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Banks and Banking--Discounting of Loans Secured by Chattel Mortgages Held Not in Violation of Banking Law Section 131 and General Corporation Law Section 18 (Antipyros Co. v. Samuel Breiter & Co., 8 M.2d 310 (Sup. Ct. 1957))

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Legislatures have also regulated legal fees, notably in the workmen's compensation area. This power to set fees in specific compensation cases has been delegated to workmen's compensation commissions.[26] Apparently, the requirement of substantial relation to public welfare is satisfied if the purpose of the regulation is to protect claimants from the practices of unscrupulous attorneys and to remove the occasion for these practices.[27] As was said in *Calhoun v. Massie:* [28]

> By the enactment . . . of laws . . . placing limitations upon the fees properly chargeable for services, Congress has sought both to prevent the stirring up of unjust claims . . . and to reduce the temptation to adopt improper methods of prosecution which contracts for large fees, contingent upon success, . . . encourage.[29]

It would then appear that any regulation of amounts of contingent fees can be effected only through legislation. Such legislation, if a proper exercise of the state's police power, would not violate constitutional requirements. The only question remaining is whether such regulation is desirable.

BANKS AND BANKING — DISCOUNTING OF LOANS SECURED BY CHATTEL MORTGAGES HELD NOT IN VIOLATION OF BANKING LAW SECTION 131 AND GENERAL CORPORATION LAW SECTION 18. — Defendant, a non-banking corporation, loaned plaintiff-corporation $129,500 and received in return promissory notes totaling $200,000 in value and a chattel mortgage on plaintiff's furniture and fixtures. Plaintiff seeks a judgment declaring the notes and mortgage void under Section 131 of the New York Banking Law and Section 18 of the New York General Corporation Law which prohibit the discounting of loans by non-banking corporations. In granting a motion by the defendant for summary judgment the New York Supreme Court *held* that the discounting of loans secured by chattel mortgages is not

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[26] See, *e.g.*, CAL. LAB. CODE ANN. § 4906 (West 1955), which provides that the Industrial Accident Commission may determine reasonable legal fees; in Arizona, ARIZ. REV. STAT. § 23-1069 (1955) provides that the Industrial Commission, upon application, may make provision for an attorney's fee; in Florida, the Industrial Commission may provide for an attorney's fee, according to FLA. STAT. ANN. § 440.34 (1951).

[27] See Calhoun v. Massie, 253 U.S. 170 (1920). See also the broad dictum in Yeiser v. Dysart, 267 U.S. 540, 541 (1924), indicating that, since the practice of law is a privilege granted by the state, the legislature may impose any reasonable conditions upon such practice for the public good.

[28] 253 U.S. 170 (1920).

[29] *Id.* at 174.

prohibited by these sections and that the notes are valid as evidences of the secured debt. *Antipyros Co. v. Samuel Breiter & Co.*, 8 M.2d 310, 165 N.Y.S.2d 976 (Sup. Ct.), *aff'd without opinion*, 4 A.D.2d 941, 167 N.Y.S.2d 1002 (1st Dep't 1957).*

Section 131 of the Banking Law [1] and Section 18 of the General Corporation Law [2] form part of a series of acts passed in 1804 [3] commonly known as the "Restraining Acts." [4] These acts were originally enacted to protect the monopoly of the specially chartered banks [5] and to guard against possible currency inflation.[6] The restrictions against discounting were repealed as applied to individuals and unincorporated business units, but still apply to non-banking corporations.[7] The need for statutory protection in these areas passed with the enactment of a general statute for the incorporation of banks in 1838 [8] and the removal from the commercial scene of private bank notes upon the establishment of the national banking system.[9]

Early decisions indicated that discounting, *i.e.*, the deduction in advance of interest or other compensation for the use or advancement of money, was prohibited under all circumstances to non-banking corporations and that any notes given for such loans were void and unenforceable.[10] One early exception to this general rule was formulated

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* The Court of Appeals for the Second Circuit recently reached the same result as the instant case. New York Credit Men's Adjustment Bureau, Inc. v. Samuel Breiter & Co., 26 U.S.L. WEEK 2479 (2d Cir. March 25, 1958).

[1] ". . . No corporation, domestic or foreign, other than a national bank or a federal reserve bank, unless expressly authorized by the laws of this state, shall employ any part of its property, or be in any way interested in any fund which shall be employed for the purpose of receiving deposits, *making discounts* . . . . *All notes* and other *securities* for the payment of any money or the delivery of any property, made or given to any such association, institution or company, or made or given to secure the payment of any money loaned or discounted by any corporation or its officers, contrary to the provisions of this section shall be void." N.Y. BANKING LAW § 131 (emphasis added).

[2] "No corporation, domestic or foreign, other than a corporation formed under or subject to the banking laws of this state or of the United States, and except as therein provided shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt. . . ." N.Y. GEN. CORP. LAW § 18.

[3] Laws of N.Y. 1804, c. 117.

[4] See Note, 5 ST. JOHN'S L. REV. 234, 237 (1931).

[5] See N.Y. Firemen Ins. Co. v. Ely, 2 Cow. 678, 711 (N.Y. 1824); Kupfer, *Prohibited Discounts Under the Banking and General Corporation Law: The Impacts of Miller v. Discount Factors, Inc.*, 12 RECORD 30, 33 (1957).

[6] See Curtis v. Leavitt, 15 N.Y. 9, 69 (1857); Kupfer, *supra* note 5, at 33-34.

[7] Laws of N.Y. 1837, c. 20; Mintz v. Karpe, — M.2d —, 170 N.Y.S.2d 110 (Sup. Ct. 1957).

[8] Laws of N.Y. 1838, c. 260.

[9] See 13 STAT. 99, 105-06 (1864).

[10] See Pratt v. Short, 79 N.Y. 437 (1880); New York State Loan and Trust Co. v. Helmer, 77 N.Y. 64 (1879); National Bank v. Phoenix Warehousing Co., 6 Hun 71, 73 (N.Y. Sup. Ct. 1875).

in *Pratt v. Eaton* [11] where the debtor had given notes and a mortgage on real property to secure a discounted loan. The Court of Appeals held that even though the notes might be void, the mortgage, having arisen out of a valid and legitimate indebtedness, was valid and enforceable. The same result was later reached in respect to a chattel mortgage.[12]

Thus the law remained until the case of *Meserole Securities Co. v. Cosman*,[13] where the court, in upholding the validity of notes purchased at a discount from a holder thereof, held that the restrictions of the sections do not apply to purchases of notes that had a valid economic inception prior to the purchase. The court then indicated by way of dicta that isolated discount transactions would not violate the sections, thus apparently sanctioning the current commercial practices.

After the commercial world had relied upon it for a quarter-century,[14] this dicta was completely ignored in *Miller v. Discount Factors, Inc.*[15] There, in holding several notes evidencing an unsecured discounted loan void, the court restated its original holdings that any notes evidencing an unsecured loan which are discounted by a non-banking corporation are void and unenforceable. Only amounts actually advanced to the debtor can be recovered.[16]

The problem in the present case was brought about by the amendment of the statutes in 1935 to exempt discounted loans secured by mortgages on real property from the prohibitions of the sections.[17] While the earlier cases had held discounted loans secured by chattel mortgages valid,[18] the question arose whether the failure of the statutory amendment to include chattel mortgages brought them under the broad language of Section 131.[19] *Antipyros Co. v. Samuel Breiter & Co.*[20] posed just that problem. Upon a threat of foreclosure of a chattel mortgage, plaintiff-debtor brought this action to have both the mortgage and the notes declared void. Plaintiff's main contention was that the specific statutory exemption of loans secured by real

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[11] 79 N.Y. 449 (1880).

[12] Wolf v. Aero Factors Corp., 126 F. Supp. 872 (S.D.N.Y.), *aff'd*, 221 F.2d 291 (2d Cir. 1955) (per curiam); Duncomb v. New York H. & N.R.R., 84 N.Y. 190 (1881).

[13] 253 N.Y. 130, 170 N.E. 519 (1930).

[14] See Pennsylvania Factors Corp. v. S. Oldman Inc., 272 App. Div. 1049, 74 N.Y.S.2d 670 (1st Dep't 1947) (per curiam); Proper Spirit Trading Corp. v. Schilowitz, 140 Misc. 171, 250 N.Y. Supp. 118 (Sup. Ct. 1931).

[15] 1 N.Y.2d 275, 135 N.E.2d 31 (1956), 31 ST. JOHN'S L. REV. 296 (1957).

[16] Pratt v. Short, 79 N.Y. 437 (1880).

[17] Laws of N.Y. 1935, c. 905.

[18] See cases cited note 12 *supra*.

[19] ". . . . All notes and other securities . . . made or given to secure the payment of any money loaned or discounted . . . contrary to the provisions of this section shall be void." N.Y. BANKING LAW § 131(1).

[20] 8 M.2d 310, 165 N.Y.S.2d 976 (Sup. Ct.), *aff'd without opinion*, 4 A.D.2d 941, 167 N.Y.S.2d 1002 (1st Dep't 1957).

property implied that the restrictions were to continue in effect as to loans secured by personalty. This contention the Court renounced, noting that the early cases made no distinction between real and chattel mortgages and that the restrictions had therefore never applied. The Court also noted that the recent unsuccessful legislative attempt to validate unsecured loans[21] impelled an implication that the legislature presupposed the validity of loans secured by chattel mortgages by its failure to provide for them in the bill. The Court then held that the proscriptions of the "Restraining Acts" do not extend to chattel mortgages executed to secure a discounted loan and that both the mortgage and the notes are valid and enforceable.

The problem of the unsecured discounted loan still remains. The legislature attempted to remove all restrictions during its 1957 session.[22] However, the Governor vetoed the bills.[23] Lending by corporations is not prohibited. These loans do not compete with but, rather, supplement the lending function of the banks. Nor do they inflate currency by creating deposits. The only apparent difficulty remaining is a lack of protection against possible abuses. Therefore, a modification of the statutory scheme from prohibition to regulation would appear desirable.

CONSTITUTIONAL LAW — ADMINISTRATIVE LAW — DELEGATION OF POWERS — PUBLIC AUTHORITIES LAW SECTION 553(5) HELD VALID DESPITE ABSENCE OF EXPRESSED STANDARDS LIMITING DISCRETION. — The defendant, while driving through the Brooklyn Battery Tunnel, violated a traffic rule[1] promulgated by the Triborough Bridge and Tunnel Authority. Section 553(5) of the Public Authorities Law[2] gives to the Authority the power to make rules, subject to agreements with bondholders, for the use of their projects.

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[21] See A. Int. No. 4037, S. Int. No. 1952; A. Int. No. 4045, S. Int. No. 1954.

[22] *Ibid.*

[23] The Governor vetoed the bills, expressing a fear that, in the haste of the closing days of the session, the legislators may have failed to appreciate the full effect of the bills in their removal of such transactions from their traditional restriction to the banking realm and its consequent supervision. He also criticized the retroactive provision of the bills which would validate transactions declared by the Court of Appeals to have been illegal when they were consummated. Veto Message, MCKINNEY'S SESSION LAWS OF NEW YORK 1991 (1957).

[1] The defendant failed to comply with hand and voice signals, a violation of the RULES FOR THE REGULATION AND USE OF THE PROJECT, art. 4, § 3.

[2] ". . . [T]o make by-laws for the management and regulations of its affairs, and subject to agreements with bondholders, rules for the regulation of the use of the project and the establishment and collection of tolls thereon."