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Bulk Sales Act--Fraudulent Conveyances

Anne Sarah Silfkin

West Virginia University College of Law

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number of side issues, it would seem that a great deal should be left to the discretion of the trial court. "When the turbulent character of the deceased in a prosecution for homicide is relevant, there is no substantial reason against evidencing the character by particular instances of violent or quarrelsome conduct. Such instances may be very significant; their number can be controlled by the trial court's discretion; and the prohibitory considerations applicable to an accused's character, have here little or no force." 1 WIGMORE, EVIDENCE, (2nd ed. 1924) §198.

Upon the facts, the holding of the court in the principal case would seem correct. The accused had been allowed to testify as to the specific act of violence. The fact that the officer was not allowed to testify as to the same specific fact should not be held reversible error.

—BYRON B. RANDOLPH.

BULK SALES ACT—FRAUDULENT CONVEYANCES.—A sold his stock of merchandise to defendant in violation of the Bulk Sales Act. Defendant paid \$3,417.90 of the entire purchase price of \$3,420.18 to certain creditors of A, and the remainder of \$2.28 to A. The merchandise has been disposed of. At the time of the sale A owed plaintiff \$369.18 which is still unpaid. Plaintiff recovered judgment against A, had an execution issued thereon, and garnished the defendant by suggestion under CODE, chapter 141, section 10. The lower court found for the defendant-suggestee, and the supreme court reversed the decision. *Emmons-Hawkins Company v. Sizemore*, 145 S. E. 438 (W. Va. 1929).

Our statute, chapter 141, section 10, provides: "On a suggestion by the judgment creditor, that by reason of the lien of his writ of *feri facias*, there is a liability on any person other than the judgment debtor"; that that person can be reached only when he owes a debt to or has in his hands personal estate of the judgment debtor, for which debt or personal estate an action at law would lie. *Swann v. Summers, et al*, 19 W. Va. 115. Our Bulk Sales Act, chapter 74, section 32, provides that the sale in bulk, of any part, or the whole, of a stock of goods, wares, merchandise and fixtures, pertaining to the conducting of said business, otherwise than in the ordinary course of trade and in the regular prosecution of the business of the seller, shall be fraudulent and void as against the creditors of the seller, unless the

seller and purchaser, shall comply with the provisions thereof. The same section provides that in event of non-compliance, the purchaser himself shall be personally liable to said creditors of such seller, in an action at law, to the extent of the value of the goods, wares, merchandise and fixtures so received by him. In the principal case there was no compliance with the statute, and the plaintiff therefore has a personal right against the purchaser. The case presents two questions. First, does the creation of a specific statutory remedy exclude other possible remedies? And, second, if it does not, does plaintiff have a right to garnishee the purchaser under the holding of *Swann v. Summers*, *supra*, though the garnishee has discharged his liability to the judgment debtor?

Our court held as to the first, that the remedy is not exclusive. The maxim "*expressio unius est exclusio alterius*" was necessarily qualified to fit the supposed legislative intent to adequately protect creditors not only by the expressed personal right, but by the more indirect method of suggestion.

As to the second, the court held that where the conveyance is fraudulent, the purchaser is liable in garnishment or suggestion to the creditors of the judgment debtor though he has discharged himself to the judgment debtor. That the sale is fraudulent was decided in *Marlow v. Ringer*, 79 W. Va. 568, 91 S. E. 386. There is a conflict of authority as to whether the fraudulent purchaser is liable to creditors of the judgment debtor, though he is not liable to the judgment debtor himself. Our court in holding as it did followed the decided weight of authority which gives creditors of the judgment debtor a right to garnishee the fraudulent purchaser irrespective of the latter's liability to the former, thus making an exception to the general rule that a suggestee must be liable to the judgment debtor in order to be subject to garnishment by a creditor. 27 C. J. sec. 549; *Jacques v. Carstarphen Warehouse Company*, 131 Ga. 1, 62 S. E. 82; *Harmon v. Osgood*, 151 Mass. 501, 54 N. E. 401. The jurisdictions which do not recognize this exception adhere to the general rule that a creditor has no greater right against the garnishee or suggestee than the judgment debtor. *Himstedt v. German Bank*, 46 Ark. 547; *Perea v. Colorado National Bank*, 6 N. Mex. 1, 27 Pac. 322, 39 L. R. A. (N. S.) 374; *Schmucker v. Lauler*, 38 Pa. Super. Ct. 578; *McGreenery v. Murphy*, 76 N. H. 338, 82 Atl. 72.

This case is the first in West Virginia presenting the question of the purchaser's liability in garnishment to creditors of the judgment debtor when the purchaser has discharged his own liability to the judgment debtor. Our court has taken its stand

with the weight of authority, and further held that the purchaser is a trustee for all of the creditors of the seller, and cannot discharge his liability by paying some of the creditors in preference to others but that all creditors are entitled to their pro rata share.

—ANNE SARAH SILFKIN.

