

10-1-1956

## Miscellaneous—Pledge—Notice of Sale

Richard G. Birmingham

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Commercial Law Commons](#)

---

### Recommended Citation

Richard G. Birmingham, *Miscellaneous—Pledge—Notice of Sale*, 6 Buff. L. Rev. 83 (1956).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol6/iss1/46>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

used therein to include vacation, holiday and severance pay. However, this definition of wages is expressly limited to the purposes of those two sections. This limitation, coupled with the failure to include a similar expanded definition for the word "wages" as used in the Labor Law, is significant; it shows that "wages", as used in the Labor Law, was not intended to include vacation pay. The law affords wage earners ample civil remedies for the purpose of assuring full payment of all additional benefits accruing to them under their contract of employment.

The dissent stressed the fact that the contemporary, natural and obvious meaning of the term "wages" includes vacation pay, and any employer of average intelligence would not assume it to have any other meaning. Penal statutes, without necessity of amendment, may, in view of changes in other statutory law, make criminal conduct which prior to these changes was not proscribed.<sup>37</sup> "The rule that a penal statute is to be strictly construed does not apply to this chapter or any of the provisions thereof, but all such provisions must be construed according to the fair import of their terms, to promote justice and effect the objects of the law."<sup>38</sup>

The argument of the dissent would be more cogent if civil remedies were inadequate to achieve justice in this area. However, barring this, the majority decision seems to reach a more equitable result.

#### Pledge—Notice of Sale

The general maxims of equity impose upon a pledgee duties comparable to those existing in all trust relations. Of particular importance is the obligation to the pledgor, upon a sale, to make every effort to sell at the greatest possible advantage.<sup>39</sup> Implicit in this obligation is the requirement of a reasonable and customary notice, made in good faith by the pledgee.<sup>40</sup> It must be so designed as to adequately identify the property in question, disclosing the facts sufficiently to apprise the reading public of the true nature of the asset.<sup>41</sup> The actual degree of disclosure required is a question which must be decided in the factual context of each case.

*In re Kiamie's Estate*<sup>42</sup> concerned a sale of pledged collateral upon default in payment of a note. The collateral consisted of all the stock of four corporations,

37. *People v. Morton*, 308 N.Y. 96, 123 N.E. 2d 790 (1954).

38. N. Y. PENAL LAW §21.

39. *Cole v. Manufacturer's Trust Co.*, 164 Misc. 741, 299 N.Y. Supp. 418 (Sup. Ct. 1937).

40. *Small v. Housman*, 208 N.Y. 115, 101 N.E. 700 (1913).

41. PERRY, TRUSTS AND TRUSTEES, §782 (7th ed. 1929).

42. 309 N. Y. 325, 130 N.E. 2d 745 (1955).

owned by the decedent debtor and his family. Notice of the sale was given to the family and to their attorney and was also published in two newspapers of general circulation on two successive days. Such notice however provided only a minimum of information, barely identifying the securities.<sup>43</sup> The Court, applying the equitable obligations of good faith which is required regardless of the powers conferred on the pledgee by contract, held that the published notice of sale was so inadequate as to render the sale itself entirely void.

In any situation of this nature, the requirement of detailed notice will vary, depending on the notoriety of the stock in question. Where stocks are listed on the large Exchanges and are recognized at sight by the probable customers, a minimum amount of information will serve to describe them.<sup>44</sup> The same clearly is not true of stock in little-known family corporations. The New York cases are consistent in imposing on the pledgee duties arising from the trust relation to protect the collateral.<sup>45</sup> While the parties may modify that relationship by contract, the paramount requirement of good faith remains intact. In the principal case, there was every justification for holding that the pledgee had failed to fulfill his equitable obligations.

### Arbitration

Often parties to a general contract incorporate or insert in the contract or in a separate instrument an agreement to arbitrate some or all of the disputes which may thereafter arise under the contract. Whether a specified dispute should be submitted to arbitration or not depends upon the words and interpretation of the arbitration clause and a determination of whether it provides for arbitration in this specified instance.<sup>46</sup>

In the instant case<sup>47</sup> the Court was called upon to decide two issues: Whether an arbitrable dispute existed and whether or not the plaintiff could demand

43. The only reference and description of the stock was contained in an announcement of a public auction, which included other goods, and read as follows: "5 shs. Sherman Investing Corp. (N.Y.); 3 shs. Kiamie Holding Corp. (N.Y.); 3 shs. Haviland Holding Corp. (N.Y.); 100 shs. LaDana Holding Corp. (N.Y.)".

44. *Wheeler v. Newbould*, 16 N.Y. 392 (1857).

45. *Wheeler v. Newbould*, *supra*, note 44; *Gillet v. Bank of Am.* 160 N.Y. 549, 55 N.E. 292 (1899); *Toplitz v. Bouer*, 161 N.Y. 325, 55 N.E. 1059 (1900); *First Trust & Deposit Co. v. Potter*, 155 Misc. 106, 278 N.Y. Supp. 847 (Sup. Ct. 1935); *Cole v. Manufacturer's Trust Co.*, 164 Misc. 741, 299 N.Y. Supp. 418 (Sup. Ct. 1937); *Perkins v. Meyer*, 302 N.Y. 139, 96 N.E. 2d 744 (1951).

46. *Rice v. Reilly*, 203 Misc. 1033, 118 N.Y.S. 2d 75 (Sup. Ct. 1952); *Application of Roselle Fabrics*, 108 N.Y.S. 2d 921 *aff'd mem.*, 113 N.Y.S. 2d 280 (1st Dep't 1952).

47. *Arbitration Between Baker and Board of Education*, 309 N.Y. 551, 132 N.E. 2d 837 (1956).