**Sales—Bulk Sales Act—Conflict between California Bulk Sales Act and Uniform Warehouse Receipts Act—[Federal].**—A California dealer in unfabricated steel leased to a warehousing company a building in which part of his inventory was stored and entered into an agreement whereby the company assumed custody of the steel, for portions of which it issued non-negotiable warehouse receipts to the dealer, who pledged them to a bank as security for loans. The dealer later went into voluntary bankruptcy, whereupon the bank filed claim as a secured creditor. The referee found that the transactions were not in the dealer's ordinary course of business, within the meaning of the bulk sales law,[1] and held that since there had been no recorded notice as required by that law the transactions were fraudulent and hence void as to the trustee. The district court reversed the referee and in addition ruled that whatever invalidity there might be under the bulk sales law was removed by substantial compliance with the Warehouse Receipts Act.[2] Upon appeal to the circuit court, *held*, the Warehouse Receipts Act, passed after the enactment of the bulk sales law, repealed that law insofar as it otherwise would apply to goods covered by warehouse receipts. Judgment affirmed. *Heffron v. Bank of America Nat'l Trust and Savings Ass'n.*[3]

No other reported case has been found which construes a bulk sales law in connection with warehouse receipts.[4] During the pendency of the instant case in the district court, the California legislature amended the code section containing the bulk sales law by expressly excluding goods covered by warehouse receipts.[5] Since every state has some form of bulk sales law[6] and forty-six states have adopted the Uniform Warehouse Receipts Act,[7] it is important to examine, in the light of rules of statutory construction, the court's statement[8] that the amendment was merely a clarification of existing law,[9] and then to examine the implications of the amendment itself.

[1] Enacted in 1903 as a proviso to Cal. Civ. Code (Pomeroy, 1901) § 3440, which dealt with transfers of personal property in general and made such transfers conclusively fraudulent as to creditors in the absence of immediate delivery and continued change of possession. The proviso deals only with stock in trade, whether or not within the transferor's possession, and is California's particular version of the bulk sales law. See note 6 infra.

[2] Cal. Gen. Laws (Deering, 1937) Act 9059, first enacted in 1909.

[3] 113 F. (2d) 239 (C.C.A. 9th 1940).

[4] In McCaffey Canning Co. v. Bank of America, 109 Cal. App. 415, 294 Pac. 45 (1930), holding that change of possession was a question of fact except where it was open, obvious and unequivocal, it was said that warehousing cannot be effectively conducted in California without compliance with § 3440 of the code. The case did not involve the bulk sales provision, however, and the authorities cited by it related only to change of possession. See note 1 supra.

[5] Cal. Civ. Code (Deering, Supp. 1939) § 3440.5.

[6] Montgomery, Laws and Decisions Applying to Sales in Bulk 9 (2d ed. 1926). The California law provides that a "sale, transfer, or assignment" in bulk of such stock or a substantial part thereof, "otherwise than in the ordinary course of trade and in the regular and usual practice and method of business" of the transferor, is conclusively presumed to be fraudulent and void as to creditors unless seven days prior to such transaction notice thereof is recorded. Cal. Civ. Code (Deering, 1937) § 3440. In 1939, publication of the notice was also required. Cal. Civ. Code (Deering, Supp. 1939) § 3440.

[7] 3 Unif. L. Ann. 5 (Supp. 1939).

[8] 113 F. (2d) 239, 243 (C.C.A. 9th 1940).

[9] Inasmuch as the court affirmed the judgment of the district court, which found that the transactions were in the ordinary course of the dealer's business, making notice thereof in

A statute designed to revise the entire subject matter within its purview supersedes or repeals earlier legislation on the same subject,[10] even though not inconsistent.[11] However, a general clause in a statute repealing all conflicting or inconsistent legislation, without specifically referring to such legislation, has no greater force than a repeal by implication.[12] A repeal by implication is not favored and takes effect only where it is apparent that the legislature intended that the prior enactment or parts thereof should not remain in force, it being the duty of the courts otherwise to construe statutes so that each shall be operative.[13] The implication of the instant case seems to be that compliance with one statute gives rights which cannot be defeated by non-compliance with an earlier statute dealing with a different subject and enacted for a different purpose. Such an interpretation is opposed to those cases holding that later statutes impliedly repealing prior acts do so only where the prior acts concerned the same subject and were enacted for a similar purpose.[14]

As the court stated,[15] the Warehouse Receipts Act was designed to make uniform the law of warehouse receipts, to clarify legal relationships among warehousemen, depositors, and holders of receipts, and to facilitate credit transactions secured by such receipts. Uniform laws and their uniform-interpretation clauses, however, are enacted to eliminate the confusion resulting from diversity of judicial decisions and statutes only in their respective fields, not to nullify specific laws governing other legal rights.

The Warehouse Receipts Act, governing the rights of parties in respect to valid receipts, stipulates the minimum requirements for validity.[16] From this it may be

---

accordance with the bulk sales law unnecessary, the statement of the court that the Warehouse Receipts Act affected the bulk sales law is only dictum. The proposition, nevertheless, demands analysis, since the nature of warehouse receipts as documents of title and the fact that pledges are subject to § 3440 of the code (In re Convisser, 6 F. (2d) 177, 178 (C.C.A. 9th 1935)), indicate that pledges of warehouse receipts covering stock in trade are "sales, transfers, or assignments" within the meaning of the bulk sales provision. Moreover, § 58 of the Warehouse Receipts Act provides that "to purchase" shall include to take as mortgagee or pledgee.

[10] 1 Sutherland, Statutory Construction 460 (Lewis' ed. 1904); see Smith v. Mathews, 155 Cal. 752, 103 Pac. 199 (1909); Harrington v. Trustees of Rochester, 10 Wend. (N.Y.) 547, 550 (1833); and cases cited in note 13 infra.

[11] Mack v. Jastro, 126 Cal. 130, 132, 58 Pac. 372, 373 (1899).

[12] Hibbett v. Pruitt, 162 Tenn. 285, 293, 36 S.W. (2d) 897, 900 (1931); Hoague-Sprague Corp. v. Frank C. Meyer Co., 31 F. (2d) 583, 585 (D.C. N.Y. 1929). Contra: State ex rel. Finegold v. Board of Com'rs, 29 Ohio App. 364, 371, 163 N.E. 585, 587 (1928).

[13] Boyd v. Huntington, 215 Cal. 473, 482, 11 P. (2d) 383, 386 (1932); Niceley v. Madera County, 111 Cal. App. 731, 739, 296 Pac. 306, 309 (1931); Chilson v. Jerome, 102 Cal. App. 635, 641, 283 Pac. 862, 864 (1929); Hoague-Sprague Corp. v. Frank C. Meyer Co., 31 F. (2d) 583, 586 (D.C. N.Y. 1929); State ex rel. Gammons v. Sorlie, 56 N.D. 650, 658, 219 N.W. 105, 108 (1928); Stuart v. Smith, 87 Cal. App. 552, 554, 262 Pac. 348, 349 (1927); 1 Sutherland, Statutory Construction 465–66 (Lewis' ed. 1904).

[14] Cases cited in note 13 supra; 1 Sutherland, Statutory Construction 468–69 (Lewis' ed. 1904).

[15] 113 F. (2d) 239, 242 (C.C.A. 9th 1940).

[16] Cal. Gen. Laws (Deering, 1937) Act 9059, § 58, defines a warehouseman who, by § 1, may issue warehouse receipts; § 50 requires that receipts shall not issue unless the warehouseman has actual possession or control of the goods.

argued that by the enactment of the Warehouse Receipts Act with its repealing clause, the legislature did not intend to repeal a previous act which, having stricter requirements as to validity, made certain fact situations conclusive proof of invalidity. Lack of the notice required by the bulk sales law in transfers of a stock in trade, when not in the ordinary course of business, is conclusive proof of invalidity. Thus, to hold that warehouse receipts issued without such notice on a stock in trade are invalid would not be contrary to the purpose of the Warehouse Receipts Act.[17] It would seem, therefore, that the repealing clause of the act was not designed to deny to creditors the protection afforded by bulk sales laws.[18]

Whether or not other courts will follow the rule of the instant case, the problem of legislative policy presented by the 1939 amendment remains. The purpose of bulk sales laws,[19] to protect creditors from secret transfers, is easily defeated when, with no other formality than the pledge of warehouse receipts, the pledgee is given control and the right to dispose of a stock in trade to the exclusion of existing creditors.[20] However legitimate the transactions were in the present case, there could hardly be an easier method whereby a debtor, in collusion with a warehouseman and pledgee, could defraud his creditors, thereby resurrecting the old problem of intent to defraud which the conclusive presumption provision of the bulk sales laws was especially designed to solve. A specific exemption of warehouse receipts from a bulk sales law is virtually an amendment of the Warehouse Receipts Act itself, since it covers a case not expressly provided for in the act. The interests of uniformity would not seem to be served, therefore, by the 1939 California amendment.

---

**Taxation—Income Tax—Proceeds from Land Converted by Agreement from Separate into Community Property**—[Federal].—The petitioner and his wife, residents of Oregon (a non-community property state), executed a written agreement purporting to convert into community property all property then owned or thereafter acquired by either of them. Relying upon this agreement, they divided, as community income, proceeds derived from land held in Washington and Idaho (community property states) and filed separate income tax returns. Some of the land in Washington was managed by a partnership of the petitioner and his brother who held as tenants in common. Both partners had been Washington residents but had removed to Oregon subsequent to the formation of the partnership. The commissioner's ruling that the entire income was taxable to the petitioner was upheld by the Board of Tax Appeals on the ground that the partnership interest, being personalty, was subject to the law of

[17] It is recognized in the act itself that the act does not cover every conceivable case. § 56.

[18] It should be noted that in those states which, in lieu of the repealing clause of the Warehouse Receipts Act, repealed specific enactments, each of the repealed laws dealt with warehousing or warehouse receipts.

[19] See Billig, Bulk Sales Laws: A Study in Economic Adjustment, 77 U. of Pa. L. Rev. 72 (1928).

[20] The amendment merely requires that copies of warehouse receipts be kept at the warehouseman's principal place of business within the county in which the goods are stored and be open to inspection on written order of the holder of the receipts. This affords no protection to existing creditors who inspect these copies only to find that a pledgee has authorized the release and disposal of the goods covered by them.