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FLORIDA BULK SALES LAW

DONALD A. WIESNER*

INTRODUCTION

At common law the relationship of the unsecured creditor to his debtor was a personal one and did not extend to the debtor's property until the creditor reached out for payment.¹ Though this was a keystone principle, it suffered misuse in commercial matters through two common forms of business fraud. (1) The rule did not prevent a merchant's sale of his stock in trade to a friend for less than full value; or (2) he could sell for value and flee with the proceeds. A creditor's relief from the first practice could be obtained through the Statute of Elizabeth and later the Uniform Fraudulent Conveyance acts.² However, the second type of activity forced a different solution; since a stock of goods or merchandise sold by a business man passed good title, free and clear of any claims of his creditors. The sale to a good faith purchaser for value placed the goods beyond the creditors' reach.³

In 1894, Louisiana enacted a penal statute designed to discourage the practice of the merchant selling his stock of goods and fleeing with the proceeds of the sale to the detriment of his supplier creditors.⁴ Civil provisions were added in 1896 predicated on the equitable theory that a business man whose principal asset is his stock in trade, e.g. inventory of goods, is generally extended credit in reliance on the existence of that personalty. Therefore, if he intends to dispose of those assets his creditors should be notified prior to the transfer, thus assuring them of an opportunity to collect their accounts by claiming the proceeds of the sale or by proceeding against the goods.⁵ This statute, called a bulk sales act, begot immediate and prolific issue—similar enactments becoming the law in all the jurisdictions of the United States and certain foreign jurisdictions.

The purpose of this article is twofold: (1) to describe the Florida Bulk Sales Act and its judicial interpretation, and (2) to place such a report against the broad outlines of bulk sales laws generally and the bulk transfer provisions of the Uniform Commercial Code, Article 6.

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1. Bayitch, *Transfer of Business, A Study in Comparative Law*, 6 AM. J. COMP. L. 284 (1957); Larson, *Bulk Sales: Texas Law and the Uniform Commercial Code*, 6 S. W. L. J. 417 (1952).

2. Florida has not adopted the Uniform Fraudulent Conveyance Act; Miller, *The Effect of the Bulk Sales Article on Existing Commercial Practices*, 16 LAW & CONTEMP. PROB. 267 (1951).

3. Miller, *Bulk Sales Law: Businesses Included*, 1954 WASH. U. L. Q. 1, 132, 283.

4. Pyburn, *Types of Claims Enforceable Under the Louisiana Bulk Sales Act*, 10 TUL. L. REV. 131 (1935).

5. So well expressed in Broeker, *Articles 2 and 6: Sales and Bulk Transfers*, 15 U. PITT. L. REV. 541 (1954).

BULK SALES LAWS GENERALLY

The aim of these acts, which originated at the instance of the National Association of Credit Men,⁶ was clearly to prevent loss to the creditor.⁷ In attempting to solve the problem and discourage the practice of sales before notification, the states quickly followed the lead of Louisiana. Some have since amended their statutes while others still operate under their original acts created in the first decade of this century.⁸

Since the legislative purpose was singular, the sponsor clearly identified, and the statutory realization accomplished within a remarkably short period of time, it is not unusual to discover the comparative contents of the laws and their approach to be similar. Nevertheless, they bred an almost chaotic mass of decisions⁹ as the specific legislative expression is varied, and a few, if any, of the acts are truly identical.¹⁰ As such, this variation destroys the verity of an extended generalization since the cultivation of these statutes produced a multiple array of specific case law not freely transferable to other jurisdictions.¹¹

The statutes adopted a common approach. They were to operate only upon certain commercial transactions involving particular personalty. Notice of these pending transactions and of certain other facts gathered by the purchaser from the vendor were to be given to the creditors of the vendor. These facts, obtained by sworn affidavit of the vendor, included such items as inventory cost price, a statement of the vendor's financial condition and the terms and conditions of the transaction. Notice was communicated to the creditors personally or by registered mail five or ten days before the sale or transfer and payment of the purchase price. In certain jurisdictions notice was communicated constructively by publication and recording.¹²

All statutes prescribe the effect of disobedience to their mandates. Failure to comply labels the sale or transfer void, fraudulent and void, presumed fraudulent or conclusively presumed fraudulent. Such effects, of course, operate only between the creditors of the vendor and the purchaser

6. Billig and Branch, *The Problem of Transfers under Bulk Sales Laws, A Study of Absolute Transfers and Liquidated Trusts*, 35 MICH. L. REV. 732 (1937).

7. *Ibid.*

8. Florida, for example, operates under its original act. Massachusetts did likewise until its recent enactment of the Uniform Commercial Code.

9. Billig, *Article 6 — Order Out of Chaos: A Bulk Transfers Article Emerges*, WIS. L. REV. 312 (1952).

10. Harris, *The Bulk Sale as a Vehicle Effecting Out-Of-Court Settlement With Creditor*, 55 COM. L. J. 317 (1950).

11. Miller, note 3 *supra*.

12. Four states require recordation and public notice, thus placing the element of notice independent of the vendor. Ring, *Bulk Sales Problems in California*, 42 CALIF. L. REV. 579 (1954).

or transferee, title passing as to all others.¹³ Some acts provide a period of limitations within which the creditor must avail himself of its provisions.¹⁴

The general classification was roughly divided into four groups: the New York, Pennsylvania, Connecticut and Wyoming.¹⁵ Of the four, the first two are representative of the majority of statutes. Into such a division must be added the Uniform Commercial Code's Article 6 on bulk transfers, as two states have adopted its provisions within the last few years.

The New York form,¹⁶ the most popular, provides that the sale or transfer in bulk or whole out of the ordinary course of business of merchandise and fixtures shall be void unless the vendor supplies the purchaser with a sworn statement of inventory and cost price, the names and addresses of the creditors and the amounts owed to each of them. Armed with such information the purchaser is required to notify these creditors in person or by registered mail at least ten days before taking possession or paying the purchase price; otherwise the purchaser becomes a receiver and is held accountable to the creditors for the merchandise and the fixtures. Certain sales and transfers, as those by executors, trustees in bankruptcy, or under judicial process were, of course, exempted from the operation of the act.

The old Pennsylvania form was more comprehensive, and included not only the foregoing provisions but added terms concerning waivers and suggested forms of certificates. More important was the requirement that directed the purchaser to apply the proceeds to the reduction of the debts or to pay them into court.¹⁷

Cases interpreting these acts followed with alacrity. The problems included not only the obvious, i.e., what is a sale out of the usual and ordinary course of business, but the more subtle questions, i.e., whether a mortgage is a sale within the act. One observation became obvious: each statute was required to balance itself on its own verbiage; the syntax, the choice of combination of elements and position of the prescriptions were in most cases to be given literal and exact effect. Many cases espoused the doctrine of strict construction of statutes in derogation of common law, but the variety of the statutory language made such a recitation superfluous.

Article 6, Bulk Transfers, of the Uniform Commercial Code is of course the latest complete consideration of bulk sales in the United States. The fifth draft was enacted into law in Pennsylvania¹⁸ in 1953 and recently

13. 24 AM. JUR., *Fraudulent Conveyances*, § 245 (1939).

14. The old Pennsylvania Act (1919, P. L. 262, Sec. 3) allowed 90 days. The UNIFORM COMMERCIAL CODE § 6-111 prescribes six months after date transferee took possession of the goods. Florida has no provision on this point.

15. Billig, *Bulk Sales Laws: A Study in Economic Adjustment*, 77 U. PA. L. REV. 72 (1928); Weintraub and Levin, *Bulk Sales Law and Adequate Protection of Creditors*, 65 HARV. L. REV. 418 (1952).

16. *Ibid.*

17. Miller, *How To Conduct a Bulk Sale*, 1 PRACTICAL LAWYER 78 (1955).

18. PA. STAT. ANN. tit. 12A § B6-101 - 111 (1956).

adopted in Massachusetts.¹⁹ This article enlarged the scope of applicable transfers to include, under certain conditions, equipment and manufacturers. It exempts those transactions in which a solvent party maintaining a known business fully assumes the debts of the transferor and gives public notice of that fact. Further reference will be made to Article 6 in the comparative treatment of the Florida Act.

THE FLORIDA ACT

The Florida Bulk Sales Law, enacted in 1907,²⁰ contained statutory language which in most particulars was identical to the Georgia act of 1903.²¹ Georgia cases, in certain instances, will be referred to in supplementing, clarifying, and comparing judicial interpretation.

Section 1²² of the Florida act established two duties: (1) every person who shall bargain for or purchase "any stock of goods, wares or merchandise in bulk" shall before payment of the price demand from his vendor a written statement under oath containing names and addresses of all the vendor's creditors together with the amount due or owing each creditor; (2) the legislature imposed upon this vendor the duty to furnish such a statement to the vendor's creditors.

The words "every person" under this section would seem to permit no exemption from the duties imposed by the act; and the court, relying upon the obvious interpretation, upheld the classification as not unreasonable and found that this language lent support to a decision upholding constitutionality of the act.²³ However, the Florida court, unlike the Georgia court, was not faced with this specific issue. Georgia held that a sale otherwise within the act but "by one partner of his interest in a mercantile business to his other partners is not within the letter of the act; and the courts will not by construction give the act such an extension as to include it."²⁴

If then the purchaser, buyer or transferee includes *all persons* under the Florida act, how do we identify the vendor? Generally, in most states, the term "vendor" is interpreted carefully.²⁵ No doubt such construction is applied to overcome constitutional objections even though the main intent of the statute is the prevention of fraud on the part of the retailer or wholesaler who sells at a fixed place of business.²⁶ Thus, the general language

19. MASS. ANN. LAWS c. 106 § 6 (1958).

20. LAWS OF FLA. c. 5679 (1907).

21. GA. CODE ANN. § 28-203 (1936).

22. NOW FLA. STAT. § 726.02 (1957); 15 FLA. JUR., *Fraudulent Conveyances* §§ 63, 64 (1957).

23. *Goldstein v. Maloney*, 62 Fla. 198, 57 So. 342 (1911).

24. *Taylor v. Folds*, 2 Ga. App. 483, 58 S. E. 683, 84 (1907); *Yancey v. Lamar-Rankin Drug Co.*, 140 Ga. 359, 78 S. E. 1078 (1913).

25. 24 AM. JUR., *Fraudulent Conveyances* § 23 (1939).

26. Pyburn, note 4 *supra*.

of the statutes, coupled with the intent to not appear to single out one economic group, produced case law at variance as to how the statutes operate beyond the retailer and wholesaler.²⁷ The vendor or enterprise finds a wide, yet precise, meaning in the Uniform Commercial Code. There, all whose principal business is the sale of merchandise from stock, including those who manufacture what they sell, are governed by its provisions.²⁸

The Florida rule too is precise, though perhaps not so broad. It appears to be the product of an afterthought by the legislature coupled with judicial response. Section 1 concludes with the statement "and it shall be the duty of such vendor to furnish such statement, whether he be a wholesale or a retail merchant."²⁹ This language was grasped by the court in *Atlas Rock Co. v. Miami Beach Builders Supply Co.*³⁰ which held the "last sentence of Section I of the act . . . appears to limit the law to wholesale and retail merchants." This does not appear to be an arbitrary or unreasonable classification for the statutory regulation.³¹

Creditors under most statutes include every creditor of a liquidated amount at the time of the sale. This appears to be one area in which little dispute exists today.³² While the protection of unsecured creditors was the paramount concern, courts show reluctance to exclude *any* creditor of the vendor.³³ Florida reports no decisions on this point, but Georgia has dealt with several aspects of the problem. There all creditors,³⁴ including those other than mercantile ones³⁵ who were in such a position at the time of the sale and not subsequently,³⁶ are within the act; further, a creditor is not barred from the protection of the act, even where he has a retain title contract on property not included in the bulk sale.³⁷

The Uniform Commercial Code affirms such principles and penalizes the party who becomes a creditor between the time of the notice of sale and the sale, but only to the extent that he is not entitled to notice.³⁸

27. Even farmers have been considered. Note, 35 COLUM. L. REV. 795 (1935); Billig and Smith, *Bulk Sales Laws: A Study in Statutory Interpretation*, 38 W. VA. L. REV. 308, 328 (1932).

28. UNIFORM COMMERCIAL CODE § 6-102.

29. The Georgia act omits such a directive, but instead, requires the vendor to supply a statement of his assets and liabilities and the cost price of the goods.

30. 89 Fla. 340, 103 So. 615 (1925).

31. *Id.* at 344, 103 So. at 617.

32. 24 AM. JUR., *Fraudulent Conveyances* § 251 (1939).

33. One having a claim under the Fair Labor Standards Act was held to be a creditor in *Adair v. Ferst*, 45 F. Supp. 824 (N. D. Ga. 1942).

34. *C. M. Miller Co. Inc. v. Lunceford*, 54 Ga. 21, 186 S. E. 766 (1936); *National Cash Register Co. v. Stubbs*, 29 Ga. App. 543, 116 S. E. 44 (1923).

35. *Anderson v. Merchants and Miners State Bank*, 161 Ga. 12, 129 S. E. 650 (1925).

36. *Dodd v. Raines*, 1 F. 2d 658 (N. D. Ga. 1924).

37. *National Cash Register Co. v. Stubbs*, 29 Ga. App. 543, 116 S. E. 44 (1923); *Garnishee's defense* that the creditor debtor had filed for bankruptcy pending the writ of attachment was of no avail in *McLean v. G. T. Duke Co.*, 95 Ga. App. 135, 97 S. E. 2d 537 (1957).

38. UNIFORM COMMERCIAL CODE § 6-109 (1).

Section 2³⁹ of the Florida act prescribes the duty of the purchaser to notify personally or by registered mail each of the creditors⁴⁰ at least five days before the completion of the purchase or payment therefore. The notification must inform the creditor: that such a sale is to transpire, its time, the price to be paid and other terms and conditions.

We note here the peculiar technique of the common law courts in examining this directive. Realistically, we are interested in effecting knowledge of the pending sale to the creditor so that he may act for his protection. Nevertheless, verbal notice⁴¹ or actual knowledge⁴² does not relieve the purchaser from specifically complying with the statute.⁴³ The literal operation of the statutes prevails also in the computation of time. Registered mail sent 5 days before the completion of the sale is compliance with the statute regardless of whether it is received by the creditor within such time.⁴⁴ Likewise the Uniform Commercial Code while prescribing 10 days is silent as to the computation of time.⁴⁵

While the Florida act did not follow the prescription of the Georgia statute requiring that the vendor list a statement of the assets and liabilities, it does direct that an inventory, sale price, and the terms and conditions of the sale be included.⁴⁶ A statement of the cash payments to be made and that the balance was to be in deferred payments was held in Georgia to be an ineffective description of the terms and conditions of the sale.⁴⁷ Further, placing the entire purchase price in escrow to pay the creditors will not constitute compliance with the act.⁴⁸

The Uniform Commercial Code enlarges the list of information to be supplied to the creditors. Some of the comprehensive matters included are the names and addresses used by the transferor within the last three years, whether debts are to be paid in full or as they fall due, the address to which the creditors should send their bills, the location and general description of the property to be transferred, and the address where the property may be inspected by the creditors.⁴⁹

39. FLA. STAT. § 726.03 (1957). By recent legislative enactment, certified mail satisfies the notice requirement. FLA. STAT. 1.01(13) (1957).

40. The omitted creditor generally has no rights against the bona fide purchaser who complies. Billig and Smith, note 27 *supra*.

41. C. M. Miller Co. Inc. v. Lunceford, 54 Ga. 21, 186 S. E. 766 (1936).

42. Mere knowledge by the creditor's attorney was not sufficient in National Cash Register Co. v. Stubbs, 29 Ga. App. 543, 116 S. E. 44 (1923); Mitchell v. Waller, 83 Ga. App. 7, 62 S. E. 2d 383 (1950).

43. While no Florida cases are reported directly on this point, the opinion in Burgoyne v. Cradwick Mather Co., 129 Fla. 850, 176 So. 772, 775 (1937), suggests that a finding by the chancellor that the spirit and intention of the act had not been violated and that knowledge of sale was present will not be disturbed by the appellate court.

44. Wyone Shoe Co. v. Daniels & Co., 136 Ga. 192, 71 S. E. 1 (1911).

45. UNIFORM COMMERCIAL CODE § 6-105.

46. FLA. STAT. § 726.03 (1957).

47. Wyone Shoe Co. v. Daniels & Co., 136 Ga. 192, 71 S. E. 1 (1911).

48. Mitchell v. Waller, 83 Ga. App. 7, 63 S. E. 2d 383 (1950).

49. UNIFORM COMMERCIAL CODE § 6-107.

Section 5⁵⁰ of the Florida act prescribes the type of transaction which is the subject of the Bulk Sales Law as "any sale or transfer of a stock of goods, wares or merchandise out of the usual or ordinary course of business or trade of the vendor, or whereby substantially the entire business or trade" is sold or conveyed. Therefore not only sales but any transfer of the applicable personalty is literally within its operation.⁵¹ Generally, mortgages⁵² or bills of sale as a security device to a creditor have not been held to be a prohibited transaction, but a sale to such creditor in total or partial extinguishment of the debt is within the applicable transactions.⁵³ The Uniform Commercial Code specially excludes security transactions.⁵⁴

It is in the area of identification of the particular personalty,⁵⁵ the quantity necessary to label it outside the usual and ordinary course of business, and the determination of what percentage of goods is substantially the entire trade or business in which the decisions are legion. The Uniform Commercial Code labels these matters as "any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the supplies materials, supplies, merchandise or other inventory of an enterprise" as being subject to its provisions.⁵⁶

Florida, however, reports that a towboat, rockcrushers and piles of rock used by one engaged in construction work do not constitute a stock of goods, wares or merchandise.⁵⁷ Georgia has interpreted the identical language of the statute to include fixtures⁵⁸ with the exception of restaurant⁵⁹ and shoe repair⁶⁰ equipment, while other states have specific provisions including

50. FLA. STAT. § 726.05 (1957).

51. One test is "was the sale or transfer made to a general class of buyers to whom the business customarily catered." Billig and Branch, *The Problems of Transfers Under Bulk Sales Laws: A Study of Absolute Transfers and Liquidating Trusts*, 35 MICH. L. REV. 732 (1937).

52. 24 AM. JUR., *Fraudulent Conveyances* § 253 (1939).

53. *Mackler v. Lahman*, 196 Ga. 535, 27 S. E. 2d 35 (1943); *Bank of LaGrange v. Rutland*, 27 Ga. 442, 108 S. E. 821 (1921); *Sampson v. Brandon Grocery Co.*, 127 Ga. 454, 56 S. E. 488 (1907).

54. UNIFORM COMMERCIAL CODE § 6-103 (1).

55. Goodwill, franchises, a list of customers, accounts receivable, prepaid insurance, unexpired vehicle license, sales contracts, notes and trade names are generally outside the scope unless specifically included in the act. Miller, *Bulk Sales Law: Businesses Included*, 1945 WASH. U. L. Q. 1, 132, 283 at 167. A remarkable instance of specific comprehensive inclusion is found in the provisions of Bulk Sales Act, 1955, of Newfoundland, as amended, in 1957, in which Section 2 (1) provides that "stock" means "a stock of goods, wares or merchandise, or chattels ordinarily the subject of trade and commerce; or the goods, wares, merchandise or chattels, in which a person trades, or that he produces, or that are the output of business; and includes leases; accounts receivable; choses in action; franchises; patents; goodwill; trade fixtures; and other assets; appertaining to, or with which a person carries on a business."

56. UNIFORM COMMERCIAL CODE § 6-102 (1) (2).

57. *Atlas Rock Co. v. Miami Beach Builders Supply Co.*, 89 Fla. 340, 103 So. 615 (1925).

58. Safes, desks, cash registers, cigar cases, pool tables, refrigerators and such used in business to which appropriate, and included in the sale with the goods come within the act. *W. B. Parham and Co. v. Potts-Thompson Liquor Co.*, 127 Ga. 303, 56 S. E. 460 (1907).

59. *Walters v. Hagan*, 53 Ga. 547, 186 S. E. 563 (1936).

60. *Harris v. Kilgore*, 56 Ga. 516, 193 S. E. 179 (1937).

fixtures to be within provisions of the act. The Uniform Commercial Code also has provisions which embrace a sale of equipment if it is made in connection with a transfer of the inventory.⁶¹

The determination of whether a sale or transfer falls within the statute in that it occurs out of the usual or ordinary course of business is a factual question not subject to a fixed quantitative test in Florida.⁶² In *Goldstein v. Mahoney*,⁶³ a retailer was indebted in excess of assets and sold to his son-in-law 448 pairs of shoes for \$424, or 10% in excess of the invoice price. This transfer was by no means the entire stock. The trial court found such a transfer to be out of the usual and ordinary course of business, and the supreme court refused to disturb the finding of fact.⁶⁴

It appears then that "substantially" can be less than half, the Florida court ruling that the finder of fact determines the element of quantity. Other states have followed a like course, with this position also finding expression in the Uniform Commercial Code where the word "substantially" is replaced by the words "major part."

The Florida act states that the effect of a sale or transfer which fails to comply with the notice provisions "shall, as to any and all creditors of the vendor, be presumed to be fraudulent."⁶⁵ This provision, of course, is the key one. It is in this area that we can test the profit of establishing facts of noncompliance with the act. What has the creditor gained if he can bring his facts within the purview of the Bulk Sale Law? If such a sale or transfer is void, the onus of proving that elusive fact, fraud, has been lifted.

Such a decisive victory was not realized even in those states where proof of failure to comply renders the transfer void.⁶⁶ Courts interpreted this to mean voidable. Florida statutory language is, of course, not strong, even failing to follow the Georgia statutes which prescribed that the sale was to be conclusively presumed fraudulent,⁶⁷ while the Uniform Commercial Code chose not to attach a specific label, merely designating the sale as ineffective.

The Florida Supreme Court further weakened the "effect" provision by holding that the failure to comply merely creates a prima facie presumption of a fraudulent transaction.⁶⁸ Doubtless, this is an aid to the creditor, but its

61. UNIFORM COMMERCIAL CODE § 6-102 (2).

62. *Goldstein v. Mahoney*, 62 Fla. 198, 57 So. 342 (1911).

63. *Ibid.*

64. A finding of fact bears great weight, e.g., sales of off-season goods where it is not uncommon for small retail stores to make large bulk sales. The test is whether the sale is a part of an established pattern of the industry. *Sternberg v. Rubenstein*, 305 N. Y. 235, 112 N. E. 2d 210 (1953).

65. FLA. STAT. § 726.04 (1957).

66. 24 AM. JUR., *Fraudulent Conveyances* § 242 (1939).

67. GA. CODE ANN. § 28-205 (1936).

68. *Goldstein v. Mahoney*, 62 Fla. 198, 57 So. 342 (1911).

merit extends only so far as to sustain the initial action, as any evidence in rebuttal is sufficient to destroy the advantage.⁶⁹ Of course evidence of a wilful violation of the act would not permit a defense, but it is not settled in Florida whether a showing of good faith in fact will destroy the presumption.⁷⁰

The Florida act contains no specific provision as to remedies when the purchaser has violated the act. This omission is not singular as the original statutes were enacted as an ancillary proceeding to the main action against the vendor-debtor leaving the consequences to be worked out through general principles of law.⁷¹ Into this area would be summoned the remedies available to defrauded creditors and those applicable to fraudulent conveyances. Execution, attachment, garnishment and relief in equity would all lie. From the creditors' viewpoint, these remedies placed a premium on those first in time as there was no duty to share with other creditors.⁷²

The only personal liability imposed on the transferee was that cognizable in equity on the trust principle,⁷³ i.e., the purchaser may be held accountable as a trustee or receiver.⁷⁴ Available before the bulk sales laws, it would appear that such a device would perform yeoman service to the new statutes. However, such was not the case, as states found it necessary to amend their acts to specifically include this remedy, as Texas did, for example, in 1915.⁷⁵ Only then did the court recognize this remedy in bulk sales. The Uniform Commercial Code likewise contains no specific remedies. The adopting state must, therefore, work out its own substantive rules in this area.

The fullest expression of remedies would occur where the legislature spells out the extent to which the transferee is liable. That is, if the transferee violates the statute, he is subject to personal liability. An interesting illustration of the possibility of further responsibility of the transferee is found in the Newfoundland Bulk Sales Act of 1955.⁷⁶ While Section 11(1) provides the not unusual provision of accountability of the transferee, it recites that he is estopped to deny that property in his possession is not property subject to the bulk sales transfers.⁷⁷

69. *Atlantic Land and Improvement Co. v. Lee*, 93 Fla. 579, 112 So. 549, (1927). See Annot., 51 A. L. R. 1139 (1927).

70. 37 C. J. S., *Fraudulent Conveyances* § 476 (1943).

71. *Schmucker v. Lawler*, 38 Pa. Super. 578 (1909). 37 C. J. S., *Fraudulent Conveyances* § 487 (1943).

72. Larson, *Bulk Sales: Texas Law and the Uniform Commercial Code*. 6 S. W. L. J. 417 (1952).

73. 4 AM. JUR., *Attachment and Garnishment* § 100 (1936). FLA. STAT. § 77.01 (1957) suggests no authority to hold garnishee for value of property obtained from violating vendor when the garnishee has disposed of it.

74. 37 C. J. S., *Fraudulent Conveyances* § 279 (1943).

75. Larson, note 71 *supra*.

76. Bulk Sales Act, 1955, Newfoundland, as amended, 1957. The amendment added a six month limitations of actions section.

77. Of course, this estoppel does not operate against the creditors of that particular personalty.

Florida cases report on unusual remedies. In one case,⁷⁸ the creditor directed a writ of execution against the personalty in the hands of the purchaser, and in another,⁷⁹ a bill in equity was instituted to cancel a bill of sale and to order execution to proceed. While replevin does not lie in favor of a creditor and against the transferee, one Florida case⁸⁰ involved the use of the action by the trustee in bankruptcy of the vendor's estate. Neither Florida nor Georgia reports a case involving the receivership principle, and a supposition as to its availability must be inclined to the negative view.

CONCLUSION

Comparatively, it is evident that the Florida Bulk Sales Law is conservative in its language, limited in its application, and rarely a factor in litigation. The act has never fully shaken its penal origins and like the Statute of Elizabeth remains untouched⁸¹ and forgotten by the legislature.

While it is not possible to ignore the act as criminal penalties⁸² are involved, yet civilly, the court may permit substantial compliance with its mandates.⁸³

Compared with the nation's acts generally, the Florida act can claim no liberal distinction. It lacks provisions other states have added by frequent amendment, i.e., the duty of the purchaser to apply the proceeds to creditors' claims and period of limitations within which the creditor must avail himself of the statute. However, if the Florida act is subject to criticism on grounds of omission, even the Uniform Commercial Code must face such a charge. Article 6, Bulk Transfers, fails to spell out clearly the rights of the purchaser, the time when title passes, a determination of when the period of notification begins to run or what creditors must be listed and notified in the dissolution of partnerships.⁸⁴

In the broader sense a further observation must be made. If the legislature wishes to displace the rule of free alienability of personalty in this area by subjection to the bulk sales laws, only the enactment of specific substantive rules may permit survival. For example, the Article 6, Bulk Transfer, is not only comprehensive in scope, but possesses a clean superstructure. Nevertheless, the skeleton must be clothed with specific substantive directives to the court, or else suffer emasculation. An excellent example of a virile attempt to displace the common law rule should be

78. *Atlas Rock Co. v. Miami Beach Builders Supply Co.*, 89 Fla. 340, 103 So. 615 (1925).

79. *Burgoyne v. Chadwick Mather Co.*, 129 Fla. 850, 176 So. 772 (1937).

80. *Goldstein v. Mahoney*, 62 Fla. 198, 57 So. 342 (1911).

81. FLA. STAT. 726.01 was not completely overlooked; in LAWS OF FLORIDA 1945, c. 22858, the word "hereditaments" was amended to read "hereditaments."

82. FLA. STAT. § 726.06 (1957), e.g., Vendor's false statement.

83. See note 43 *supra*.

84. *Steingold, Bulk Sales and the Uniform Commercial Code*, 59 *COM. L. J.* 92 (1954).

observed in the recent Newfoundland bulk sales enactment which contains numerous well organized and specific directives to the court.⁸⁵

However, the bulk sales legislation must face the question as to the practical use and effectiveness of the statutes generally.⁸⁶ Unfortunately few statistical reports as to the merit of these enactments are available to the legislature. No doubt the act has discouraged a troublesome habit rampant at the turn of the century, but since then, the effective communication of credit information, enactments of the Uniform Fraudulent Conveyance Act, and the provisions of the bankruptcy statute at times overlap in this area. One writer⁸⁷ raises interesting speculations after a limited survey of the managers of the National Association of Credit Men. The impression gained is that perhaps the bulk sales acts accomplished their punitive purpose and are presently of scattered importance.

85. Bulk Sales Act, 1955, Newfoundland, as amended, 1957. See note 55 *supra*.

86. As early as 1920, the value of the laws was questioned in the face of the National Bankruptcy Act which provided for a "speedy discovery of assets and by making a preference by an insolvent debtor an act of bankruptcy and voidable." Note, *The Application of Bulk Sales Statutes*, 33 HARV. L. REV. 717, 718 (1920).

87. Miller, *The Effect of the Bulk Sales Articles on Existing Commercial Practices*, 16 LAW & CONTEMP. PROB. 267 (1951).