unrecorded trust receipt agreement would not be valid as against it. The alternative requirement which would validate the trust receipt agreement (assuming it to be a conditional sale under the Chattel Mortgage Law) as against third persons would be delivery of possession of the goods constituting the security to the lender. Such a requirement is of the essence of a contract of pledge. The observation was made that while under the Spanish Civil Code, delivery of possession to the creditor or a third person agreed upon by the parties is absolutely necessary to constitute a contract of pledge, under our then Chattel Mortgage Law, such a requirement is necessary only as against third persons, not against the debtor, his executors or administrators.[35] In any event, the court in the instant case, in resolving the question of priority as to the proceeds of the sale of the gasoline, switches to a pledge analysis without so much as giving a reason for the sudden change. In succession it cites Articles 1921, 1922 (2), and 1926 (1) of the Spanish Civil Code[36] which speak of credits secured by a *pledge*

[33] Chattel Mortgage Law, Sec. 4.
[34] *Ibid.*
[35] Meyers v. Thein, 15 Phil. 303 (1910).
[36] See notes 26, 27, and 28 *supra.*

in the possession of the creditor. It cannot be overemphasized that in the instant case the subject matter of the dispute is the proceeds of the sale of the gasoline and not the gasoline itself. The lender (Philippine National Bank) was in the beginning smart enough to store the gasoline in its own warehouses. Such a procedure is today the exception rather than the rule. The current business practice (especially in the distribution of automobiles, TV sets, radios, and other hard goods) is for the buyer-trustee to obtain possession of the goods to enable him to display and ultimately sell them. It should be conceded that had the judgment creditor levied on the gasoline in the bank's warehouses, the bank's security interest should prevail since the bank was still in possession of its security. But the situation in the present case is different. By permitting the resale of the gasoline, the bank lost possession of its security. Indeed, at the time of this action, they had been converted into cash proceeds in the hands of the subsequent buyer, the Manila Railroad Company. The point we are trying to make here is this—Articles 1921, 1922 (2), and 1926 (1) of the Spanish Civil Code, standing alone, cannot serve as authority for the proposition that the bank's security interest arising from the unrecorded trust receipt agreement (construed as a pledge) should prevail over the garnishment lien of the judgment creditor with respect to the proceeds in question. These articles of the Spanish Code, particularly Article 1922 (2), speak of "credits secured by a pledge *in the possession of the creditor,* with respect to *the thing* pledged . . ." It is submitted that the plain and unequivocal meaning of these provisions cannot be stretched and extended to cover the proceeds in the hands of a third person, arising from a resale of the thing pledged with the consent of the creditor. Preferences being an exception to the general rule, the statute creating them must be strictly construed.[37]

It seems clear that a sounder rationale must be sought to support the result reached in this case. The potent contention so frequently upheld by the federal courts of the United States that the standard trust receipt transaction should be distinguished from other security devices

[37] Roman v. Herridge, 47 Phil. 98 (1924).

on the ground that title gets into the lender-entruster not from the buyer-trustee but from a third person, the distant seller, and hence should be valid without recordation, has since lost its effectiveness.[38] In fact, the Uniform Trust Receipts Act seems to reject such an argument.[39]

In common law, it is fairly well-recognized that the thing pledged may be re-delivered to the pledgor for a specific and temporary purpose without invalidating the pledge [40] as long as unrestricted dominion is not reposed in the pledgor.[41] Before the advent of the Uniform Trust Receipts Act in the United States, it was urged [42] that with this principle it was possible to save the trust receipt transaction as an independent security device without need of recordation. It was argued that the entrusting of the goods by the lender-entruster to the buyer-trustee for the latter to sell them and apply the proceeds against the lender's advances was a re-delivery of the subject-matter of the pledge for a special and temporary purpose only and hence would not invalidate the lender-entruster's security interest as against other creditors of the buyer-trustee with respect to the things or goods pledged.[43] It may be that the civil law will uphold such a principle. But we have not found any provision either in the Spanish or Philippine Civil Code or any reported Philippine case supporting this view. On the contrary, the Philippine Civil Code contains two new provisions [44] which would make

[38] Lusk, *Trust Receipts,* 12 Temp. L. Q. 189, 195 (1938) and the cases there cited.

[39] "The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise." Sec. 2, (1), (b), (ii), Uniform Trust Receipts Act.

[40] Reeves v. Capper, 5 Bing (N. C.) 136 (1838); Rose v. Coble, 61 N. C. 517 (1868); Accord: Manufacturers Acc. Corp. v. Hale, 65 F. (2d) 76 (C. C. A. 6th, 1933); Darragh v. Elliotte, 215 F. 340 (C. C. A. 6th, 1914).

[41] Benedict v. Ratner, 268 U. S. 353, 45 Sup. Ct. 566 (1925).

[42] Hanna, *supra* note 13, at 280.

[43] *Ibid.*

[44] "Art. 2097. With the consent of the pledgee, the thing pledged may be alienated by the pledgor or owner, subject to the pledge. The ownership of the thing pledged is transmitted to the vendee or transferee as soon as the pledgee consents to the alienation, *but the latter shall continue in possession.*"

"Art. 2110. If the thing pledged is returned by the pledgee to the pledgor or owner, the pledge is extinguished. *Any stipulation to contrary shall be void.*

"If subsequent to the perfection of the pledge, the thing is in the possession of the pledgor or owner, there is a *prima facie* presumption that the same has been returned by the pledgee. This same presumption exists if the thing pledged is in the possession of a third person who has received it from the pledgor or owner after the constitution of the pledge." (Italics supplied.)

the application today of the aforementioned principle extremely doubtful. The court in the present case faintly echoes this principle [45] but cites no authority to support its statement. Were it not for the two new provisions in the Philippine Civil Code above-mentioned, a pledge analysis along these lines would probably be the method, short of legislation, to validate an unrecorded trust receipt agreement as an independent security device in our jurisdiction.

It seems that the only remaining alternative on which to rest the validity of such an unrecorded transaction, short of legislation, would be on grounds of commercial necessity or mercantile convenience. A few American decisions [46] like *In re Dunlap Carpet Co.,* which the court cites in the present case, tend towards this view.

Of course there is always the alternative of adopting the Uniform Trust Receipts Act which, as its name indicates, was purposely drafted to govern the various aspects of this peculiar type of transaction. For instance, under Section 10 of this Act, the main question in the present case—that of priority to the proceeds in the hands of the railroad company—could have been easily resolved. Since the proceeds were concededly identifiable as those arising from the sale of the gasoline, subject matter of the trust receipt agreement, under paragraph (c) of the aforesaid

[45] The court said: "The lower court, however, has lost sight of the fact that the appellant's purpose in authorizing the delivery to the Manila Railroad Company of said merchandise, of the price of which the sum of ₱1,948.03 in question formed part, was precisely to enable Coleman Petroleum Products Co., Inc. to comply not only with the terms of its contract with the Manila Railroad Company (Exhibit 1), but also and more principally, with those of the trust receipt (Exhibit A-1) entered into between it and appellant." at p. 823.

[46] See note 24 *supra;* Century Throwing Co. v. Muller 116 C. C. A. 614, 197 F. 252 (1912); In General Motors Acceptance Corporation v. Berry, 86 N. H. 280, 167 A. 553 (1933), the court citing *In re* Lee, 6. A. B. R. (N. S.) 437, 446, said: "It is conceded by the authorities that the only real ground of the so-called trust receipt doctrine is commercial necessity."; In Anno., *Trust Receipts,* 49 ALR 285, 292-293, it is said that, "To refuse to recognize the title of the bank or finance company taking the trust receipt as security for advance of the purchase price would be to strike down a *bona fide* and honest transaction of great commercial benefit and advantage, founded upon a well-recognized custom, by which banking credit is officially mobilized for manufacturers and importers of small means."

Section 10,[47] the lender-entruster (the bank) would unquestionably be entitled to them, especially so where the bank had required the account-debtor (the railroad company) to make direct payments to it. This Section of the Uniform Trust Receipts Act has been substantially reproduced in the proposed Uniform Commercial Code of the United States.[48]

The present case has served to highlight the inadequacy of our commercial credit and security transaction laws. The few casual amendments of the Code Commission in the Philippine Civil Code's chapters on pledge and mortgage have been inserted obviously without an eye to the credit needs of the business and commercial sectors. As our economy expands and as we aim for industrialization, there will be a corresponding need for expansion of credit. Our security transaction laws must be brought up-to-date and must respond to and stimulate such an expansion. When Article 9[49] of the proposed Uniform Commercial Code of the United States was drafted, the fact that in recent years the security laws in the United States "have grown in complexity at an alarming rate"[50] was taken cognizance of. Besides the chattel mortgage, the conditional sale, and the trust receipt, other security devices such as field warehousing, factor's lien, and assignment of

[47] "Sec. 10. *Entruster's Right to Proceeds.* Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or having liberty of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled, to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows: (a) to the debts described in Section 9 (3); and also (b) to any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within ten days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also (c) to any other proceeds of the goods, documents or instruments which are identifiable, unless the provision for accounting has been waived by the entruster by words or conduct; and knowledge by the entruster of the existence of proceeds, without demand for accounting made within ten days from such knowledge shall be deemed such a waiver."

[48] Sec. 9-306.

[49] Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper.

[50] Comment, Section 9-101, Proposed Uniform Commercial Code of the United States.

accounts receivable have been developed in the United States in response to the tremendous need for credit. The aforementioned Article 9 of the proposed Code annihilates the formal distinctions existing among these various security devices.[51] The distinctions are now based "on the type of property constituting the collateral—industrial and commercial equipment, business inventory, farm products, consumer goods, accounts receivable, documents of title and other intangibles—and, where appropriate, the Article states special rules applicable to financing transactions involving each type of property."[52] It is also said that "the scheme of the Article is to make necessary distinctions along functional rather than formal lines."[53] If our credit and security transaction laws are to be revised, it is hereby suggested that serious thought and consideration be given to the provisions of Article 9 of the proposed Uniform Commercial Code of the United States.

[51] *Ibid.*
[52] *Ibid.*
[53] *Ibid.*