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1. PAWNBROKER — REPLEDGE ARTICLES LEFT AS SECURITY — MUST HAVE AUTHORITY TO SELL OR DISPOSE OF PROPERTY OF UNITED STATES.
2. NO DUTY UPON PAWNOR TO ASCERTAIN PAWNEE IS LICENSED PAWNBROKER — LICENSED PAWNEE.
3. PROCEDURE, NOTICE UPON DEFAULT, PAWNEE, PAWNOR.
4. LICENSED PAWNBROKERS GOVERNED BY SECTION 6341-1 G.C.
5. PAWNED ARTICLE, REPLEDGED, ASSIGNMENT, FINAL PAWNBROKER MUST HOLD SURPLUS PROCEEDS ONE YEAR — IF NOT CLAIMED, ABSOLUTE PROPERTY FINAL PAWNBROKER.
6. WHERE REPLEDGE, CONDITIONAL CONVEYANCE, HOW SURPLUS GOVERNED.
7. WHEN EXCESSIVE LOAN MAY BE CONVERSION — SECTIONS 6337 TO 6346 G.C.

SYLLABUS:

1. *A pawnbroker may repledge articles left with him as security for loans he has made if he has held such articles for at least forty-eight hours "after the delivery to the chief of police a copy and statement relating thereto as provided in Section 6341 of the General Code," provided, however, that if any of such articles to be repledged is property of the United States, as defined in Section 6343, General Code, as to such article or articles the pawnbroker must first have complied with the provisions of that section relating to the securing of authority to sell or dispose of such property.*

2. *There is no duty upon the part of a pawnor, whether he be pledging or repledging articles, to see that the pawnee is a licensed pawn-*

broker. If the pawnee in such transaction falls within the provisions of Sections 6337 to 6338, General Code, and does not come within the excepted classes mentioned in Section 6344-2, General Code, it is the duty of such pawnee to be licensed.

3. Upon default the pawnee of a repledged article should notify as required by Section 6341-1, General Code, both the owner of the article, who was the original pawnor, and the pawnee who repledged the article by virtue of his special interest therein.

4. The provisions of Section 6341-1, General Code, regarding the sending of notice upon default apply only to licensed pawnbrokers.

5. If a pawned article be repledged by the original pawnee and the transaction is an assignment of the entire interest of the original pawnee, and the repledged article is subsequently sold as provided in Section 6341-1, General Code, the final pawnbroker must hold all surplus proceeds for a period of one year during which period the original pledgor may claim such balance. If not claimed by him within one year, such surplus shall become the absolute property of the final pawnbroker.

6. If such repledge is a conditional conveyance to secure a loan from the final pawnbroker to the original pawnbroker for an amount less than the original loan, the first pawnbroker is entitled to the surplus of the sale to the extent of his equity. The remainder of the surplus, if any, should be held for a period of one year for the original borrower.

7. A pawnbroker may not lawfully repledge any article as security for a loan in excess of the balance due him from the original borrower and if such an excessive loan is made it may be regarded as a conversion, and it is made in violation of the provisions of the Pawnbrokers' Act, Sections 6337 to 6346, General Code.

Columbus, Ohio, August 1, 1941.

Hon. Paul L. Selby, Chief, Division of Securities,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

"In order to obtain additional capital for the operation of their business, several pawnbroker licensees engage in the practice of repledging the pawns left with them as security for loans with other licensed pawnbrokers from whom they receive loans of the capital required, generally at a rate in excess of 8% per annum. The parties may or may not enter into a written agreement concerning the method and manner of repledging, the procedure varying with the custom and previous business experience of the parties.

In order that we may make our problem as concrete as possible, we will state herewith a hypothetical case involving a written agreement entered into between two licensed pawnbrokers whereby 'A' will repledge his pawns with 'B.' In consideration of the repledge, 'B' will advance to 'A' an amount of cash repayable with interest at the rate of 1% per month until paid.

The written agreement provides in part as follows:

1. 'A' shall from time to time repledge with 'B' such pledges as he desires to pledge, each pledge to be a separate transaction.

2. At the time of the repledge 'A' shall furnish 'B' with the serial number of the pledge ticket issued by 'A' which serial number shall be written upon the back of each pawn ticket issued by 'B' to 'A.' The serial number contained on each pawn ticket issued by 'B' to 'A' shall be written upon the back of the stub of each pawn ticket issued by 'A' to the original borrower.

3. In case of default by 'A,' 'B' shall notify 'A' by registered mail in accordance with the provisions of Section 6341-1 O. G. C.

4. Within 30 days after receipt of said notice 'A' shall redeem the repledges in which he is in default or deliver to 'B' a copy of the stub evidencing the original pledge together with the name and address of the original pledgor (the borrower). Whereupon 'B' shall notify the original borrower that his pledge has been transferred to 'B' and that 'B' will carry out all of the terms of said pledge as though originally made with him. Any monies collected by 'B' shall be applied to the respective accounts and if any equity remains for 'A' it shall be remitted to him. If the pledges are not redeemed by the original borrower but are sold under the provisions of Section 6341-1 O. G. C., 'B' shall further notify 'A' of the date and place of said sale by sending him by registered mail, return receipt requested, a duplicate copy of the notice required by Section 6341-1 O. G. C. to be sent the original owner of the pledged property.

5. In the event of bankruptcy of 'A' or upon the appointment of a receiver and the like, the trustee or receiver shall immediately furnish 'B' with copies of all stubs relating to repledged items.

Your opinion as to the validity of such transactions is herewith requested and we desire to know specifically whether any licensed pawnbroker may repledge the articles left with him as security for his loan. If he may repledge said items, must he repledge with another licensed pawnbroker or may he repledge with any individual, corporation, partnership or association? In addition, if it is permissible for a licensee to repledge the various pawns, is the licensee pledgor entitled upon his default to the notice provided in Section 6341-1 as a matter of law or is no notice required?

Further, if the various items may be pledged with one who is not a licensee, particularly if the pledgee be a bank or building and loan association or small loan licensee, is said pledgee likewise bound by the provisions of the pawnbroker laws and required to send notice of default by registered mail return receipt requested both to the licensee pledgor and to the original borrower? May 'B' or any other pledgee not a licensee retain the balance of the proceeds of sale if not demanded in one year by the original borrower, as provided in Section 6341-1 O. G. C. or is 'A' entitled to said proceeds?

Lastly may a licensee pledgor borrow more upon the pawn than he has himself loaned to the true owner? If the licensee pledgor having no title in the pawn other than a lien for money advanced does obtain a greater loan, has he exercised such dominion over the property as to amount to a conversion or has he engaged in any other wrongful act contrary to his duties as a bailee?"

Your first two questions deal with the right of a licensed pawnbroker to repledge articles pledged with him as security for loans. The pledging or pawning of property as security for loans is a form of bailment for the mutual benefit of both the bailor and bailee. 8 C.J.S., 243, section 8, and 6 Am.Jur., 147, section 19. The pledgee acquires a special property right in the pawn and is entitled to its exclusive possession during the time and for the objects for which it is pledged. At common law the pawnee could assign over his interest in the pawn and the assignee would take it under all the responsibilities of the original pawnee. Or he could transfer his interest conditionally by way of pawn to another. 2 Kent's Commentaries, 579. In the second branch of the headnotes in the case of National Bank of Pulaski v. Winston, 64 Tenn., 685, it was said:

"A pawn is a mere collateral security for the payment of a debt, and a pawnee may assign his interest in the pledge, and the assignee will take it under all the responsibilities of the original pawnee; or he may transfer conditionally his interest by way of pawn to another, and his assignee will hold the pledge until the debt of the original owner is discharged."

And in *Bailey v. Colby*, 34 N.H., 29, it was said in the opinion on page 35:

“But the law seems to be well settled in the case of the pawn, that the pawnee may sell and assign all his interest in the pawn, or he may convey the same interest conditionally by way of pawn to another person, without in either case destroying or invalidating his security.”

Although this question does not appear to have been presented to any of the courts of Ohio, we may assume that the common law would be followed unless modified by statute. Through the enactment of Sections 6337 to 6346, General Code, the legislature has regulated the pawnbroking business in Ohio and required pawnbrokers to be licensed. The term “pawnbroker” has been defined in Section 6338, General Code, which provides:

“That any person, firm, partnership, association or corporation now or hereafter engaged in the business of lending money on deposit or pledges of personal property or other valuable thing, other than securities or printed evidence of indebtedness, or in the business of purchasing personal property, or choses in action, or other valuable thing, and selling or agreeing to sell the same back to the seller at a price other than the original price of purchase, or in the business of purchasing personal property such as articles made of or containing gold, silver, platinum or other precious metals or jewels of any description for the purpose of reducing or smelting them into any form different from their condition or construction when purchased and reselling or marketing the product, is hereby declared and defined to be a pawnbroker within the meaning of this act.”

Section 6337, General Code, requires pawnbrokers to be licensed and the remaining sections of the Act detail the terms under which licenses shall be issued and how the pawnbroking business shall be conducted. An examination of the entire Act fails to disclose any provision which directly or impliedly prohibits the repledging of pawns received by pawnbrokers other than Sections 6342 and 6343, General Code. Section 6343, General Code, restricts the disposition of United States property received by pawnbrokers as follows:

“All pawnbrokers shall make a report on or before the fifteenth day of each month for the preceding calendar month, to the adjutant general on such forms as shall be prescribed and furnished by the adjutant general, setting forth by item or serial number all property of the United States government, including firearms, optical instruments, musical instruments, and any other property whatsoever which may be in the possession of such

pawnbroker and which is marked with the words 'Property of the United States Government' or any other language of like import or carries other identifying language which indicates that such property belongs to one of the military branches of the United States government.

No pawnbroker shall sell or otherwise dispose of any such property unless such pawnbroker shall have obtained a written permit from the adjutant general authorizing the sale or disposition of such property and stating that such property can not be identified as being the property of the United States government or any of its military branches and that such property may be lawfully sold or otherwise disposed of in accordance with the laws of this state and of the United States."

Section 6342, General Code, is designed to assist the police department, it being therein provided:

"No pawnbroker shall change, alter, smelt, or deface any article on voluntarily release possession of any goods, articles or things pledged with him or purchased by him until the expiration of forty-eight hours after the delivery to the chief of police a copy and statement relating thereto as provided in section 6341 of the General Code, except by the permission of the police department."

In specific answer to your first and second questions, it is my opinion that a pawnbroker may repledge articles left with him as security for loans he has made if he has held such articles for at least forty-eight hours "after the delivery to the chief of police a copy and statement relating thereto as provided in Section 6341 of the General Code," provided, however, that if any of such articles to be repledged is property of the United States, as defined in Section 6343, General Code, as to such article or articles the pawnbroker must first have complied with the provisions of that section relating to the securing of authority to sell or dispose of such property.

You next inquire whether or not the pawnbroker must repledge the articles with another licensed pawnbroker. Section 6337, General Code, provides:

"It shall be unlawful for any person, firm, partnership, association or corporation to engage, or continue in, or carry on, the business of lending money on deposit or pledge of personal property other than securities or printed evidences of indebtedness, or in the business of purchasing personal property or choses

in action, or other valuable thing, and selling or agreeing to sell the same back to the seller at a price other than the original purchase price, at a total charge, rate of interest or discount or other remuneration in excess of eight per cent per annum, or in the business of purchasing personal property such as articles made of or containing gold, silver, platinum or other precious metals or jewels of any description for the purpose of reducing or smelting them into any form different from their condition or construction when purchased and reselling or marketing the product without first having obtained a license so to do from the commissioner of securities."

Penalties for violation of the Pawnbrokers' Act are found in Section 6346, General Code, which is as follows:

"Any person, firm, partnership, corporation or association, and any agent, officer, or employee thereof, violating any provision of this act, shall for the first offense be fined not less than fifty dollars nor more than two hundred dollars, and on conviction for a second offense be fined not more than five hundred dollars or imprisoned for not more than six months or both. The commissioner of securities upon such second conviction shall revoke any license theretofore issued to such person, firm, partnership, corporation or association."

It will be observed from the above and related sections that license requirements are placed upon lenders only. When a pawnbroker repledges a pawn, he acts as a pledgor in such a transaction and the Act places no restrictions upon him in that capacity. The responsibility is upon the person receiving the repledged article to meet the requirements of the Act or come within the exceptions found in Section 6344-2, General Code, which reads:

"Nothing in this act shall apply to licensees who obtain licenses under sections 6346-1 to 6346-10, both inclusive, of the General Code of Ohio, or to national banks or state banks, or building and loans."

In specific answer to your third question, I am therefore of the opinion that there is no duty upon the part of a pawnor, whether he be pledging or repledging articles, to see that the pawnee is a licensed pawnbroker. If the pawnee in such transaction falls within the provisions of Sections 6337 and 6338, General Code, and does not come within the excepted classes mentioned in Section 6344-2, General Code, it is the duty of such pawnee to be licensed.

You next inquire as to the notice required by Section 6341-1, General Code. This section reads:

“If pledgor shall fail to redeem any articles of jewelry, gems, silverware, goldplate, precious stones and kindred articles within six months from the date of the loan or sale, or becomes six months in arrears in the payment of interest, or shall fail to redeem any other articles pledged or sold within thirty days after maturity of loan, it shall be the duty of the licensee to notify the pledgor or seller by registered mail, demanding return receipt therefor, to the last place of address given by said pledgor or seller, that unless said pledge or property is redeemed within thirty days from the date said notice is mailed, specifying in said notice the time and place said sale will take place, it shall be sold at public or private sale, at the option of the licensee, and the proceeds applied to the payment of the indebtedness or amount advanced, with all interest and charges. If the pledgor or seller fail to redeem or repurchase said property within the thirty day's period specified in said notice, the licensee shall proceed to offer said pledge or property at public or private sale to the highest bidder, on the date fixed in said notice, and said licensee may become the purchaser, and from the proceeds of any such sale pay his or its claim including any expense of said sale; any balance shall be held and paid to such pledgor or seller, but if he shall fail to call for and collect said balance within one year from date of said sale, as above provided, said balance of such proceeds shall become the absolute property of such licensee.”

The requirements of the above section were considered in *Phillips v. Ideal Securities, Inc.*, 51 O.App., 241, and it was held in the first branch of the syllabus that:

“A pledgee, in sending notice to the pledgor that if pledgor does not pay his loan the pledged article will be sold, must comply strictly with the requirements of Section 6341-1, General Code, as to what the notice shall contain, or the sale will be unauthorized.”

As I have previously stated, the original pawnee has a special interest in the pledged articles. Title and the right to redeem remains in the original pledgor. The original pawnee can ordinarily assign no greater right than he himself possesses. The pledged article cannot be separated from the original debt which it secures so that the debt would be owned by one person and the pledge by another. See *Jones on Collateral Securities*, 3d Ed., pp. 500 and 506, sections 419 and 423. I am therefore of the opinion that upon default the pawnee of a repledged article should notify as required by Section 6341-1, General Code, both the owner of the

article, who was the original pawnor, and the pawnee who repledged the article by virtue of his special interest therein.

You have next inquired if the pledgee, with whom the article has been repledged, is not a licensee, and particularly if such pledgee be a bank, building and loan association or small loan licensee, whether the latter pledgee is bound to send notice of intention to sell upon default as provided in Section 6341-1, General Code. Section 6344-2, General Code, provides:

“Nothing in this act shall apply to licensees who obtain licenses under sections 6346-1 to 6346-10, both inclusive, of the General Code of Ohio, or to national banks or state banks, or building and loans.”

It is therefore my opinion that the provisions of Section 6341-1, General Code, regarding the sending of notice upon default apply only to licensed pawnbrokers.

Your sixth question concerns the right of the final pledgee to retain the balance of the proceeds of the sale of pawned articles if not demanded by the original borrower. Assuming the final pledgee to be a licensed pawnbroker, for as I have just stated, the provisions of Section 6341-1, General Code, would not otherwise apply, it would be the duty of the final pledgee to send out notices to both the original borrower and the original pawnee who repledged the article. It would of course be the privilege of the first pawnee to repay his loan and redeem the pledged article, thereafter retaining the same as security for the original loan. It must be assumed from your question, however, that the pledged article would not be redeemed, and that upon sale by the final pawnee a surplus would remain. Your question then is, who is entitled to this surplus? The answer probably depends on the nature of the holding of the final pawnbroker. As stated in *Bailey v. Colby*, 34 N.H., 29, on page 35, “the pawnee may sell and assign all his interest in the pawn, or he may convey the same interest conditionally by way of pawn to another person, without in either case destroying or invalidating his security.” If the first pawnbroker assigns his entire interest to the second pawnbroker, the latter, upon sale of the pledged article, must hold the surplus proceeds for the period of one year for the original pledgor or seller after which time, if not called for, such balance shall become the absolute property of the second or final pawnbroker. If the repledge is conditional, and to

secure an amount less than the original loan, the first pawnbroker is entitled to the surplus of the sale price to the extent of his equity, and the remainder of such surplus should be held for the period of one year for the original borrower.

Your seventh and eighth questions concern the right of a pawnbroker to repledge an article for an amount greater than that which he has loaned thereon. It will be recalled that it is his special interest in the property that gives a pawnbroker the right to repledge. "But the pledgee can ordinarily assign no greater right than he himself possesses." Jones on Collateral Securities, 3d Ed., p. 506, section 423. This is the general rule of assignments. The assignee is in privity with the assignor. His rights are those of the assignor and can rise no higher. In *Bailey v. Colby*, 34 N.H., 29, it is said on page 35:

"But if the pledgee should undertake to pledge the property (not being negotiable securities) for a debt beyond his own, or to make a transfer thereof to his own creditor, as if he was absolute owner, it is clear that in such a case he would be guilty of a breach of trust, * * * "

Instances in which the original pledgee has repledged the article for an amount greater than the original loan balance have been treated as conversions, giving the original borrower the right to recover the value of the pawned article from the original pawnbroker. The original pawnbroker, if unable to return the pledged article upon tender of the unpaid balance, must be regarded to have violated the provisions of the Pawnbrokers' Act and he and his bondsmen required by Section 6339, General Code, to be liable.

It is therefore my opinion that a pawnbroker may not lawfully repledge any article as security for a loan in excess of the balance due him from the original borrower and if such an excessive loan is made it may be regarded as a conversion, and it is made in violation of the provisions of the Pawnbrokers' Act, Sections 6337 to 6346, General Code.

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Respectfully,

THOMAS J. HERBERT,

Attorney General.