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The Enduring Relevance of Pledges in English Secured Transactions Law: Delivery of Possession, Non-Registrability, and the Case Against Abolition

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Abstract: ***Security interests are central to transactions and may be regarded as the lifeblood of secured dealings. English law recognises three typical forms of security interest: the pledge, the mortgage, and the charge. Over recent decades, pledges—the oldest form of security—have been partly superseded in practice by mortgages and charges, giving rise to debate about their abolition. This essay argues that although pledges are now used less extensively than mortgages and charges, they remain an important form of security, particularly in short-term security arrangements. To explain the relative decline of pledges in practice, the essay examines the definitions and nature of the three security interests. A pledge requires delivery of possession of an asset to secure repayment of a debt. A mortgage involves the transfer of title—legal or equitable—as security for a liability. A charge, by contrast, confers an equitable proprietary interest over the secured asset without any transfer of legal or beneficial title. Building on this doctrinal comparison, the essay analyses the distinctive features of pledges, notably the requirement of delivery of possession and the common-law concept of non-registrability, and considers their implications for the utility and limitations of pledges. It concludes that pledges retain significant doctrinal and practical value and should not be abolished.***

Keywords: Security interests, Pledges, Mortgages and charges, English law.

1. INTRODUCTION

Security interest plays an essential role in transactions and therefore security interest can be compared to blood in transactions. There are 3 typical types of security interest under English law– a pledge, a mortgage and a charge.[1] Over the past few decades, pledges, as the oldest form of security, in practice have been superseded by other types of security such as mortgages and charges to some extent, leading to extensive discussion about the abolishment of pledges. This essay argues that even though pledges are not used to such an extent in comparison to mortgages and charges in practice now, pledges are still an important form of security and in some particular circumstances, such as short-term security. It will do by introducing the 3 basic types of security and analyzing pledges' feature such as, the requirement of delivery of possession and common law concept non-registrable.

In order to examine why pledges in practice is not as widely used as mortgages or charges, the definition and the nature of these three types of security interest should be discussed. The term of pledges can be defined as a type of security which require the delivery of the possession of an asset to secure repayment of a debt.[2] A mortgage involves the transfer of the title to an asset as security for a liability. [3] In the case of ***Santley v Wilde***[4], Lindley MR describe the nature of a legal mortgage as 'a conveyance of land or an assignment of chattels as a security for the payment of a debt or the discharge of some other obligation for which it is given.' On the other hand, an equitable mortgage is similar to a legal mortgage but the main different is that an equitable mortgage requires the transfer of beneficial title, rather than legal one. [5]Compared to a mortgage, neither legal title nor beneficial title is required in a charge but the creditor would obtain an equitable proprietary interest over the secured asset. To be more specific, Peter Gibson J describing a mortgage in the case of ***Carreras Rothmans v Freeman Mathews Treasure***[6], said that a charge is created 'by an appropriation of specific property to the discharge of some debt or other obligation without there being any change in ownership either at law or in equity …'

2. PLEDGES REQUIRE THE TRANSFER OF POSSESSION

2.1 The way pledges created

Fundamentally, upon transfer of possession of an asset by the debtor to their creditor as security for a monetary obligation, a pledge is created, and the pledge's efficacy is generally dependent on the creditor's continued possession of the asset. Once the creditor takes over the possession of the asset, the pledge has already been created and no further requirement for evidence of agreement or intentions. This can be exanimated in the case of ***Re Hardwick, ex parte Hubbard*** **(1886)** LR 17 QBD 690.[7] However, the situation that a pledge is created without a document is rare in practice. By contrast, the way in which a charge or a mortgage is created is different from the one of a pledge. A charge or a mortgage is created by an act that indicates the debtor's intention to create one. The intention can be manifested both orally and in written.

2.2 The types of assets that can be pledged

Due to the requirement of the delivery of assets, an asset can only be pledged if it is transferable by delivery of possession. [8]This may bring the question that which types of asset can be pledged. Nether land nor intangibles are capable of being pledged. [9] The only way in which land can be transferred is by deed, that is subject to, the appropriate formalities such as registration, rather than by delivery of possession. Due to the fact that almost all intangibles are incapable of being rendered into possession, they cannot be transferred by delivery. For example, a debt or a share, is one such intangible that can only be transferred by legal processes, such as assignment. On the other hand, assets over which can be legal mortgaged are those which can be regarded as property under the common law and are capable of being transferred at common law. For example, land and goods are capable to be created a mortgage over but most types of intangibles and future assets are not. The same principal can apply to the equitable mortgages and charges. Only assets which can be regarded in equity law as property and therefore capable of being transferred can be created an equitable mortgage or a charge on. The main difference between the assets which can be legal mortgaged over and the assets which can be equitable mortgaged or charged on is about intangibles and future property, which can be defined as being property under equitable concept but this is not a case in common law.

Although pledges cannot be created over intangibles, there is an exception to this principle, which is if the intangibles can be represented by a document, and the title to them can be transferred by delivery of the document (also require for particular endorsement, such as endorsement), they are capable of being pledged. In the ***Carter v wake*** case[10], Jessel MR decided that a deposit of bearer bonds by way of security created a pledge. Therefore, when it comes to intangibles, not definitely just equitable mortgages or charges could be created, whilst pledges as a common law concept can also be utilized in intangibles unless they have a document to represent them. However, the use of pledge over the document of intangibles are not still not available in some circumstances. In the case ***Harrold v Plenty*** [11], it is impossible to create pledges over registered shares, because the share certificate being merely evidence of title, and not a document of title. To be more specific, 'transfer of title to registered shares is effected by the registration of the transferee in the register of members of company concerned.' [12]

Pledges can be created over not only goods but also documents of title to goods such as bills of lading. In the case of ***Meyerstein v Barber***[13], a bill of lading is described as 'a symbol of property' because delivering a bill of lading from the owner to a buyer with the intention of effecting a transfer of title, the buyer could gain the title to the goods which are presented by the bill of lading in the same way as if the buyer obtained the goods itself. This seems to contribute to the wide use of pledges in international trade transactions, in string sales in particular. In string sales, it is always the first seller who delivered the goods and the intermediate parties buy the goods which are already afloat. These parties generally have no physical possession on the goods and the way they trade is usually through bills of lading. In practice, for these parties who own the bill of lading and intent to create a security on it are more like to create a pledge instead of a mortgage or charge, even though both mortgages and charges can also be created over bills of lading in theory. This is because the nature of string sales is to gain profit through purchasing and selling goods not to obtain the goods in a

long run. Thus, the non-registerable feature of pledges would increase the use of pledges in these kinds of document transactions.

2.3 The effect of a pledge under the requirement of transfer possession

The requirement of transfer possession can also affect the effect of pledges. the essential nature of pledge has been discussed which is that the creditor has possession of the assets concerned bur does not obtain legal or beneficial tile to it. The right to the possession of the assets is referred to as a 'special property' in the case of ***Coggs v Bernard*** [14], where the 'special property' is used to distinguish the creditor's rights from those of the ultimate owner, who is said to own the 'general property', such as the reversionary title. This special property is a type of proprietary interest which is also a legal interest. Therefore, pledges have certain priority advantages over equitable mortgages and charges.

The first advantage is that pledges have priority on insolvency. In an insolvency proceeding, an asset which has a pledge on can be taken outside from the scope and either the administrator or the debtor has no better rights over the assets. Both mortgages and charges have the same priority on insolvency. But as a legal interest, pledges and legal mortgages have priority compared to equitable mortgages and charges which are equitable interests. This is mentioned by James LJ in ***Pilcher v Rawlins***[15], in which it argues that a person who obtains a legal interest in the asset and without notice of an earlier equitable interest obtains 'an absolute, unqualified, unanswerable defence' to the equitable interest.

Secondly, because the pledgee has the possession of the pledged asset and the security right, he is entitled to sell the asset concerned on default by the debtor without the necessity to apply to the court and pay himself out of the net proceeds. [16] However, a legal mortgagee has the right to foreclose. The reason is explained in the case ***Carter v wake***[17] that pledgees only have a special property in the assets but the legal mortgagee has the general property. For example, the legal mortgagee can go to the court to become an unencumbered owner of the pledged asset. In addition to this, the duty of the pledgee that the price should be reasonable and any surplus, after repaying the secured liability should be trusted for the debtor. On the contrary, neither mortgagees nor charges is entitled to sell the secured asset because of the lack of possession and the only way they enforce their security interest is to go through litigation proceedings. However, in ***Re Morritt, ex parte Official Receiver***[18], the court decided that although there was little authority, a legal mortgage of goods as an implied power of sale at common law, but only once the mortgagee has entered into possession. One of the judge, Fry LJ dissented on this point and he argued that the creditor could only sell the goods if there is an expression about it in the mortgage document. in short, pledgees have undoubtedly power to sell the pledged asset when the debtor defaults, and this is function cannot be replaced by mortgages or charges.

3. POTENTIAL PROBLEMS

As a pledge is created by the transfer of possession of the pledged asset, the general rule is that the pledgee must obtain the possession of the asset otherwise, he would lose his security interest. This may cause a weak side of pledges, which is that the relinquishing possession may defeat the pledge since the existing of pledges is the possession of the assets. In practice, it seems that taking the possession of the assets concerned would affect the pledgor's business. For example, where the pledge is over a bill of lading, the pledgor may wish to deal with the goods, and thus he would need the bill of lading. If the pledgee releases the bill of lading to the pledgor, will the pledge still be effective?

There are three exceptions to the principle that losing the possession means losing the pledge interest. The first one is involuntary surrender of possession such as the result of theft or fraud. an example related to this is the case ***Bassano v Toft***[19] in which the debtor pledged his viola to a company to secure a loan. According to the agreement between the creditor, the debtor and a dealer, the viola was under the dealer's possession. Later, the dealer delivered the viola to another dealer and finally the viola was sold. Popplewell J held that until the viola was sold, the creditor was entitled to the proceeds of sale and his pledge over the asset had continued as the fraud cannot deprive the pledge interest. The second exception is to re-deliver the possession to the debtor for a limited purpose. This can be examined in the case ***North Western Bank v John Poynter, Son, & Macdonald's***[20], where the debtor had delivered bills of lading to the creditor to create a pledge.

The creditor re-delivered the bills of lading to the debtor in order to sell the goods and get repaid. The House of Lord held that the creditor still has the interest of the pledge because the debtor in this case only acted like a trustee. Another similar example is the case ***Re David Allester***[21]**,** where the judge gave two reasons of this situation. Firstly, the pledgee decided to re-delivered the bills of lading because he believed that the pledgor was better qualified to do so. The second reason is that the letter of trust was not registrable. However, re-delivering the pledged assets for any other purpose rather than selling them cannot be seen the exception and would terminate the pledge. A related case to this is ***Reeves v Capper***[22]**.** The last exception is re-pledge by the creditor to a third party. In the case ***Donald v Suckling***[23]**,** the court held the original pledge can be continue as a pledge can give the pledgee proprietary right which is capable of being assigned.

To sum up, only under these exceptions, the creditor still obtains the pledgee interest but, in most cases, he would lose his pledge interest if he falls to remain the possession of the pledge. By contrast, any other types of security such as mortgages and charges are created by documents and once the documents have been executed, the creditor obtain the security interest until the secured liability is discharged. This can be seen as a weakness of pledges and it seems that this decreases the use of pledges as in practice, most debtors may require their assets to develop their business.

Another potential problem of the requirement of delivery the possession of the assets concerned could be the store of pledged assets. This would cost more fees and time to manage the assets under creditor's possession. For example, for large-scale assets, the creditor may need a warehouse to deposit them and likely to hire a staff or a security to take care of it. Conversely, for mortgages and charges, there is no any possession delivery and the whole processes would not cost any money until the security has to be enforced. However, as discussed before, three types of assets can be pledges: goods, documents of title to goods and documents of title to intangibles. The latter two types of assets are just documents which would be easy to store just like the documents of mortgages and charges. Meanwhile, not all the goods require extra expenditure or time to arrange and pledges as a form of bailment (*Coggs v Bernard*), has its considerable importance on small-scale but high-valued goods such as gold and luxuries. Therefore, pledges should not be abolished merely because of the potential expense over the secured assets.

4. A PLEDGE IS A COMMON LAW CONCEPT

A pledge is a common law concept and therefore the pledgee obtains a legal proprietary interest in the asset concerned, while an equitable mortgage and charges are equitable concept and the creditor therefore would only obtain equitable interest rather than any common law interest. A pledge has certain advantages over an equitable interest, specially in its priority. In most cases, a legal proprietary interest is effective against any other subsequent proprietary interest in the related asset.

4.1 The bona fide purchaser principle

The bona fide purchaser principle is the basic principle which guilds the relationship between legal and equitable interests. In most cases, a legal interest can take priority over an equitable interest, even though the legal interest is created after the equitable one. James LJ described this priority in the case ***Pilcher v Rawlins*** [24]as 'an absolute, unqualified, unanswerable defence'. However, there are three requirements for this principle. Firstly, the priority owner must be a 'purchaser for value', but he need not to be the outright purchaser of the assets concerned. On the other hand, if his claims is by the means of a gift, he should be excluded by the principle. Secondly, the interest he taken must in good faith and without notice of the earlier equitable interest. thirdly, a legal interest of the assets must be required. A related example is the case ***Joseph v Lyons***[25], where A created an equitable mortgage over the future goods in favor of B. A later pledged the goods to C without notice of B's equitable mortgage. The court of Appeal held that C had priority over B because as an equitable mortgage, B only has the beneficial title to the goods rather than legal title, which would be subjected to the later legal interest. In this case, the priority of the pledge is over the equitable mortgage and this is the same as between pledges and charges.

In practice, because of the requirements of registration of security interest, the bona fide purchaser principle is now less importance than it used to be. To some extent, the registration provides with an anther system of

priority based on the time, land, ships and aircraft particularly. Even if the secured assets are not certain types of registries, for most types of mortgages or charges created by companies are subjected to the requirements of registration. This is the first in time principle. However, pledges are not registrable and therefore, for the pledge interest, the bona fide purchaser principle should always be applied rather than the first in time principle.

4.2 The foreclosure of legal mortgages

Both pledges and legal mortgages are common law concept, but legal mortgages have foreclosure for remedy but pledges do not. Foreclosure allows legal mortgagees to get his property back on payment of the secured liability, which means that it can shut out the debtor form the mortgaged property. Foreclosure exactly gives the creditor the highest right to the assets concerned because it is also more priority than the rights of anyone who has a subsequent security interest over the assets concerned. The reason of the foreclosure is mentioned by Sir George Jessel MR in the case of ***Carter v wake*** [26]that the legal mortgagee is the legal owner of the property concerned and what the role of the court here is just that simply remove the stop on the mortgagee to cancel the equity of redemption. In the case of ***Re Farnol Eades Irvine & Co***[27], Warrington J said that foreclosure must be done by the order of the court rather than any person. This foreclosure is subject to the legal title, and therefore, it is not available for a pledge, even if it is also a common law interest. Therefore, although both pledges and legal mortgages are common law interest, the later ones have higher priority than the former ones. For example, even if a pledgee sells the pledged assets in order to get repaid under beyond his legal right, if there is also a legal mortgage over the assets, the legal mortgagee is entitled to foreclosure. However, excepting pledgees' right to sell the assets concerned, which are not required to go through the court proceedings, any other secured interest or right, including legal mortgagees' foreclosure, has to be ordered by courts. Therefore, from this aspect, it can be argued that the way to enforce the interest of pledges is easier than the one of other security interest.

4.3 Nemo dat principle

As a legal security interest, a pledge is in accordance with the nemo dat principle which means that a person cannot give what he does not have. For instance, the pledged obtain the physical possession of the asset concerned and the it was sold or by any other way to dispose such as creation of another pledge in it, by the debtor to a third party without the pledgee's consent and delivery of it, according to this principle, the third party will not obtain title to the asset, even though he gave value for it and acted in good faith. What is more common in practice is that the pledgor disposes the asset which the pledgee parts with possession. In this situation, whether the pledgee still obtains the security interest depends on the possession he has or not.

This may raise a question that whether there are any circumstances that the third party may have any right to against the original pledgee. This issue was discussed in the case ***Lloyds Bank Ltd v Bank of America National Trust and Savings Association***[28], where the creditor had a pledge over the debtor's bills of lading and returned them to the debtor under a trust receipt for the purpose of the sale of the asset concerned. The creditor later pledged the assets to a third party who is in good faith and without the notice of the creditor's interest on it. **T**he court held that the third party has defence to the pledgee, which was based on section 2(1) of the Factors Act 1889. The court rejected the claim that 'the pledgor could not be a trust agent because the trust receipt was a permission by the pledgees to exercise the pldgor's power of disposition'. [29] In addition to this, the pledgee claims that they are the 'owner' of the asset as they obtained the possession of the documents under the pledgor's consent. Sir Wilfrid Greene MR says that the 'owner' should be the person who is able to give express authority in terms of the transaction. Therefore, the third party obtained the right to against the pledgee. This exception to the nemo dat rule is shown in section 2(1) of the Factors Act 1889, which gives a bona fide purchaser priority over a pledge if he acquires his interest from a mercantile agent in possession of assets with the consent of the owner. However, as the creditor does not have any legal title to the assets concerned, the debtor has a legal right to redeem on payment of the assets concerned or on tendering the amount of the debt. Thus, in the case of ***Lloyds bank v Bank of America***[30], the pledgor is still under the payment duty to the pledgee, failing doing this would make him acts in a breach of the trust receipt arrangement, which is likely only a personal duty rather than a proprietary duty.

As discussed at the beginning of the asset, pledges and legal mortgages are common law concepts and therefore pledgees and mortgagees obtain legal interests over the assets concerned, while as equitable law concept, equitable mortgagees and chargees only obtain beneficial title or equitable propriety interests rather than any legal interest. These interests are purely personal right. Therefore, equitable security interests are less effective against third party. For example, if a debtor whose assets is subjected to an equitable mortgage or a charge tries to sell the secured asset, the third party in good faith could obtain the legal title of the assets. This is also a reason of the bona fide purchaser principal that the conscience of the legal interest would not be affected by the earlier equitable right.

5. A PLEDGE IS NOT REGISTRABLE

5.1 Related regulation about pledges

It has been discussed that the creation of a pledge requires the transfer of possession of the secured assets from the debtor to the creditor, rather than any documents related, though some documents have the function to evidence the term on which the pledge has been created. The reason of this feature was explained by the Court of Appeal in the case of ***Re Hardwick, ex parte Hubbard***[31], which has already mentioned before. The fact of this case is that the debtor deposited goods with the creditor for the purpose to security a loan. But the debtor did not deliver the possession to the creditor. The Court of Appeal decided that they did not create a pledge over the goods because only the delivery of possession can create a pledge and agreement cannot give the creditor any pledge interest.

Neither under the bills of Sale Act 1878-1891 nor under the Companies Act 2006, a pledge is not registrable. [32]This is because the purpose of registration is to publicize security interest but pledges can publicize its security interest by obtaining the possession. People always consider the man who obtain the possession of the goods as the owner so that in practice, the case that a pledgor tries to dispose the pledged assets to a third party but without the possession, is very rare. However, for mortgages and charges which are created by documents and do not require transfer of the secured assets, the statutory requirement for registration could protect both the creditor and any third parties' interest.

However, it seems that pledges are registerable under some certain circumstances. A related example to this is the case ***Dublin City Distillery v Doherty***[33]**,** where the House of Lords held that the process of the transaction did not create the pledge, and therefore the transaction was registrable. Here, the judges believe that even if a pledge is created, there can still be a bill of sale, which therefore is registrable. Lord Parker pointed that the Companies Act stating that 'mortgage or charge' could include a pledge in some circumstances such as when the creation of the pledge requires certain formalities. These ideas seem that pledges can be created by that a debtor remains the physical possession of the pledged assets but only gives constructive possession to a creditor by documents. And this is obviously registerable. However, the security interest this created is not a pledge but a charge as the main feature of a pledge is transferring the physical and actual possession. To address again, no delivery of possession, no a pledge created.

5.2 Registration of mortgages and charges

Although not all mortgages and charges are required to be registered, most security interests created by UK companies should be registered under Companies Act 2006. These compulsory requirements apply to both UK companies and UK LLPs according to Companies Act 2006 ss1(1) and 859A -Q. There are two requirements about the type of security. The first one is that the security must be a 'charge' and here the express of 'charge' also includes mortgages due to the nature of them which has been discussed before. The second requirement is that the security interest must be created by the entity. For example, security right like liens cannot be applied to because they are created by operation of law. To clarify this point, seen in the case ***London and Cheshire Insurance Company v Laplagrene Property Company***[34], a person bought land owned by a company by the means of installment. Although the land had transferred to the person but there was an equitable lien created over the land. Brightman J decided that this kind of security interest was not registrable because it arose by operation of law, rather than created by the creditor or the debtor.

The Companies Act regulates the secured interests created by companies while the Bills of Sale Acts requires registration of charges including mortgages against individuals and non-corporate debtor. The purpose of the Bills of Sale Acts was to prevent fraud, in a way that, if the seller (owner) sold the title to goods to a buyer (the potential new owner) however kept possession of the goods, this would be an act of fraud and so the bill was put into place to ensure possession of the goods are indeed transferred from the seller to the buyer. In the transaction of mortgages or charges, the original owner of the goods transfers the legal title or other equitable interest to the creditor but retains the possession. Third parties would be induced to believe that the debtor owns the goods or have fully interest on the goods. In order to avoid this scenario, the registration is required under the Bills of Sale Acts. This is also the reason why this Act does not apply to pledges that is pledgors transfer the possession to the pledgees and third parties are less likely to deal with the pledgors who does not have the title.

5.3 The effects of the regulations of registration

Because pledges are not registrable, they have certain advantages over other types of security interests in securing short-term financing in which registration might be cumbersome. For example, a bill of lading presents the goods on the sea and the purchaser always receive the bill of lading before the exactly have the possession of the goods, which means in most cases, when the buyer has already obtained the title of the goods, he still cannot utilize the goods on the way. However, the buyer could pledge the bill of lading to a bank in short-term, which would not even affect his goods on the sea. For short-term security, the requirement of register would be considered time-consuming. In addition to useful in securing short-term financings, this non-registrable also make pledges advantageous among individuals. As discussed before, the Bill of Sale Act regulate mortgages and charges among individuals under which, however, there are plenty of requirements about the registration, leading that parties who wish to take a mortgage or charge over the assets would finally choose to take a pledge. For instance, a security bill of sale must be in the form of the Schedule to the Act. In practice, the amounts of the secured assets by individuals are more likely smaller than the ones created by companies in most cases. Therefore, the cumbersome formalities and requirement may decrease the use of mortgages and charges

Although the registration of charges and mortgages under Companies Act could protect related parties' interests, falling to do this, the creditors could even lose their right on the assets secured. According to the Companies Act 2006 s 859H, in order to register a mortgage or charge, the debtor or the creditor must deliver documents to Registrar of Companies within the period allowed for delivery, and otherwise, the charge is invalid to against liquidator of the debtor, an administrator of the debtor and other creditors. This can be referred to the case ***Re Monolithic Building Company***[35], in which the company had created a mortgage over land in favor of A but this was not registered under the Companies Act. The companies later created and register a floating charge in favor of B who is aware of the former mortgage in favor of A. the Court of Appeal finally held that B had priory because the former mortgage is not registered and the fact that B's notice was not relevant. This seems unfair for A who created the mortgage first and just because of falling to register, he lost all priority. Although the creation of a mortgage or a charge is only by documents rather than registration, non-registration of companies could cause lose the security interest.

Therefore, due to the fact that pledges require the transfer of possession, even if they do not require registration, the existing of pledges is still obvious and there would be less disputes about the priority over the pledged goods.

This may raise a question that what if all security interests including pledges require registration and would this make the law governing simpler? On one hand, the requirement would change the priority of these security interests. As discussed before, legal interests has priority over equitable interests, but the purpose of registration is to apply 'first in time' principle which means that whose security interest get registered earlier, who could have the priority. This new rule may be considered more impartial as legal interests and equitable interest could be the same as priority. Also, registration of all assets could make transactions more transparent for creditors, debtors and any other third parties related. On the other hand, pledges are the only type of security interests which are not registerable under the current law. The requirement would increase the

formalities and is likely to decrease the number of transactions in the market. Laws should be utilized to serve transactions rather than hinder them.

6. CONCLUSION

This essay has shown that it is true that a pledge is an archaic type of security interest but it could provide efficiency and effectivity in some circumstance and therefore, pledges should not be abolished. A pledge is the only type of security interest that require the transfer of possession and is not registrable, which would hamper the debtor's business and cause some disputes, especially in some cases of retention of possession. However, these features also determine that pledges are useful in terms of short-term financings and small-scale goods or documents of title to goods. In addition to this, a pledge is a common law concept, which means its interest has priority over equitable mortgages and charges. On the other hand, when it comes to legal mortgages whose creditor has right to foreclose, a pledgee has no any more advanced power than a legal mortgagee.

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