

of the creditor available under the prior Bulk Sales Act, and plaintiff was entitled to have a receiver appointed in a court of equity. The court quotes with approval language from the Official Comment to Section 6-105 to the same effect.

ARTICLE 9: SECURED TRANSACTIONS

SECTION 9-102. Policy and Scope of Article.

(1) Except as otherwise provided in Section 9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this state

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9-310.

Hartford Acc. & Indem. Co. v. State Pub. School Bldg. Authority, 26 Pa. D. & C.2d 717 (1962).

See Annotation to Section 9-204, *infra*.

SECTION 9-103. Incoming Goods Already Subject to a Security Interest.

(3) If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. . . .

In the Matter of Dumont-Airplane and Marine Instruments, Inc., 203 F. Supp. 511 (S.D.N.Y. 1962).

Borrower received money from lender on July 21, 1955, with payment secured by a chattel deed of trust on borrower's equipment in West Virginia which was filed and properly recorded under West Virginia law.

During March, April, and May, 1958, the equipment was removed to Clearfield City, Pennsylvania, and lender filed the chattel deed of trust with the prothonotary of Clearfield County, Pennsylvania. On October 31, 1958, borrower filed a petition for reorganization under Chapter X of the Bankruptcy Act. The court approved the petition and ordered all tangible assets of the borrower to be sold and secured creditors to be paid in full.

The court held that the lender was not a secured creditor on the date borrower filed for reorganization. Since security interest was not perfected in Pennsylvania within the four month period allowed by Section 9-103(3), the date of perfection would be when the lender properly filed in Pennsylvania. Perfection in Pennsylvania is accomplished by filing a financing statement with the Secretary of the Commonwealth and, if all of the debtors' places of business are in one county, with the prothonotary of that county. Sections 9-303 and 9-401. The lender had not complied with the statutory requirements and the security interest was not perfected in Pennsylvania. Lender could claim proceeds of the sale of the collateral only as an unsecured creditor.

[Annotator's Comment: This decision is correct. The security interest was unperfected in Pennsylvania, the law of which controlled the lender's rights after removal, when the chapter X proceedings were instituted. The trustee, both under Section 70(c) of the Bankruptcy Act and under Code Section 9-301, was a lien creditor as of that date as to whom the security interest was subordinate. However, the court seemed to add this reason as an afterthought, stating that the issue was the "validity" of the security interest, and concluding that the "validity, or perfection, of a security interest on property subject to a valid security interest in another state" terminated four months after its removal to Pennsylvania if not perfected there within that time. "Perfection" and "validity" are not synonymous. A properly created security interest is valid as to all third persons although subordinate to their interests by the secured party's failure to protect his interest against those interests (Section 9-201). Perfection is necessary to protect a security interest against lien creditors. The court was not correct in saying that the lender's failure to perfect "destroyed creditor's secured position." Were there no third party interests given priority, such as those of the trustee, the security interest would have been fully enforceable.]

SECTION 9-105. Definitions and Index of Definitions.

(1) In this Article unless the context otherwise requires:

(h) "Security agreement" means an agreement which creates or provides for a security interest;

Hartford Acc. & Indem. Co. v. State Pub. School Bldg. Authority, 26 Pa. D. & C.2d 717 (1962).

See Annotation to Section 9-204, *infra*.

SECTION 9-109. Classification of Goods; "Inventory."

(4) Goods are inventory if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process, or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

Thompson v. Scott Credit Corp., 16 Chester 405 (Pa. 1962).

See Annotation to Section 9-312, *infra*.

SECTION 9-110. Sufficiency of Description.

For the purposes of this article, any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

In re Drane, 202 F. Supp. 221 (W.D. Ky. 1962).

A chattel mortgagee sought to recover from the bankruptcy trustee of the mortgagor chattels allegedly subject to the mortgage. The goods were described in the mortgage as: "1-2 piece living room suite, wine; 1-5 piece chrome dinette set, yellow; and 1-3 piece panel bedroom suite, lime oak, mattress and springs." The security agreement also required that the chattels be kept at a certain address.

The creditor filed its motion against the trustee to show cause why he should not disclaim any interest in these chattels. The referee overruled the motion on the grounds of insufficiency of description. The same motion was brought before the court on a petition for review.

The court interpreted Section 9-110 as requiring a description which is sufficiently intelligible to fix a lien: the description is sufficient if the facts shown will enable a third person, assisted by external evidence, to identify the property. Although warning against a general use of abbreviated descriptions in these cases, the court was satisfied that a third person would have no difficulty identifying the property. Extrinsic evidence of exact identity was furnished by the inclusion in the agreement of the location of the mortgaged property.

**In the Matter of Kowalski*, 202 F. Supp. 897 (D. Conn. 1962).

Conditional seller executed a conditional sales contract with bankrupt for a bulldozer and a flat-bed trailer, which agreement was filed in the proper public office. The conditional sales contract described the property as follows: "One Oliver B.D. Bulldozer—year—1952, color—yellow"; "One homemade flat-bed trailer—color—black, double axle." The bankrupt owned only one bulldozer and one flat-bed trailer, both of which were the subject of the conditional sale.

Seller sought to reclaim both bulldozer and flat bed from buyer's trustee in bankruptcy. The referee allowed reclamation of both. The court denied seller's reclamation of the flat-bed trailer because seller had not perfected his interest against subsequent creditors by notation on the certificate of title as required by the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, C.G.S.A. Section 14-185. The bulldozer was excepted from this statute.

The Sales Act, C.G.S.A. Section 42-77, required that a conditional sales contract be in writing *describing the property*. Although the sale was consummated before the Uniform Commercial Code was in effect in Connecticut, the court used Section 9-110 as a criterion for the description required, holding that the description was sufficient to have alerted creditors to the vendor's interest.

Howarth v. Universal C.I.T. Credit Corp., 203 F. Supp. 279 (W.D. Pa. 1962).

See Annotation to Section 9-306, *infra*.

Thompson v. Scott Credit Corp., 16 Chester 405 (Pa. 1962).

See Annotation to Section 9-312, *infra*.

SECTION 9-203. Enforceability of Security Interest; Proceeds, Formal Requisites.

(1) Subject to the provisions of Section 4^l-208 on the security interest of a collecting bank and Section 9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties unless

(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement which contains a description of the collateral, and, in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

Thompson v. Scott Credit Corp., 16 Chester 405 (Pa. 1962).

See Annotation to Section 9-312, *infra*.

SECTION 9-204. When Security Interest Attaches; After-Acquired Property; Future Advances.

(1) A security interest cannot attach until there is agreement (subsection (3) of Section 1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

Hartford Acc. and Indem. Co. v. State Pub. School Bldg. Authority, 26 Pa. D. & C.2d 717 (1961).

See Annotation to Section 9-312, *infra*.

SECTION 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply.

(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under Section 9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under Section 9-304 or in proceeds for a 10 day period under Section 9-306;

(c) a purchase money security interest in farm equipment having a

purchase price not in excess of \$2500; but filing is required for a fixture under Section 9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under Section 9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (Section 4-208) or arising under the Article on Sales (see Section 9-113) or covered in subsection (3) of this section.

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

Howarth v. Universal C.I.T. Credit Corp., 203 F. Supp. 279 (W.D. Pa. 1962).

See Annotation to Section 9-306, *infra*.

SECTION 9-303. When Security Interest Is Perfected; Continuity of Perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9-302, 9-304, 9-305, and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

Hartford Acc. and Indem. Co. v. State Pub. School Bldg. Authority, 26 Pa. D. & C.2d 717 (1961).

See Annotation to Section 9-312, *infra*.

In the Matter of Dumont-Airplane & Marine Instruments, Inc., 203 F. Supp 511 (S.D. N.Y. 1962).

See Annotation to Section 9-103, *supra*.

SECTION 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral.

(1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract

right. Money, checks and the like are "cash proceeds." All other proceeds are "non-cash proceeds."

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

(a) in identifiable non-cash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) if the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a

security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under Section 9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

Howarth v. Universal C.I.T. Credit Corp., 203 F. Supp. 279 (W.D. Pa. 1962).

On December 13, 1954, Universal CIT and a dealer in new and used automobiles entered into an Agreement for Wholesale Financing which provided for a security interest in the dealer's new and used motor vehicles, equipment, accessories or replacement parts and proceeds. A financing statement including this collateral was properly filed on March 3, 1955 by UCIT. Through September 28, 1957, UCIT financed the dealer's acquisition of 201 new vehicles by advances to the dealer or directly to the manufacturer. The dealer gave trust receipts to UCIT for all of them. The dealer sold 110 of the new vehicles and UCIT took possession of and sold the remaining 91, leaving a balance due under the Wholesale Agreement of \$249,704. An involuntary petition in bankruptcy was filed against the dealer on January 6, 1958, and adjudication followed on February 13, 1958. Within four months prior to the filing of the petition, UCIT took possession of many of the assets of the dealer. The trustee in bankruptcy brought action against UCIT singling out as voidable preferences under Section 60 of the Bankruptcy Act: (1) cash and checks in the amount of \$10,847 which the dealer had collected from customers, only \$1,100 of which UCIT could identify as proceeds from the sale of new vehicles; (2) eleven used vehicles the acquisition of which UCIT had financed and for which the dealer had given trust receipts but had made no notation of the security interest on the certificates of title to the vehicles; (3) seventeen used vehicles identifiable as trade-ins from the sale of new vehicles as to which no notation of the security interest had been made on the certificates of title; (4) forty-two used vehicles taken as trade-ins but the source of which was not known; and (5) twenty shares of Ford Motor Company stock owned by the dealer. As to each item the court held:

(1) Since only \$1,100 of the commingled cash and checks was traceable as proceeds, and since the transfers to UCIT were more than ten days prior to filing the petition, the balance of \$9,747 must be paid to the trustee since UCIT did not hold a perfected security interest in that amount under Section 9-306.

(2) The security interest in the eleven used vehicles was perfected by the properly filed financing statement since Sections 201(b), 203(b), and 207(c) of the Motor Vehicles Code, though establishing a method for creating encumbrances on motor vehicles by notation on certificates of title, did not *require* such notations for either new or used vehicles held by dealers. Compliance with the

filing requirements of Sections 9-302(1) and 9-401(1)(a) of the Code is the most expedient method for perfecting security interests in motor vehicles as inventory: creditors are given notice by the financing statements, and buyers of the inventory are protected irrespective of their knowledge of the security interest by virtue of Section 9-307. UCIT also had a security interest in the excess from their sale over the amount actually advanced against the vehicles since the security interest in the wholesale agreement covered *all* proceeds, and the financing statement even specified "cash taken in the sale . . . of the property. . . ."

(3) Used motor vehicles traded in in the purchase of new ones were identifiable proceeds covered by the financing statement as "merchandise taken in trade" and, for the same reasons discussed above, notation on the certificates of title was not required to perfect the security interest. Filing the financing statement as required by Sections 9-302(1) and 9-306(1) was sufficient to perfect the interest.

(4) The forty-two motor vehicles taken in trade for new ones, whether or not those in which UCIT had a security interest, were identifiable proceeds covered by the security agreement which the dealer was obligated to hold "in trust" for UCIT.

(5) The twenty shares of stock were not shown to be proceeds and, hence, were not covered by the security agreement; thus, they constituted a voidable preference, and the amount realized from their sale was ordered to be paid to the trustee.

On February 5, 1957, UCIT advanced \$75,000 to the dealer under a separate loan agreement and chattel mortgage covering the dealer's "complete inventory of all parts and accessories now owned or which may hereafter be acquired." A financing statement including as collateral "replacement parts and accessories" was duly filed. UCIT took possession of and sold the motor parts and accessories. Also, it obtained judgment against the dealer for \$75,000 and proceeded to garnish the dealer's bank account under the judgment and received the sum of \$6,734. The trustee contended that the cash received was a voidable preference and that the description in the financing statement covering motor parts and accessories was insufficient. The court held that the cash received by UCIT was a preference and voidable since the cash in the account was received more than ten days prior to the petition and did not constitute identifiable proceeds under Section 9-306; the lien acquired by garnishment was void under Section 67 of the Bankruptcy Act. However, the description of the collateral in the financing statement was sufficient under Sections 9-110 and 9-402(1) and UCIT was entitled to retain the proceeds of the sale.

[N.B. This case was decided under the 1953 version of the Code in which Section 9-306 provided:

"(1) When collateral is sold, exchanged, collected or otherwise disposed of by the debtor the security interest continues on any identifiable proceeds received by the debtor except as otherwise provided in subsection (2); the security interest also continues in the original collateral unless the debtor's action was authorized by

the secured party in the security agreement or otherwise or unless it is otherwise provided in Sections 9-301, 9-303(2), 9-307, 9-308 and 9-309. The security interest in proceeds is a perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) the financing statement covering the original collateral also includes the proceeds received on disposition of such collateral; or

(b) it is perfected before the expiration of the ten day period.

"(2) In insolvency proceedings a secured party with a perfected security interest has a right to the cash and bank accounts of the debtor equal to the amount of cash proceeds received by the debtor within ten days before the institution of such proceedings less the amount of such proceeds received by the debtor and paid over to the secured party during the ten day period, but no other right to or lien on cash proceeds not subjected to his control before insolvency proceedings are instituted. Nothing in this subsection shall affect any right of set-off which might otherwise exist.

"(3) On sale or exchange of collateral or collection of accounts or chattel paper by the debtor, 'proceeds' are received and when the right to payment has been earned under a contract right, the resulting account is a 'proceed.' 'Cash proceeds' include checks and money received on disposition of collateral or on collection or transfer of non-cash proceeds but not notes, time bills, chattel paper, accounts and goods received in exchange.

"(4) If the proceeds resulting from a sale or other disposition of inventory consists of chattel paper, nothing in this section prevents a transfer thereof for new value in the ordinary course of business, and the security interest or any other right of any such transferee shall have priority over the security interest based on a claim to proceeds under subsection (1).

"(5) If collateral which has been sold is returned to the debtor, the following rules determine the priorities:

(a) As between the debtor and a secured party to whom the indebtedness originally secured by the collateral has not been paid, the original security interest continues;

(b) As between the debtor and an unpaid transferee of the chattel paper arising from the sale, the transferee shall have a security interest in the property returned, but such security interest must be perfected for protection against third parties;

(c) The security interest of an unpaid transferee under (b) shall have priority over a security interest claimed under (a)."]

[Annotator's Comment: This case was properly decided and well reasoned on all counts. The certificate of title problem as to new vehicles held as inventory had been settled in *Sterling Acceptance Co. v. Grimes*, 194 Pa. Super. 503, 168 A.2d 600 (1961) (3 B.C. Ind. & Com.

L. Rev. 42, 44 (1961)), and *Taylor Motor Rental, Inc. v. Associates Discount Corp.*, 196 Pa. Super. 182, 173 A.2d 688 (1961) (3 B.C. Ind. & Com. L. Rev. 210 (1962)): no notation was required since a dealer, while permitted to acquire a dealer's certificate of title, was not required to obtain one. Once a car was sold, however, a certificate of title was required and it was intimated in the former case that notation for used vehicles would be required even by an inventory financier to perfect a security interest. This case makes it clear that this would not be so. However, in states other than Pennsylvania with different certificate of title laws, especially those requiring certificates of origin and dealer certificates of title, a different result may be required. In such states notation on certificates of title may require "busy work" by the inventory financier, but third persons, such as creditors, will have but one place to look for notice of security interests, the place to which they have become accustomed to look. As a practical matter, financing statements properly filed will become the sole source of notice in Pennsylvania and, for the sake of commercial expediency, this is a sound result.

As to the eleven used vehicles, the court properly construed Section 9-306(1) to the effect that the term "proceeds" includes proceeds of proceeds and, thus, the entire sum received by a secured party in disposition of identifiable proceeds. A security interest in proceeds will cover those received by either the debtor or the secured party. Cf. *Girard Trust Corn Exchange Bank v. Warren Lepley Ford, Inc.* (No. 3), 25 Pa. D. & C.2d 395 (1961) (3 B.C. Ind. & Com. L. Rev. 433 (1962)).]

SECTION 9-312. Priorities Among Conflicting Security Interests in the Same Collateral.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (in-

cluding cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under Section 9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under Section 9-204(1) so long as neither is perfected.

Hartford Acc. and Indem. Co. v. State Pub. School Bldg. Authority, 26 Pa. D. & C.2d 717 (1961).

A contractor entered into a building contract with defendant authority for the construction of school buildings in May, 1957, and procured performance bonds required by law from plaintiff. The surety agreement with plaintiff assigned the contractor's rights under the contract to the surety upon the contractor's default for which the surety became answerable. In May, 1956, in order to secure credit, the contractor had assigned to intervenor bank all of his accounts receivable, present and future. The bank duly filed financing statements. As construction progressed under the contract with defendant, the contractor borrowed from the bank from time to time, making specific assignments of installment progress payments on each occasion from which each advance by the bank was eventually paid. On November 21, 1958, the contractor specifically assigned payment number sixteen in exchange for a loan to pay materialmen and laborers.

On November 25, 1958, the contractor notified the surety that he was unable to continue performance under the contract. After notifying the defendant, the surety filed its financing statement in the office of the Secretary of the Commonwealth, and then completed the work. On December 15, 1958, plaintiff surety filed its complaint seeking to restrain payment by defendant of funds due the contractor, which included retained percentages from prior payments and payment number sixteen. The bank intervened on January 14, 1959, asserting a security interest and priority in payment sixteen. The court granted a temporary restraining order, and, by agreement of the parties, defendant paid certain sums due under the contract to other parties until the balance held by defendant was less than the balance due either to the surety or to the bank. The court ordered the entire sum to be paid to the bank.

1. The bank held a perfected security interest in the payment, which became an account at the time it became payable, when it filed its financing statements in 1956 since, under Section 9-204, a security interest in after-acquired collateral is permitted and may secure advances whenever made. Perfection occurred at the time of filing by virtue of the provisions of Section 9-303.

2. The assignment to the surety in the suretyship agreement was the creation of a security interest as defined in Sections 9-102 and 9-105. The court cited and agreed with the holding, to the same effect, in *United States v. Fleetwood & Co.*, 165 F. Supp. 723 (W.D. Pa. 1958). The provisions and requirements of the Code are paramount to the surety's admitted rights of subrogation to the rights of the contractor, materialmen and laborers and the defendant. When the plaintiff filed its financing statement after default, it assumed that the Code governed.

3. The bank has priority under Section 9-312(3) since it perfected by filing before the assignment to the surety.

4. Further, both surety and defendant had constructive notice of the bank's interests by virtue of the financing statements on file and, in any event, the specific assignment to the bank occurred before the contractor's default and notice to the surety which fulfilled the condition to the assignment in the suretyship agreement.

[N.B. This case was decided under the 1953 version of the Code in which the pertinent sections, where they differ from the 1958 version, provided as follows:

SECTION 9-204.

"(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure any advances made or other value given at any time pursuant to the security agreement.

(5) A security agreement may provide that collateral under it shall secure future advances."

SECTION 9-303.

"(1) Except as provided in Section 9-103 with reference to property which is already subject to a perfected security interest when it is brought into this state, a security interest is perfected

(a) If filing is required under Section 9-302(1), at the time of filing, except that if filing occurs before the security interest attaches, the security interest is perfected when it attaches;"

Section 9-312 Conflicting Security Interests: General Rules of Priority.

"When conflicting security interests attach to the same collateral, such interests rank in the order of time of perfection with the following exceptions:

"(1) An interest which attaches after filing takes priority from the time of filing, but in case of conflict this rule is subject to the rules stated in the following subsections.

"(2) A secured party who has a perfected security interest and who makes later advances to the debtor on the same collateral and under the same security agreement takes priority as to the later advances from the time when his security interest was originally perfected.

"(3) A secured party who has a perfected security interest and who acquires rights in after-acquired collateral under a term in the security agreement takes priority as to such rights from the time when his secu-

rity interest was originally perfected, whether or not he makes advances on the after-acquired collateral, except as otherwise provided in subsection (4)."]

[Annotator's Comment: Surety companies must realize that the standard clause in suretyship agreements with contractors assigning to the surety, conditional upon default, the contractor's rights under the contract is governed by Article 9 of the Uniform Commercial Code as the assignment of a contract right to secure payment of an obligation. Sureties should at once file proper financing statements to protect their interests against those subsequently perfected by other secured parties. Even then, secured parties with previously filed security interests will have priority, as in the above case. If such exist, the surety's best procedure is to obtain a subordination agreement from the prior secured parties, effective if and when the surety must enforce its security interest.

The result in this case would be the same under the 1958 version of the Code, effective in Pennsylvania January 1, 1960, but for different reasons. The only means of perfecting a security interest in contract rights or accounts is by filing financing statements in the proper public offices. In this case both parties filed. By Section 9-312(5)(a), the first to file would prevail, i.e., the bank. Had the surety not filed at all, the first to perfect would prevail under Section 9-312(5)(b), which again would be the bank. The bank's security interest was perfected when it made its first advance in 1956. By giving value, the bank fulfilled the last requirement for attachment of the security interest under Section 9-204(1) which is essential to perfection under Section 9-303(1); by filing, the bank had taken the steps necessary to perfect under Section 9-302(1).

Under suretyship agreements of this type, the surety's security interest in the contractor's contract rights will be perfected either; (1) at the time of filing if after execution of the agreement, or (2) when the contractor in fact defaults, depending upon the construction given to both the agreement and the relevant Code provisions. The first conclusion is arguable upon the following bases: (1) the suretyship agreement is also a security agreement in which there is an agreement that the security interest attach; (2) surety is obligated to perform, although conditional upon default, which constitutes value (Section 1-201(44)); (3) the contractor has an obligation, although it is also conditional, to repay the surety upon default (Section 1-201(37)); (4) the contractor has rights in the collateral (contract rights) when the contract is made with the owner (Section 9-204(2)(c)). These are the requisites for attachment of the security interest (Section 9-204(1)). When financing statements are filed, the security interest is perfected (Sections 9-302(1) and 9-303(1)). The second conclusion can be reached if the surety's obligation (value) and the contractor's obligation to the surety are held to occur only upon default. This should make no difference in result as to the priority of security interest filed previously under the first-to-file rule, or as to the inferiority of those filed subsequently or those not filed at all since the order of filing or order of perfection, and not the order of attachment, determines priorities. There can be no perfection, as there might be with other collateral, in a manner other than by filing.]

Thompson v. Scott Credit Corp., 16 Chester 405 (Pa. 1962).

Petitioners sold the assets and good will of their business, which was conducted under a fictitious name, properly filed under a Pennsylvania statute requiring revelation of the true owners, and executed with the buyers a security agreement under which payment of the balance of the purchase price was secured by a security interest in "the inventory, furniture and fixtures of debtors' business" which extended "to all collateral of the kind which is subject of this agreement which the debtor may acquire at any time during the continuation of this agreement in connection with the operation of the business of the debtor." Financing statements were filed centrally and locally naming the buyers as debtors, but not the name under which the business was conducted. The buyers properly changed the names of the record owners under the Fictitious Names Act. Fourteen months later defendant and buyers entered into a trust receipt agreement under which defendant would advance money for the purchase of "grass seed, fertilizer, wood controls, pest controls, spreaders, mowers and other lawn products" in which defendant would have a security interest. Financing statements were properly filed. When buyers breached their agreement with petitioners, petitioners took possession of all existing inventory, including seed financed by defendant. The seed was turned over to defendant in exchange for its bond for the value of the seed. Petitioners sought a declaratory judgment. The court held that petitioners had a security interest in the seed superior to that of defendant.

1. "Inventory" was an adequate description under Section 9-110 and the seed, held or being prepared for sale, was inventory within the definition of Section 9-109.

2. Because petitioners' security interest was perfected first, it is superior to that of defendant under Section 9-312(3) since defendant did not give the advance notice to petitioners of a claim to a purchase money security interest which, had Section 9-312(4) been complied with, would have had priority.

3. Defendant knew the identity of the true owners of the business and, in any event, was on constructive notice of the fact under the Fictitious Names Act. Petitioners' naming the debtors in their financing statements met the requirements of Section 9-203(1)(b).

[N.B. This case was decided under the 1953 version of the Code in which Section 9-312(4) provided:

"(4) A purchase money security interest has priority over a conflicting interest in the same collateral which is claimed under an after-acquired property clause if the purchase money security interest is perfected at the time the debtor receives the collateral or within ten days thereafter and, where the collateral is inventory, if before the debtor receives it the purchase money party also notifies any secured party who has made a prior filing covering inventory of the type concerned. Such notification must describe the inventory concerned, state that the interest is a purchase money security interest and specify its amount. If, however, the interest claimed under an after-acquired property clause is itself a pur-

chase money security interest, the rule stated in subsection (5) applies."]

SECTION 9-401. Place of Filing; Erroneous Filing; Removal of Collateral.

(1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the in the county where the goods are kept, and in addition when the collateral is crops in the office of the in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the [Secretary of State] [and in addition, if the debtor has a place of business in only one county of this state, also in the office of of such county, or, if the debtor has no place of business in this state, but resides in the state, also in the office of of the county in which he resides.]

Howarth v. Universal C.I.T. Credit Corp., 203 F. Supp. 279 (W.D. Pa. 1962).

See Annotation to Section 9-306, *supra*.

In the Matter of Dumont-Airplane & Marine Instruments, Inc., 203 F. Supp. 511 (S.D.N.Y. 1962).

See Annotation to Section 9-103, *supra*.

SECTION 9-402. Formal Requisites of Financing Statement; Amendments.

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

Howarth v. Universal C.I.T. Credit Corp., 203 F. Supp. 279 (W.D. Pa. 1962).

See Annotation to Section 9-306, *supra*.