than their proportionate share of a bankrupt's estate, and to encourage the creditors to inform the trustee of voidable transfers. *Trimble* v. *Woodhead*, 102 U.S. 647, 26 L. Ed. 290 (1880).

It would seem, therefore, that the rule as stated in the *Midland Case* was correctly applied upon its facts though the rule, itself, is not as absolute as intimated by the court in their opinion.

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Chattel Mortgages

BULK SALES ACT — CHATTEL MORTGAGE ACT — LIEN AND TITLE THEORY — FRAUD

The recent case of *Winter's National Bank and Trust Co.* v. *Midland Acceptance Corporation*, 47 Ohio App. 324, 17 Abs. 146, 40 O.L.R. 308, 191 N.E. 889 (1934), raises the problem of whether the Bulk Sales Act, Section 11102 of the General Code, applies to a chattel mortgage, a question of first impression in Ohio. One F. H. Gessaman had executed and delivered to the defendant, one of several creditors, a chattel mortgage which covered the entire equipment of his new and used auto sales establishment. The consideration was deferring legal action on a note of $15,000, the note being due and unpaid as to principal and interest. Plaintiff bank, as a creditor of Gessaman, sought to subject certain chattel property to a trust in the hands of the defendant, upon the claim that the defendant took the property by sale or transfer from Gessaman in violaion of the provisions of Section 11102, et seq., General Code. The statute provides in substance that the sale, transfer or assignment, in bulk of any part or the whole of a stock of merchandise, otherwise than in the ordinary course of trade of the seller, transferer or assignor, shall be void as against his creditors, unless the purchaser, transferee, or assignee, demands and receives from the seller, transferrer or assignor, a certified list of names of his creditors, with the amount of indebtedness owing to each, and gives certain specified notice to them five days before taking possession.

The jurisdictions which have been confronted by this problem have split in their decisions, with the decided weight of authority holding that the giving of a chattel mortgage on a stock of goods for a bona fide debt, whether it be a lien or title given as security, does not constitute a sale, transfer or assignment in violation of the Act. Although special grounds for reaching the same result have been found by some courts, the most common basis for such a holding is that the words, "sale, trans-

fer or assignment," contemplate a complete change in title, while a chattel mortgage creates merely a limited property interest. *Hannah and Hog* v. *Richter Brewing Co.*, 149 Mich. 220, 112 N.W. 713, 12 L.R.A. (N.S.) 178, 119 Am. St. Rep. 67, 12 Ann. Cas. 344 (1907); *Talty* v. *Schoenholz* 323 Ill. 232, 154 N.E. 139, 49 A.L.R. 1487 (1926); *Farrow* v. *Farrow* 136 Ark. 140, 206 S.W. 134 (1918); *Avery & Sons* v. *Carter* 18 Ga. App. 527, 89 S.E. 1051 (1916); *Slow* v. *Ohio Valley Roofing Co.*, 198 Ind. 190, 152 N.E. 820 (1926); *Faeth Co.* v. *Bressie* 125 Kans. 425, 264 Pac. 1077 (1928); *Wright* v. *Cline* 27 Ga. App. 129, 107 S.E. 593 (1921) where a deed to secure payment of a debt, altho purporting to pass title to purchaser was held not covered by Bulk Sales Law; *Lee* v. *Gilen & Boney* 90 Neb. 730, 134 N.W. 278 (1912); *In re George Seton Thompson Co.*, 297 F 934 (1924); *Wasserman* v. *McDonnell* 190 Mass. 326, 76 N.E. 959 (1906); *Symons Brothers & Co.* v. *Brink* 187 Mich. 43, 153 N.W. 359 (1915); affirmed in 194 Mich. 389, 160 N.W. 638 (1916); *Schwartz* v. *King Realty Investment Co.*, 94 N.J.L. 134, 109 Atl. 567 (1920).

In jurisdictions where the lien theory of mortgages exists some courts have held the Act inapplicable on the ground that no title passes, as was contemplated by the Act. *Noble* v. *Fort Smith Wholesale Grocery Co.* 34 Okla. 662, 127 Pac. 14, 46 L.R.A. (N.S.) 455 (1911); *Appel Mercantile Co.* v. *Kirtland* 105 Neb. 494, 181 N.W. 151 (1920); *United States* v. *Lankford* 3 F (2d) 52 (D.C.E. D. Va. 1924); while the opposite conclusion was reached in *Beene* v. *National Liquor Co.* 198 S.W. 596. (Tex. Civ. App. 1919).

On the other hand a respectable minority, regardless of whether they are lien or title jurisdictions, have judicially interpreted the Act as to include chattel mortgages. *Vaughan* v. *Tyler* 206 Mo. App. 1, 226 S.W. 1034 (1920); *Semmes* v. *Rudolph Stecker Brewing Co.* 195 Mo. App. 621 (1916); *Texas Bank & Trust Co.* v. *Teich* 283 S.W. 552 (Tex. Civ. App. 1926) Federal District courts of Texas have held the Act inapplicable and have refused to follow the decisions of the state courts. *In re Gary* 281 F 218 (D.C.S.D. Tex. 1922); *In re Martin* 283 F 833 (D.C.E.D. Tex. 1921); *In re Griffen Drug Co.* 289 F. 140 (D.C.N.D. Tex. 1923).

In jurisdictions where the title theory of mortgages prevails some courts have held that a chattel mortgage is within the Act. *Linn County Bank* v. *Davis* 103 Kans. 672, 175 Pac. 972 (1924). However, though the title theory is recognized in Rhode Island, the supreme court of that state has held the Bulk Sales Act inapplicable. *Aristo Hosiery Co.*

v. *Ramsbottom* 46 R.I. 505, 129 Atl. 503 (1925). Ohio is in the title theory group, with the principal case in accord with the Rhode Island view.

As a result of these decisions the problem has been met in a few states by amending their Bulk Sales Act so as to name chattel mortgages specifically. *D. C. Goff Co.* v. *First State Bank*, 175 Ark. 158, 298 S.W. 884 (1927); *Rashaw* v. *Straus Co.* 94 Okla. 141, 221 Pac. 62 (1923).

From an examination of the foregoing cases, it would seem that the position adopted by the Court of Appeals, following the weight of authority, presents a sound legal solution. While the Act is intended to prevent certain debtors from defrauding their creditors, this intent does not justify the courts in giving the statute a construction it will not bear because the legislature has not included within the interdiction a transaction whereby fraud may be perpetrated. The mere assertion that it is not likely that such an opening was overlooked by the legislature can hardly solve the issue. Some evidence should be presented in support of such a contention before entertaining such a conjecture.

Cases attempting a distinction on the basis of the lien and title theory, offer little aid because the substance of the transaction is the same in both jurisdictions. Under either theory a mortgage is the giving of security, and is not an absolute and unconditional transfer of property as contemplated by the legislature.

The statement of the court in the principal case, that the courts should give effect to both the Chattel Mortgage Act, Sections 8560, 8561, et seq., General Code and the Bulk Sales Act, in which case the latter section would not be controlling, deserves some consideration. Some weight must also be given to the argument which the court points out, that if a chattel mortgage is within both Acts, it would require two forms of execution. To require both notices would complicate such a transaction and tend to materially hamper the securing and extension of credit on this class of security.

It is recognized that it would be desirable to eliminate evasion of the Act, and since a chattel mortgage is within the spirit of Sec. 11102, General Code, it would also be desirable to hold such a transaction within the Act. However, it is hard to see what means there may be to that end, without straining the wording of the statute as it now reads. A statute should not be interpreted to serve the purpose of a dragnet unless the legislature manifested such intent. It would seem that the more reasonable way to meet the problem in Ohio is by amending the Bulk Sales Act or enacting a Bulk Mortgages Law.

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