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The Uniform Commercial Code Bulk Sales Article Compared With West Virginia Law

LONDON H. BROWN

The gradual adoption of the various uniform laws by the states is beginning to have some effect on the system of "different laws in different states." Perhaps nowhere in the field of law is there greater need for uniform laws in the different states than in commercial law. The Uniform Commercial Code was designed to meet this need, and since 1954 our neighboring state, Pennsylvania, has served as a testing ground for that Code.

This report deals with Article 6, Bulk Transfers, of the Uniform Commercial Code. That article, if adopted in West Virginia, would supplant our present Bulk Sales Law. Such adoption would result in several changes in the West Virginia law, but none would amount to a serious change unless Section 6-106 is adopted along with the code.

Section 6-106 of the Uniform Commercial Code provides that the purchaser of goods in bulk must see that the consideration paid for the goods is applied so far as necessary to pay any debts of the seller of which the purchaser has knowledge. However, the Code is designed so that it is possible for a state to adopt the Uniform Commercial Code without adopting Section 6-106 thereof.

Otherwise, none of the changes in the West Virginia law in regard to bulk sales which would result from the adoption of the Uniform Commercial Code would amount to a great change in the law. In several instances the adoption of Article 6 of the Code would serve to clarify the West Virginia law.

The following discussion attempts to compare Article 6 of the Uniform Commercial Code with the existing West Virginia Bulk Sales Law.

UNIFORM COMMERCIAL CODE
ARTICLE 6
BULK TRANSFERS

Section 6-101. Short Title.

This Article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers.

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There are no prior uniform statutory provisions on bulk transfers, but most states have enacted bulk sales statutes of one kind or another. The purpose of such statutes was to prevent the so-called "hit and run" retailer from procuring a stock of goods, either by purchase on credit or on consignment, then selling out his business in its entirety and departing for an unknown destination with the proceeds of the sale, leaving his creditors unpaid.

The bulk sales statutes generally provide that sales in bulk of a part or all of a stock of merchandise in other than the regular course of business shall be void, or presumptively void, as to creditors of the seller unless certain requirements in regard to notice to such creditors are met. The statutes were originally challenged on constitutional grounds, but are generally held valid now.

Section 6-102. "Bulk Transfer"; Transfer of equipment; enterprises Subject to This Article; Bulk Transfers Subject to This Article.

(1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (Section 9-109) of an enterprise subject to this Article.

(2) A transfer of a substantial part of the equipment (Section 9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this Article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this Article.

Subsections (1) and (2) would change the West Virginia bulk sales law if the Uniform Commercial Code should be adopted since the West Virginia Bulk Sales Law includes the sale in bulk of any part, or the whole, of a stock of goods, wares and merchandise

2 The West Virginia act was so held in Marlow v. Ringer, 79 W. Va. 568, 91 S.E. 386 (1917).
and/or fixtures pertaining to the conducting of the seller's business.\(^3\) The original West Virginia statute did not include the words "wares and merchandise and/or fixtures" and it was held that fixtures were not included under the bulk sales act.\(^4\) Those words were added in an amendment to the act.\(^5\) Under the Uniform Commercial Code a sale in bulk of fixtures would not be included unless made with a bulk sale of inventory.

A sale in bulk of any part of a stock of merchandise in other than the ordinary course of business would be within the scope of the West Virginia statute,\(^6\) but to come within the scope of the Uniform Commercial Code the bulk transfer would have to be a transfer of a major part of the stock of merchandise.

Subsections (3) and (4) probably would not affect a change in the bulk sales law of West Virginia. The term "sellers" as used in the West Virginia statute would probably be construed to include manufacturers and to exclude businesses which sell services rather than merchandise. Thus, the only change that subsection (4) would make in West Virginia law would be made in the cross reference to section 6-103, hereinafter discussed.

Section 6-103. Transfers Excepted From This Article.

The following transfers are not subject to this Article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation

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and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this State who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution.

Subsection (1). While there is no case in West Virginia determining whether the transfer of a stock of merchandise to secure the performance of an obligation is a sale within the meaning of the bulk sales law of this state, this subsection probably would not change the law in that regard. In other jurisdictions having similar statutes, it is generally held that mortgages of stocks of goods are not covered,7 nor is a sale of the goods pursuant to the terms of the mortgage.8 However, this subsection would serve to clarify the law in West Virginia.

Subsections (2) and (4) would be a continuation of existing West Virginia law. Section 5 of the West Virginia Bulk Sales Law provides in part as follows: "... Nothing contained in this article shall apply to sales by executors, administrators, receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or by any one acting under judicial process."

Subsection (3) may or may not constitute a change in West Virginia law. Such a transfer has not been before the Supreme Court of Appeals of West Virginia. It would at least clarify the law in regard to transfers in settlement or realization of a lien or security interest.

Subsections (6) and (7) would make substantial changes in the West Virginia Bulk Sales Law. Subsection (6) would remove many

7 See United States v. Lankford, 3 F.2d 52 (E.D. Va. 1924); Annot., 57 A.L.R. 1049 (1928).
8 See Annot., 57 A.L.R. 1049 (1928).
of the objections to the bulk sales law since purchasers of businesses would not have to go through the "red tape" required by such laws if they would comply with the provisions of this subsection. Subsection (7) also dispenses with "red tape" while preserving the rights of creditors to the same or even a greater extent than they would be protected if the bulk sales law were applicable and its provisions followed.

Subsection (8) would also be a departure from the present West Virginia Bulk Sales Law, but it would probably be applicable in very few instances, and it is hard to see how the rights of creditors could be materially affected by its application.

Section 6-104. Schedule of Property, List of Creditors.

(1) Except as provided with respect to auction sales (Section 6-108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in (a public office to be here identified).

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not
rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

The list of creditors required by Subsections (1)(a) and (2) and the list required by the West Virginia Bulk Sales Law are substantially the same. Both require lists sworn to by the transferor giving the names and addresses of the creditors of the transferor, along with the amounts owed each of them. The Uniform Commercial Code permits an agent to sign and swear to the list, but the West Virginia law would permit this in some cases, particularly in cases involving corporations.

The West Virginia law requires that the seller certify under oath that the list is a full, accurate and complete list of his creditors.\(^9\) That law also allows the seller to certify under oath that he has no creditors, but it is presumed that this could be done in proper cases under the Uniform Commercial Code.

Subsection (1)(b). Compliance with this subsection would be easier than compliance with the West Virginia law in this regard. The West Virginia law requires "a full detailed inventory, showing the quantity, and, so far as possible with the exercise of reasonable diligence, the cost price to the seller, of each article to be included in the sale and the price to be paid therefor."\(^10\)

Subsection (1)(c). This subsection is substantially the same as section 4 of the present Bulk Sales Law which requires that the seller and purchaser shall each preserve the inventory list and affidavit, required by section 1 of the present law, open to inspection of creditors of the seller for the period of six months after the transfer. Thus, the West Virginia law requires more than does the Uniform Commercial Code in this regard. The filing provisions of this subsection would be new to West Virginia law.

Subsection (3). This subsection would change the law in West Virginia. The West Virginia law provides that if the inventory or list of creditors shall be incomplete or false in any respect the transfer shall prima facie be presumed to be fraudulent and void as against the creditors of the seller, and the burden shall be on the purchaser to show that he acted in good faith and without knowledge of such incompleteness or falsity.\(^11\)

\(^10\) Ibid.
There is an exception in Section 6-104 in regard to auction sales which will be discussed in the discussion of Section 6-108. There is no such exception in the West Virginia Bulk Sales Law.

Section 6-105. Notice to Creditors.

In addition to the requirements of the preceding section, any bulk transfer subject to this Article except one made by auction sale (Section 6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (Section 6-107).

This section would change the law in West Virginia to some extent. It requires that the transferee give notice of the transfer to the creditors of the transferor ten days prior to taking possession of the goods or paying for them. The West Virginia law requires that such notice be given at least fifteen days prior to the purchaser’s taking possession of the goods or paying for them.12 This section of the Uniform Commercial Code makes the transfer “ineffective” as against creditors of the transferor if such notice is not given. The West Virginia law provides that the transfer is “fraudulent and void” as against creditors of the seller in such case.13

There is an exception in this section in regard to transfers by auction sale. No such exception is made in the West Virginia law.

Section 6-106. Application of the Proceeds.

In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subsection to this Article for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (Section 6-104) or filed in writing in the place stated in the notice (Section 6-107) within thirty days after the mailing of

13 Ibid.
such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

There is a division of opinion among the members of the Editorial Board of the Uniform Commercial Code as to whether this section should be included in Article 6 of the Code. They suggest that this is a point on which state enactments may differ without serious damage to uniformity. Pennsylvania, in adopting the Uniform Commercial Code, included this section, and the bulk sales law which was repealed when the Uniform Commercial Code was adopted in that state required that the transferee paid or saw to it that the listed creditors were paid. If this section is omitted the following parts of sections, hereinafter bracketed where quoted, should also be omitted: Subsections 6-107(2)(e); 6-108(3)(c) and 6-109(2).

If this section should be enacted in West Virginia, it would change the bulk sales law in respect to the payment of the consideration for the transfer. Under the present West Virginia law the purchaser need only see that the required inventory is made; the certified list of creditors with the amounts owed each, or certification by the seller that he has no creditors, is furnished by the seller; and that the required notice is sent to the creditors on the list. The purchaser is then protected from the claims of the creditors of the seller if he has no knowledge of any incompleteness or falsity in the above mentioned inventory, list of creditors or debts or certification that the seller has no debts, or notice to creditors.

The purpose of the section under discussion is to give the creditors of the transferor direct protection against improper dissipation by the transferor of the consideration which he receives for the transfer.

Section 6-107. The Notice.

(1) The notice to creditors (Section 6-105) shall state:
   (a) that a bulk transfer is about to be made; and
   (b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and
   (c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:
   (a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;
   (b) the address where the schedule of property and list of creditors (Section 6-104) may be inspected;
   (c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;
   "(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; [and]
   ["(e) if for new consideration the time and place where creditors of the transferor are to file their claims.]

“(3) The notice in any case shall be delivered personally or sent by registered mail to all the persons shown on the list of creditors furnished by the transferor (Section 6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.”

Subsection (1)(a). This subsection would not change the existing West Virginia law.16

16 W. Va. Code ch. 40, art. 2, § 1 (Michie 1961) provides that the purchaser must notify every creditor whose name is on the list of creditors about the proposed sale.
Subsection (1)(b). This subsection would be new to West Virginia law, although it is presumed that most of the notices sent to creditors pursuant to the West Virginia Bulk Sales Law would include the names and business addresses of the seller and purchasers even though the law does not require them to be included. But they probably would not include former business names and addresses of the sellers.

Subsection (1)(c). The requirements of this subsection would also be new to West Virginia law.

Subsection (2)(a),(b),(c),(d),(e). These subsections would all be new to West Virginia law. Note that Subsection (2)(e) would be omitted if Section 6-106 is omitted.

Subsection (3). This subsection would not change the existing West Virginia law since that law provides that the purchaser should notify personally or by registered mail every creditor whose name is on the list furnished by the seller, or of which he has knowledge, of the proposed sale.\(^\text{16}\)

Note that if the sale is by auction Section 6-108 applies.

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Section 6-108. Auction Sales; “Auctioneer”.

(1) A bulk transfer is subject to this Article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (Section 6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the “auctioneer”. The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this Article (Section 6-104);

\(^{17}\) In West Virginia the notice to the creditors of the seller need only contain a notification of the proposed sale, a statement of the aggregate value of the goods proposed to be sold, and the price, terms and conditions of the sale, W. VA. Code ch. 40, art. 2, § 1 (Michie 1961).

(b) give notice of the auction personally or by registered mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; [and]

[(c) assure that the net proceeds of the auction are applied as provided in this Article (Section 6-106).]

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sum owning to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several."

This section would change the bulk sales law in West Virginia materially.

Under the West Virginia law the sale in bulk of any part, or the whole, of a stock of goods in otherwise than the ordinary course of trade or prosecution of the business of the seller is subject to the bulk sales law.19 There has been no case determining whether an auction sale is subject to that law. Such sales would not ordinarily be in the regular course of the seller's business. However, in most cases the sales would be of single items, not bulk sales. The provisions of the West Virginia Bulk Sales Law in their literal form could not be applied to auction sales because neither the purchaser nor the sale price is known until the sale is made.

If auction sales are within the West Virginia Bulk Sales Law, this section would change the law in West Virginia as to the person who is to give the notice, as to when the notice is to be given, as to the list of creditors and schedule of property, and as to the person or persons liable to the creditors of the seller.

If auction sales are not within the West Virginia Bulk Sales Law, this section would change the law by making them subject to the provisions of the section.

Subsection (2)(c) is to be omitted if Section 6-106 is omitted. That subsection, if included, would also change the law in West

Virginia since the proceeds of the sale would have to be applied toward paying the creditors of the seller.

Section 6-109. What Creditors Protected; [Credit for Payment to Particular Creditors].

(1) The creditors of the transferor mentioned in this Article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (Sections 6-105 and 6-107) are not entitled to notice.

[(2) Against the aggregate obligation imposed by the provisions of this Article concerning the application of the proceeds (Section 6-106 and subsection (3)(c) of 6-108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sum believed in good faith at the time of the payment to be properly payable to such creditors.]

Subsection (1). This subsection probably would not change the Bulk Sales Law in West Virginia, but would clarify it.

The purchaser in West Virginia is protected if he gives the required notice to the creditors on the list given him by the seller, or of which he has knowledge,20 at least fifteen days before taking possession of the goods or paying for them. Thus, a creditor of the seller who becomes such after such notice is given apparently would not be entitled to notice in West Virginia unless the purchaser has knowledge of such creditor.21

20 The word creditors is generally construed to include general creditors of the seller as well as those who are creditors because they sold goods to the seller. Annot., 84 A.L.R. 1406, 1407 (1933).

21 Most of the decisions on this subject concern the situation where a creditor who became such after the transfer sought to avoid the conveyance under the bulk sales law. The statutes have been held to apply only to creditors existing at the time of the transfer and not to those whose claims arose subsequent to that time. Annot., 84 A.L.R. 1406, 1410 (1933). However, in Albano v. Motor Center, 75 Idaho 348, 271 P.2d 444 (1954), the court held that the purchaser is bound to hold any part of the purchase price still under his control in trust for all the creditors of which he obtains notice or knowledge before the purchase price is paid even though some are omitted from the verified list. The court admitted that some jurisdictions hold that omitted creditors of the seller have no remedy against the purchaser if he learned of their claims before disbursing the purchase price.

In Trimble v. Corrington Grocery Co., 112 Va. 826, 831, 72 S.E. 724, 727 (1911), the court, in construing a statute similar to W. Va. Code ch. 40, art. 2, § 1 (Michie 1955), used language which might be construed as intimating that the term creditors, as used in the statute, meant those who were creditors at the time of the sale. However, that statement was not necessary to the decision since the status of the one claiming to be a creditor had not changed up to the time of the sale. There was no notice given in that case and the court said that none was necessary since the plaintiff was not a creditor at the time of the sale.
A case can be imagined, however, where the West Virginia statute may be more favorable to the purchaser than would this subsection. Suppose the seller should furnish the purchaser with a complete list of his creditors and the purchaser did not mail the notice until three days thereafter, but did mail it at least fifteen days before he purchased or took possession of the merchandise. If, in the interim between the giving of the list to the purchaser and the purchaser's mailing of the notice, the seller acquired new creditors unknown to the purchaser, it would seem that the purchaser would be protected under the West Virginia law, but not under this subsection.

Subsection (2). This subsection is to be omitted if Section 6-106 is omitted. This subsection, if included, would change the law in West Virginia since the subsection concerns the obligation of the purchaser or auctioneer to pay to the creditors of the transferor their claims or their pro rata share thereof. There is no such requirement in the existing West Virginia Bulk Sales Law.

Section 6-110. Subsequent Transfers.

"When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this Article, then:

"(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

"(2) a purchaser for value in good faith and without such notice takes free of such defect."

This section would apparently make a substantial change in the West Virginia Bulk Sales Law.

While there is no provision similar to this in the West Virginia law, nor are there any court decisions in West Virginia on this subject, it is doubtful if a purchaser of such property from the transferee who has not complied with the bulk sales law, which purchaser
takes with notice or pays no value, would prevail over the creditors of the seller.\textsuperscript{22}

However, the West Virginia statute provides that the goods in the hands of the purchasers, or any part thereof, if found in his hands, shall be liable to the creditors of the seller.\textsuperscript{23} Since the rest of the statute makes the purchaser personally liable if he disposes of the goods, there is room for the argument that any purchaser from such purchaser would take free of such defect.

It would appear that a purchaser for value without notice of such defect in the ordinary course of trade from a transferee who has not complied with the bulk sales law, or one who complies with the bulk sales law if the purchase from such transferee is not in the ordinary course of trade, would take free of such defect. Such results would be in conformity with the general law of fraudulent conveyances in West Virginia.\textsuperscript{24}

The West Virginia Bulk Sales Law provides that in the event that the goods, or any part thereof, shall be withdrawn or disposed of by the purchaser in bulk who does not comply with the bulk sales law then such purchaser himself shall also be liable to the creditors of the seller to the extent of the value of the goods received and withdrawn or disposed of by him.\textsuperscript{25}

Thus, the purchaser who does not comply with the provisions of the bulk sales law in West Virginia remains liable for the statutory period. Whether this would be true under the Uniform Commercial Code would apparently depend upon whether the particular state adopted Section 6-106 when it adopts the Uniform Commercial Law.

\textsuperscript{22}The statutes do not ordinarily confer on the creditors of the seller in bulk who does not comply with the bulk sales law the right to pursue the goods no matter into whose hands they may fall. Since the creditor has no lien on the goods by virtue of the bulk sales law, but only an inchoate right to have the goods subjected to the payment of his debt, the rule of caveat emptor does not apply. He must, therefore, show that the holder or convertor of the goods is the fraudulent purchaser from the seller or some person who took the goods from such purchaser with knowledge of the fraudulent transfer. Kasper v. Spokane Merchants Ass'n, 87 Wash. 447, 151 Pac. 800 (1915); 37 C.J.S., Fraudulent Conveyances \S 486 (1943).

\textsuperscript{23}W. Va. Code ch. 40, art. 2, \S 3 (Michie 1961).

\textsuperscript{24}W. Va. Code ch. 40, art. 1, \S 1 (Michie 1961), which provides that transfers with the intent to delay, hinder or defraud creditors are void as to the creditors of the transferor also provides as follows: "This section shall not affect the title of a purchaser for valuable consideration, unless it appears that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor."

\textsuperscript{25}W. Va. Code ch. 40, art. 2, \S 3 (Michie 1961).
Code. If that section should be adopted the purchaser would apparently remain liable after he disposes of the goods. If that section should be omitted there seems to be no provision for holding the transferee who does not comply with the provisions of the bulk sales law liable after he disposes of the goods. If the purchaser from such transferee pays value and has no notice of the non-compliance with the bulk sales law, the creditors of the original transferor apparently have no remedy against such purchaser, nor can such creditors reach the goods.

Of course the second transfer may itself be a transfer subject to the bulk sale article of the Uniform Commercial Code. But would it not be ineffective only as to creditors of the original transferee, now transferor? Under the West Virginia law the creditors of the original seller become creditors of the purchaser who himself transfers the goods.

Section 6-111. Limitation of Actions and Levies.

No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.

This section would apparently change the law in West Virginia. At least it would clarify the law in regard to the statute of limitations on creditors' claims under the Bulk Sales Law in West Virginia.

The West Virginia statute in this regard provides in part as follows:

"After the expiration of such six months period, [six months after such sale and purchase] no suit or action shall be brought to have declared void, or the effect of such will be to have adjudicated void, any such sale or purchase as is mentioned in this article." 26

It would seem that it would be unnecessary for a creditor to have such a sale or purchase declared void if there had been no compliance with the provisions of the Bulk Sales Law. That law specifically states that such sale is fraudulent and void. In *Foley v.*

Ruley, the Supreme Court of Appeals of West Virginia held that a judgment acquired against a debtor who had previously made a fraudulent conveyance of land was a lien on the land so conveyed. The court, in speaking of another West Virginia fraudulent conveyance statute, stated:

"[N]o good reason appears why such conveyances . . . should not be treated as void as the statute says it [sic] is, nor why the statute making every judgment a lien upon the real estate of the debtor should not be held to give such a lien in the case of a judgment subsequent to the execution of a fraudulent conveyance."

If the sales in bulk without compliance with the Bulk Sales Law are void as to the creditors of the seller as the statute says they are, a six months statute of limitations on suits or actions to have such sales declared or adjudicated void would not seem to bar other proceedings in aid of judgments such as levy, attachment, garnishment or suggestion on judgment. The last named remedy is available to the creditors where the Bulk Sales Law has been evaded even though the purchaser has disposed of the purchased goods. In Marlow v. Ringer, the Supreme Court of Appeals of West Virginia held that a sale in bulk made without compliance with the Bulk Sales Law was void in toto, not merely voidable, and was without legal effect as against the creditors of the seller. In that case the creditor of the seller was secured by a trust deed, duly recorded, which conveyed the merchandise and fixtures to the creditor to secure the payment of a sum of money. At the time of the transfer the creditor also held two unsecured notes executed by the seller. After the transfer the creditor reduced his notes to a judgment against the seller and he levied on the transferred goods. The court held that the goods were subject to sale to satisfy the liens created by the trust deed and the levy. From the statement of facts in the case it appears that the levy was made in 1915 and the transfer had been made in 1913.

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27 50 W. Va. 158, 40 S.E. 382 (1901).
29 50 W. Va. 169, 40 S.E. 386 (1901).
30 Emmons-Hawkins Hardware Co. v. Sizemore, 106 W. Va. 259, 145 S.E. 438 (1928). It has been held under many bulk sales statutes that where goods are sold in violation thereof the goods may be levied on by creditors of the seller as if no sale had been made; or that attachment is a proper remedy; or that the goods may be reached by garnishment proceedings. 37 C.J.S., Fraudulent Conveyances §§ 439, 460, 491 (1943).
31 79 W. Va. 558, 91 S. E. 386 (1917).
The West Virginia Bulk Sales Law, section 3,\textsuperscript{32} provides that the goods, wares and merchandise and/or fixtures, or any part thereof, in the hands of a purchaser who has not complied with the bulk sales law shall be liable to the creditors of the seller. It does not provide that any suit or action is necessary to make them so liable. The same section provides that if such purchaser has disposed of the same, or any part thereof, he shall be liable to the creditors of the seller in any action at law to the extent of the value of the goods, etc. It would seem that such liability could be enforced without regard to the six months limitation on suits or actions to have sales in violation of the Bulk Sales Law set aside.

A West Virginia statute provides that transfers not upon consideration deemed valuable in law shall be void as to existing creditors.\textsuperscript{33} A subsequent statute provides that no such transfer shall be avoided unless suit for that purpose be brought within five years, or the subject thereof, or some part of it, be distrained or levied upon by or at the suit of a creditor as to whom the transfer is void.\textsuperscript{34} The Legislature, in enacting this statute seemed to think that it was necessary to impose a limitation on the time that a levy could be made as well as the time in which the transfer could be avoided.

Virginia, in its bulk sales law, has provisions almost identical to section 4 of the West Virginia statute, above quoted in part.\textsuperscript{35} However, the General Assembly of Virginia evidently thought it necessary to enact another statute which provides that any such sale, entered into in good faith and for value, shall be deemed valid after twelve months from the sale if no suit or action has been brought to have such sale declared void.\textsuperscript{36}

This section of the Uniform Commercial Code would seem to indicate that the creditors of the seller would have no remedy whatsoever after six months if the transfer had not been concealed.\textsuperscript{37} A comment by the Editorial Board of the Uniform Commercial Code Commission states that "levy" should be read broadly as including not only levies of execution proper, but also attachment, garnishment,

\textsuperscript{32} W. VA. Code ch. 40, art. 2, § 3 (Michie 1961).
\textsuperscript{33} W. VA. Code ch. 40, art. 1, § 3 (Michie 1961).
\textsuperscript{34} W. VA. Code ch. 40, art. 1, § 4 (Michie 1961).
\textsuperscript{35} VA. Code §§ 55-84, 55-85 (Michie 1959).
\textsuperscript{36} VA. Code § 55-86 (Michie 1959).
\textsuperscript{37} An attachment proceeding was dismissed when it was instituted more than six months after a bulk sale in which the required notice was not given. Trau & Loewner, Inc., 6 D. & C.2d 164 (Pa. 1957).
trustee process, receivership or whatever proceeding under the state's practice is used to apply a debtor's property to the payment of his debts. 38

Section 6-111 of the Uniform Commercial Code, as adopted in Pennsylvania in 1953, read as follows:

"No action under this article shall be brought more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed action may be brought within six months after its discovery." 39

That section was amended in Pennsylvania in 1959 40 so as to read the same as does the present Section 6-111 of the Uniform Commercial code.

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38 Uniform Commercial Code § 6-111, Comment 2.