LEGISLATION

BULK SALES ACT—WHAT IS A "SALE IN BULK"—Bulk Sales legislation, nurtured by credit men's associations throughout the country,[1] was designed to remedy a specific evil:[2]

> "Without such a law a retailer who has purchased his stock largely on credit may sell it for cash, put the proceeds in his pocket and walk off, leaving the wholesaler from whom it was bought without remedy against it, the new purchaser having a perfect title." [3]

However, to eradicate this all too common practice, the legislatures, in defining what transaction shall constitute a bulk sale within the meaning of a particular Bulk Sales Act, have employed general terms: "a sale or transfer" [4] of an entire stock in bulk,[5] or "of a large part",[6] "a major part",[7] "a major part in value",[8] "all or substantially all"[9] or "any stock in bulk",[10] or "any portion not sold or transferred in the ordinary course of trade and regular and usual prosecution of the seller's business".[11] The Arizona statute [12] alone fixes a specific amount: the

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[1] Billig, *Bulk Sales Laws* (1928) 77 U. OF PA. L. REV. 72, 81; see MONTGOMERY, LAWS AND DECISIONS APPLYING TO SALES IN BULK (1926) 9; CREDIT MANUAL OF COMMERCIAL LAWS FOR 1934 (1933) 251.

[2] See Kraft Co. v. Heller, 188 Ind. 612, 614, 125 N. E. 209 (1919); Gallus v. Elmer, 193 Mass. 106, 109, 78 N. E. 772, 773 (1906); Patmos v. Grand Rapids Dairy Co., 243 Mich. 417, 420, 220 N. W. 724, 725 (1928); West Shoe Co. v. Lemish, 279 Pa. 414, 417, 124 Atl. 87, 88 (1924); Billig, *supra* note 1, at 74.

But a creditor may waive his rights: Lietchfield Mfg. Co. v. Heinicke, 200 Iowa 958, 205 N. W. 350 (1925); see Marshall v. Leon, 267 Ill. App. 242 (1932). If buyer applies part of purchase price to payment of creditors, he will be subrogated to their rights. Pratt Paper Co. v. Eiffler, 196 Iowa 199, 194 N. W. 370 (1923); Bay Co. v. Ridnour, 49 S. D. 27, 206 N. W. 463 (1925); see Linn Co. Bank v. Davis, 103 Kan. 672, 675, 175 Pac. 972, 973 (1918).

[3] See Schoeppel v. Pfannensteil, 122 Kan. 630, 635, 253 Pac. 567, 569 (1927).

[4] "Sale or transfer" is usually held not to include a chattel mortgage. Aristo Hosiery Co. Inc. v. Ramsbottam, 46 R. I. 505, 129 Atl. 503 (1925); Krower v. Martin, 184 S. W. 511 (Tex. Civ. App. 1916). *Contra:* Norton Jewelry Co. v. Maddock, 115 Kan. 108, 222 Pac. 113 (1924); Billig, *Bulk Sales Laws* (1933) 39 W. VA. L. REV. 323, 326. In some states, chattel mortgages are included by statute. LA. GEN. STAT. (Dart, 1932) § 9037; MICH. COMP. LAWS (1929) § 9545; N. Y. PERSONAL PROPERTY LAW (1917) § 44; *cf.* ME. REV. STAT. (1930) c. 123, § 6 (statute does not apply to mortgages made in good faith for purpose of security only).

[5] Every Bulk Sales Act makes this provision; for example, see ALA. CODE (Michie, 1928) § 8041; COLO. ANN. STAT. (Courtright, 1930) § 3077; IDAHO ANN. CODE (1932) § 62-701; OKLA. STAT. (1931) § 10014.

[6] CONN. REV. STAT. (1930) § 4703; N. J. COMP. STAT. (Supp. 1930) § 182-80; KY. STAT. ANN. (Baldwin, 1930) § 2651a-5.

[7] ILL. REV. STAT. (Cahill, 1933) c. 121a, par. 1; S. C. CODE ANN. (Michie, 1932) § 6617.

[8] MO. STAT. ANN. (1932) § 3127; R. I. GEN. LAWS (1923) c. 311.

[9] CAL. CIV. CODE (Deering, 1931) § 3440 (substantial part); D. C. CODE (1929) tit. 11, § 16; FLA. COMP. LAWS (1928) § 5775; MD. ANN. CODE (Bagby, 1924) art. 83, § 21; ONT. REV. STAT. (1927) c. 167, § 6; ORE. CODE ANN. (1930) § 64-104; WASH. REV. STAT. (Remington, 1932) § 5835.

[10] GA. CODE ANN. (Michie, 1926) § 3226; IND. ANN. STAT. (Burns, 1926) § 8052; IOWA CODE (1931) § 10008; MASS. GEN. LAWS (1932) c. 106, § 1; MICH. COMP. LAWS (1929) § 9545; MONT. REV. CODE (Choate, 1921) § 8607; NEB. COMP. STAT. (1930) § 36-501; OHIO CODE ANN. (Throckmorton, 1930) § 11102; PA. STAT. ANN. (Purdon, 1931) tit. 69, § 525; S. C. CODE ANN. (Michie, 1932) § 6617; S. D. COMP. LAWS (1929) § 914.

[11] The statutes of almost all states make this provision: for example, see LA. GEN. STAT. ANN. (Dart, 1932) § 9037; ME. REV. STAT. (1930) c. 123, § 6; N. Y. PERSONAL PROPERTY LAW (1917) § 44. For classification and construction of these statutes, see MONTGOMERY, *op. cit. supra* note 1, at 13.

[12] ARIZ. CODE (Struckmeyer, 1928) § 2888.

transfer of the whole or seventy-five *per cent.* of a stock of goods is specified by the statute. Thus, it has generally been left to the courts to determine in each case whether the sale or transfer is of such magnitude or so unusual as to fall within the provisions of the statute, with no guide except general concepts and a clear-cut purpose. Considering this point, one court has stated, "The Bulk Sales Act is not well drawn." [13]

Originally, the Act was to prevent only sales of an entire stock of goods in bulk, but gradually the legislatures, as can be seen from the terms employed, and the courts, have included within the Act sales of less than the whole of a stock of goods. Writing in 1911, Dodge, J., stated in *Carpenter v. Karnow:* "I find no case in which the sale of less than an entire stock in trade has been so regarded." [14] The scope of this note will be to examine the cases decided under the various Acts to determine to what extent this statement is true today; to ascertain what portion of a stock of goods must be transferred so that the courts will regard the transfer as falling within the purview of the statute.

Naturally, each case must turn on its particular facts, the amount of goods sold, the amount in stock at time of sale, the merchant's indebtedness, the type of business and the wording of the particular statute. However, as each court endeavors to carry out the purpose of the statute—that creditor's rights shall not be prejudiced by a sale in bulk—the cases present a similarity allowing their consideration as a group without undue emphasis on the particular statute.

Transactions Within the Statute

All courts agree that if a merchant owning two or more businesses, each conducted separately, sells one, such sale is within the Act; [15] and it has been held that the sale of a wholesale house used to supply a chain of retail stores, though the owner continued to operate the retail stores, was a sale in bulk.[16] However, where the owner of a large store with goods valued at $33,000 opened a branch, all goods being bought and paid for through the main store, and books kept at the branch only to ascertain if it was being operated at a profit, a sale of the goods in the branch for $4,000, at seventy cents on the dollar, was held not within the Act as it was not the sale of a separate business.[17] But a sale of $4,000 from a stock of $33,000 might well have been considered a sale of a portion outside the ordinary course of business.[18] Courts have had no difficulty in holding sales of the

[13] Webber v. Hall, 54 N. S. R. 192, 202 (1921). For discussion of the general problems involved in Bulk Sales Acts, see Billig, *Bulk Sales Laws* (1932) 38 W. VA. L. Q. 309; (1933) 39 W. VA. L. Q. 322; Driscoll, *Sales in Bulk Act* (1929) 4 WASH. L. REV. 97; MONTGOMERY, *op. cit. supra* note 1.

[14] 193 Fed. 762, 765 (D. Mass. 1911).

[15] Young v. Lemieux, 79 Conn. 434, 65 Atl. 436 (1907); Goodman v. Clarkson, 39 Ga. App. 383, 147 S. E. 183 (1928); Ogden Ave. State Bank v. Cheny, 225 Ill. App. 201 (1922); Interlake Tissue Mills Co., Ltd. v. Everall Co., Ltd., 500 Ont. L. R. 165 (1921); Gagnon v. La Banque Nationâle, 29 Que. K. B. 166 (1919); see Roberts v. Kaemmerer, 220 Mo. App. 582, 586, 287 S. W. 1057, 1059 (1926); *cf.* Potter v. Walker, 2 F. (2d) 774 (E. D. N. Y. 1924); Bank of Montreal v. Ideal Knitting Mills, Ltd., 55 Ont. L. R. 410 (1924).

[16] Keller v. Fowler Bros., 148 Tenn. 571, 256 S. W. 879 (1923).

[17] *In re* John Allan, Ltd., 8 Can. B. R. 97 (1926).

[18] A merchant's "ordinary course of business" is determined by the nature of his business, the amount of sales he usually makes, and the amount of his indebtedness. Hart v. Brierly, 189 Mass. 598, 76 N. E. 286 (1915). And whether the merchant is regarded by the trade as a wholesaler or retailer: Webber v. Hall, *supra* note 13. But not by whether such transactions are usual in the general conduct of the type of business throughout the community. Rison v. Knapp, 20 Fed. Cas. 835, No. 11861 (E. D. Ark. 1868). Apparently, a seller can gain a new course of business without notice to creditors: see Vacuum Oil Co. v. Wichita Independent Consolidated Co., 110 Kan. 245, 203 Pac. 915 (1922) (gained new course of trade but did not follow it); Feldstein v. Fusco, 238 N. Y. 58, 143 N. E. 790 (1924). But a seller

entire business in two or more transactions as within both the letter and purpose of the Act.[19]

The statute includes a sale of $130,000 worth of goods from a stock of $140,000,[20] and a sale of eighty *per cent.* of the merchant's goods.[21] The smallest transactions to which it has been held the statute applied were a sale of one-third of a stock of goods [22] and a sale of from one-fourth to one-seventh of the entire stock.[23] *Webber v. Hall* [24] illustrates the attitude of the courts: a retail shoe merchant with stock valued between $20,000 and $30,000 with an indebtedness of $33,000, being hard pressed by his creditors, sold shoes in lots of $100, $200 and $500 at less than cost, until $7,000 worth of his goods had been sold. The court held the Act applied, since these were sales "out of the ordinary course of trade". It would not seem that the sale of $100 worth of shoes should be considered outside the ordinary course of trade of a retailer, but if such sales were made in quick succession and the stock not replenished, the Act should apply.

The courts have allowed creditors to attack a transaction whereby goods [25] were transferred for goods on the theory that a sale is any transfer of goods for a consideration, whether for cash or other property. If goods are placed in a store under an agreement that if they are not paid for within a certain time, the seller may retake a stock of goods of equal value, the statute should apply on the retaking of the goods in favor of all creditors who became creditors while the goods were in the store. However, if the seller gets a fair price for the goods sold, and receives other goods in return, the ability of creditors to realize on their claims is not impaired and the formalities of the statute should not be required as a prerequisite to a valid sale.

There is a division of authority on the question of whether a sale of a partner's interest [26] in a retail business falls within the statute. If the sale is for the purpose of taking in a new partner, by the weight of authority the sale is void

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may not cease business and then sell his goods without complying with the statute: Hoja v. Motoc, 23 Mich. 258, 209 N. W. 66 (1926); Teich v. McAuley, 212 S. W. 979 (Tex. Civ. App. 1919).

[19] Hall v. Main, 34 F. (2d) 528 (E. D. Ill. 1929); Conquest v. Athins, 123 Me. 327, 122 Atl. 858 (1923); Thorndike & Hix Lobster Co. v. Hall, 223 App. Div. 576, 229 N. Y. Supp. 225 (1928); Kirkholder & Rausch Co. v. Bridgland, 120 Misc. 565, 119 N. Y. Supp. 113 (1923); see Webber v. Hall, *supra* note 13 (twenty or thirty sales); *cf.* Hughes-Curry Packing Co. v. Sprague, 200 Ind. 540, 165 N. E. 318 (1929).

[20] Root Refineries v. Gay Oil Co., 171 Ark. 129, 284 S. W. 26 (1926).

[21] Commercial Motor Bodies and Carriages, Ltd. v. Perth, Ltd., 65 Ont. L. R. 383 (1930).

[22] Webber v. Hall, *supra* note 13.

[23] See Norton-Berger Shoe Co. v. Rideau, 1 La. App. 244, 245 (1924).

[24] *Supra* note 13.

[25] As to creditors, the statute applies to all, personal and business. People's Savings Bank v. Van Allsburg, 165 Mich. 524, 131 N. W. 101 (1911); Roberts v. Kaemmerer, *supra* note 15 (creditors of goods for store *A* may attack sale of store *B* in bulk); Douglas Fir Lumber Co. v. Star Lumber Co., 27 N. M. 403, 201 Pac. 867 (1921); Hartwig v. Rushing, 93 Ore. 6, 182 Pac. 177 (1919); see Fitzhugh v. Munnell, 92 Ore. 47, 179 Pac. 679 (1919) (creditors whose claims are due and will become due); *cf.* Ellis Jones Drug Co. v. Coker, 151 Miss. 102, 117 So. 545 (1928) (individual creditor of a partner need not be notified on sale of the partnership). But not to tort claims. Superior Plating Works v. Art Metal Crafts Co., 218 Ill. App. 148 (1920); Harrison v. Riddell, 64 Mont. 466, 210 Pac. 460 (1922). But must have been creditor at time of sale. Lawndale Sash Co. v. West Side Trust & Savings Bank, 207 Ill. App. 3 (1917); see Trummer v. Crimmins, 262 Mich. 314, 247 N. W. 191 (1933).

[26] Intangible property, with the exception of a partner's interest, has not been considered as within the Act. Knass v. Madison & Kedzie State Bank, 269 Ill. App. 588 (1933) (assets of a bank); Thorndike & Hix Lobster Co. v. Hall, *supra* note 19 (good will); (1933) 1 U. OF CHICAGO L. REV. 343.

unless the statutory formalities are complied with;[27] but if the transfer is of one partner's interest to one of the other partners, the statute does not apply.[28] Are these decisions in accord with the purpose of the statute, disregarding abstract considerations of whether the transfer of rights in a partnership is a "sale of a stock of goods" or only the transfer of an interest?[29] Where *X*, the sole owner of a business, sells a half interest in the business to *Y* to admit him as a partner, if the consideration paid by *Y* consists of goods contributed to the business, *X's* creditors are not adversely affected, for *X*'s interest in that stock of goods has not been altered and hence the statute should not apply.[30] However, if the consideration which *Y* contributes is cash, *X* can pocket the cash and keep it out of reach of creditors, and as *X*'s interest in that stock of goods is now diminished, the security of his creditors is diminished. To this latter situation the Act might readily be applied.

In the case in which an existing partner transfers his interest to one of his partners, the courts have rightly held that the Act has no application.[31] Here the effect of the transaction on creditors is that partnership creditors will be deprived of their preference over the personal creditors of the remaining partners in the partnership assets and the personal creditors of the withdrawing partners will lose all interest in these goods. As for the latter, a statute passed to protect creditors of merchants who became creditors only because the debtor was a merchant would not seem to include them. Nor, with respect to the former, should a statute passed to end the evil of "fly-by-night" merchants be extended to preserve a mere *preference* among creditors in certain assets.

Transactions to Which the Statute Did Not Apply

Transactions to which the courts have held the statute did not apply have been of small size and value: "It should be something more than that [ten *per cent.*] or nearer a half of the stock to come under condemnation of the statute."[32]

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[27] Virginia-Carolina Chemical Co. v. Bouchelle, 12 Ga. App. 661, 78 S. E. 51 (1913); Daly v. Sumpter Drug Co., 127 Tenn. 412, 155 S. W. 167 (1912); Watkins v. Angus, 241 Mich. 690, 217 N. W. 894 (1928); Ellis Jones Drug Co. v. Coker, *supra* note 25. *Contra:* Yancey v. Lamar-Rankin Drug Co., 140 Ga. 359, 78 S. E. 1078 (1913).

[28] Taylor v. Folds, 2 Ga. App. 453, 58 S. E. 683 (1907); Schoeppel v. Pfannensteil, *supra* note 3; Fairfield Shoe Co. v. Olds, 176 Ind. 526, 96 N. E. 592 (1911); Peterson Co. v. Freeburn, 204 Iowa 644, 215 N. W. 746 (1927); *In re* Rosenberg's Account, 16 Dist. & C. 569 (Pa. 1931); *cf.* Dakota Trust & Savings Bank v. Hanson, 5 F. (2d) 915 (C. C. A. 8th, 1925). *Contra:* Howell v. Howell, 142 Tenn. 31, 215 S. W. 278 (1919) ("A half interest is a portion of the stock").

[29] Where the statute provides for a "sale or transfer of any interest", a transfer by one partner of his right in the partnership to a stranger or one of the partners would be within the Act. Spokane Merchants' Ass'n v. Koska, 118 Wash. 445, 203 Pac. 969 (1922). As to a transfer to a corporation formed to take over the business, the cases are in conflict; that such a transaction is within the statute: First Nat. Bank of Durham v. Raleigh Savings Bank, 37 F. (2d) 301 (C. C. A. 4th, 1930); Keedy v. Sterling Electric Appliance Co., 13 Del. Ch. 66, 115 Atl. 359 (1921); Sakelos v. Hutchinson Bros., 129 Md. 300, 99 Atl. 357 (1916); Smith-Calhoun Rubber Co. v. McOhie Rubber Co., 235 S. W. 321 (Tex. Civ. App. 1921); see Lowendahl v. Van Bokkelen, 139 Misc. 857, 248 N. Y. Supp. 553 (1931). *Contra:* McLean v. Miller Robinson Co., 55 F. (2d) 232 (E. D. Pa. 1931); Maskell v. Alexander, 100 Wash. 16, 170 Pac. 350 (1918); Note (1932) 41 YALE L. J. 1246; (1922) 20 MICH. L. REV. 909.

[30] In one case, both types of sale were involved. *X*, a merchant, sold a half-interest in his business to *Y*, admitting him as a partner, and, shortly thereafter, sold his remaining interest to *Y*, leaving *Y* as sole owner. The court held the latter sale to be void. In deciding as it did, the court was undoubtedly influenced by the fact that *X* had here, in effect, sold out completely to *Y*, and that the admission of *Y* as a partner had been merely a device to evade the statute. Virginia-Carolina Chemical Co. v. Bouchelle, *supra* note 27.

[31] Denton v. White, 223 Ky. 640, 4 S. W. (2d) 412 (1928); Hartwig v. Rushing, *supra* note 34; McCallum v. Jones, 150 Tenn. 492, 265 S. W. 984 (1924).

[32] Armfield Co. v. Saleeby, 178 N. C. 298, 301, 100 S. E. 611 (1919); see Splain v. Goodrich Rubber Co., 53 App. D. C. 303, 290 Fed. 275 (1923).

Similarly the statute does not apply to sales of $1,090 and $487 out of a stock with a value between $6,000 and $20,000.[33] In *Krueger v. Hammond,*[34] *X* sold four tubes and eight casings, his total stock of goods for the repair of cars, in one sale. The court held this sale was not within the Act as the articles were so few in number and of such small value that the sale could not be regarded as within the spirit or reason of the law, though actually a sale in bulk. Nor, where a merchant ran a retail piano store and music house, did the statute condemn a sale of all the sheet music department, constituting five to seven *per cent.* of the total business, as this was not a sale of "all or substantially all".[35] A sale of an entire accessory business run as part of a repair shop or other non-commercial business, is not within the Act.[36] Likewise, a sale of an auto sales agency and $39.24 worth of accessories out of a stock of $1,500, where both businesses had previously been operated as one, was not a bulk sale as to the accessories because it was not of a "material portion" of the stock.[37] One Illinois case has held that the sale by a dairyman of the goods remaining after a sale of his cattle and wagons did not come within the Act.[38] Nor has the Act been used to prevent the sale in bulk of odds and ends of goods when moving the store to a new location, nor of old or shopworn goods, where the principal business is not that of dealing in such goods.[39]

Thus a review of the cases presents no settled construction of the Act as to the amount necessary to be sold so that the sale is a bulk sale; a sale of half or more than half would probably be held within the statute, less than one-fourth probably not. The cases do little more than present guides or concepts which the courts will apply to a set of facts, but provide no easily applicable test by which a merchant can ascertain if his sale is a bulk sale. Two questions remain: What is the effect of weighing, counting, or measuring as contrasted with a sale in a lump quantity, and what is the effect of solvency or insolvency of the merchant in the application of the statute to a sale of less than the entire stock?

A lower New York court has said:

> "A sale in bulk is made where separating, counting, measuring, weighing or dividing in parcels, packages or barrels does not take place but where the mass and heap are sold as one . . . Concededly, a purchaser might buy a large part of one's stock of goods by selecting a certain number of one article and a definite amount of another and not be said to have made a bulk or mass sale." [40]

However, to give effect to the legislative intent and purpose, a sale large enough to prejudice rights of creditors should not be held within the purview of the Act merely because the goods sold were counted.

In deciding cases under legislation of this type, the courts have not put sufficient emphasis on the ability of the merchant to pay his creditors, or the

[33] Fudge v. Brown, 126 Wash. 475, 218 Pac. 251 (1923). See also Nisbet v. Quinn, 7 Fed. 760 (C. C. Ga. 1881) (sales of $1200, $1900, $2200, from stock of $9000 were out of ordinary course of trade); Sabin v. Horenstein, 260 Fed. 754 (C. C. A. 9th, 1919) (sales in job lots).

[34] 123 Kan. 319, 255 Pac. 30 (1927).

[35] Blanchard Co. v. Ward, 124 Wash. 204, 213 Pac. 929 (1923).

[36] Fisk Rubber Co. v. Harson Auto Co., 168 Ark. 418, 270 S. W. 605 (1925); Wellston Radio Corp. v. Culberson, 175 Ark. 921, 300 S. W. 443 (1927); Goff Co. v. First State Bank, 175 Ark. 158, 298 S. W. 884 (1927).

[37] Fiske Rubber Co. v. Hayes, 131 Ark. 248, 199 S. W. 96 (1917).

[38] Larson v Judd, 200 Ill. App. 420 (1916); *cf.* Hall v. Main, *supra* note 19.

[39] Fiske Rubber Co. v. Hayes, *supra* note 37; see Lusby v. Sachs, 184 Ark. 929, 44 S. W. (2d) 348 (1931); Webber v. Hall, *supra* note 13. *Contra:* Cohen v. Calhoun, 150 So. 198 (Miss. 1933).

[40] Feldstein v. Fusco, 205 App. Div. 806, 201 N. Y. Supp. 4 (1923), *rev'd,* 238 N. Y. 58, 143 N. E. 790 (1924), but this statement was not questioned.

relation between the amount of goods remaining after the sale and the amount of the merchant's indebtedness. Indeed, there are statements and holdings that the solvency or insolvency of the seller is immaterial.[41] One case goes to the extent of applying the Act even though the court admits that the creditor's position was improved by the transaction.[42] Whatever may have been the tacit consideration given this factor—and in the majority of the cases the seller is insolvent at the time of sale—the opinions of the courts usually do not weigh it in relation to the size of the sale and the amount of goods remaining. To give effect to the legislative intent, the solvency or insolvency of the seller should be of primary importance.

With this confusing and undesirable state of the law, an honest merchant about to make a sale slightly larger than is usual for him cannot tell whether the statutory formalities such as notice to creditors and publication, should be complied with; nor can the buyer. Often it would be inconvenient for both seller and buyer to wait five or seven days after giving notice to creditors, especially where the seller is solvent, and the buyer and seller will benefit only by a sale at once; and for the courts to require this would unduly hamper the business of buying and selling. Considering the general concepts applied by the courts, the size of the sale, the amount of the sales usually made by this merchant, amount of stock remaining after the sale, and the solvency or insolvency of the creditor, always attempting to give effect to the legislative intent, can some rule, supported by the majority of the cases, be formulated to solve this problem?[43] Can rules be postulated that will adjust the basic conflict between facility of sale and rapid turnover, so necessary to retailers, and the rights of creditors to look to these goods for payment without the danger that they will suddenly and silently be put beyond their reach? It would seem basic, to give effect to the purpose of legislation of this type that unless the sale of less than an entire stock of goods in fact prejudiced rights of creditors, the Act should not apply. But even if they are prejudiced, a sale of one-fourth of the entire stock, unless such sale was part of a general scheme to sell the entire stock of goods, should not be regarded as within the Act for two reasons: (1) merchants should be allowed freedom quickly to make a good bargain of at least that part of their wares; (2) it must be remembered, the Act is in derogation of the common law right to dispose of property as one pleases.[44] For a sale of more than one-fourth the goods, if the amount of the merchant's indebtedness either is slightly less than or exceeds the value of the goods remaining after the sale, the sale should be held within the Act. However, if the value of the goods remaining greatly exceeds the merchant's indebtedness, such a sale should not require compliance with the statutory formalities. Most of the cases reviewed in the foregoing would bear out this analysis, but a clear adoption of such rules by the courts or the legislatures would go far to enable a merchant, or buyer, to know if his particular transaction was within the Act.

K. W. G.

[41] Sabin v. Horenstein, *supra* note 33 (the court rejected counsel's argument that sale must be of an entire stock of goods "or such proportion of it as will render the vendor less able to pay his obligations"); Miller v. Myers, 300 Pa. 192, 150 Atl. 588 (1930); Glantz v. Gardiner, 40 R. I. 297, 100 Atl. 913 (1917).

[42] Marlow v. Ringer, 79 W. Va. 568, 91 S. E. 386 (1917).

[43] "If the sale is one which naturally divests the vendor of the controlling interest, or in any other way alienates his right, title and interest to the extent that the creditors are jeopardized, it would appear that the court would hold it to be a substantial part of the goods rather than to require the act to be one which disposes of 'practically all' of the stock of goods, wares or merchandise." Driscoll, *supra* note 13, at 107.

[44] Eckstein & Co. v. Sweat, 133 Ga. 511, 512, 66 S. E. 257 (1909); Fairfield Shoe Co. v. Olds, *supra* note 28, at 529, 96 N. E. at 593; Blanchard Co. v. Ward, *supra* note 35, at 207, 213 Pac. at 930; *cf.* Peterson Co. v. Freeburn, 204 Iowa 644, 215 N. W. 746 (1927).