

## Chapter 76

### Bulk Transfers

#### 76.1010 to 76.1110

LAW REVIEW CITATIONS: 45 OLR 175.

#### 76.1020

##### NOTES OF DECISIONS

###### 1. Under former similar statute

The chapter applies not only to sales for money but also to sales for property measured in money. *Hartwig v. Rushing*, (1919) 93 Or 6, 182 P 177.

The chapter was sufficient in its scope to include a series of sales to various purchasers whereby the greater portion of a merchant's stock was disposed of. *Sabin v. Horenstein*, (1919) 260 Fed 754.

When the transfer of a substantial interest in a business created a new business organization, the Act would apply if the transaction fell within the purposes of the statute. *Brownson v. Lewis*, (1962) 233 Or 152, 377 P2d 327.

LAW REVIEW CITATIONS: 5 OLR 235; 41 OLR 182.

#### 76.1030

##### NOTES OF DECISIONS

###### 1. Under former similar statute

Assignment of personal property for benefit of creditors was not a "sale" within the meaning of the chapter. *Bown v. Frank*, (1927) 121 Or 482, 256 P 190; *Liberman v. Low*, (1934) 148 Or 359, 36 P2d 791.

Sales by bankrupt to defendant of goods in job lots was not so out of his usual course of business as to constitute sales in bulk. *Sabin v. Horenstein*, (1919) 260 Fed 754.

The chapter was not applicable to a chattel mortgage when executed as such and not in reality an unconditional sale or transfer. *Smith v. Allen*, (1933) 144 Or 261, 24 P2d 1043.

The chapter was not applicable to the transfer of apartment house furnishings. *Mattecek v. Pugh*, (1936) 153 Or 1, 55 P2d 730, 168 ALR 725.

LAW REVIEW CITATIONS: 45 OLR 175.

#### 76.1040

##### NOTES OF DECISIONS

###### 1. Under former similar statute

(1) **In general.** The creditor of the seller entitled to the benefit of the statute could hold the vendee liable only for such property as was embraced by the statute at the time of the sale. *Rice v. West*, (1916) 80 Or 640, 157 P 1105; *Golden Rod Milling Co. v. Connell*, (1917) 84 Or 551, 164 P 588.

The statute was inapplicable to transfer of apartment house furnishings. *Mattecek v. Pugh*, (1936) 153 Or 1, 55 P2d 730, 168 ALR 725.

The object of the statute was to protect creditors from the fraudulent transfer of stocks of merchandise and similar assets. *Brownson v. Lewis*, (1962) 233 Or 152, 377 P2d 327.

The statute was strictly construed because it restricted the right of an owner to dispose of his property. *Id.*

(2) **"Creditors."** The statute contemplated two classes of creditors, those whose claims are due and those whose claims were not yet due, and it was imperative that the statement state the facts as to both classes whether or not both existed. *Fitzhugh v. Munnell*, (1919) 92 Or 47, 179 P 679.

The statute was not limited to protection of mercantile creditors only but it referred to "all of the creditors." *Hartwig v. Rushing*, (1919) 93 Or 6, 182 P 177.

One holding an unliquidated claim was not a "creditor". *Electrical Prod. Corp. v. Ziegler Drug Stores*, (1937) 157 Or 267, 68 P2d 135, 71 P2d 583.

(3) **Defective statement.** Where the statement was defective on its face the buyer accepted it at his peril. *Fitzhugh v. Munnell*, (1919) 92 Or 47, 179 P 679.

Where the vendor had made a statement under oath, fair upon its face, and the vendee had no knowledge of its incorrectness and nothing to put him on inquiry, he was protected. *Coach v. Gage*, (1914) 70 Or 182, 138 P 847; *Fitzhugh v. Munnell*, (1919) 92 Or 47, 179 P 679.

The section was not complied with where the statement was not made under oath and not given at least five days before the purchase. *Rice v. West*, (1916) 80 Or 640, 157 P 1105.

A statement was faulty that did not give the address of any creditor, and made no mention of debts to become due or that there were no such debts. *Fitzhugh v. Munnell*, (1919) 92 Or 47, 179 P 679.

(4) **Pleading and proof.** A reply alleging the purchase of goods in bulk and noncompliance with the chapter was not a departure from a complaint alleging ownership. *Goodwin v. Tuttle*, (1914) 70 Or 424, 141 P 1120.

An allegation that said sale was in violation of the chapter in that no certificate under oath was made was purely a conclusion of law. *Credit Serv. Co. v. Peters*, (1925) 115 Or 633, 239 P 810.

A creditor's allegations had to show affirmatively that there were creditors of the vendor in existence at the time of the transaction with their names, addresses and amount due to each of them. *Id.*

FURTHER CITATIONS: *Moore Mfg. Co. v. Billings*, (1905) 46 Or 401, 80 P 422; *Gress v. Wessinger*, (1918) 88 Or 625, 172 P 495; *Henry v. Allen*, (1943) 171 Or 676, 138 P2d 591; *Dudley v. Eberly*, (1962) 201 F Supp 728, 314 F2d 8.

LAW REVIEW CITATIONS: 5 OLR 235; 17 OLR 63; 45 OLR 174.

#### 76.1050

##### NOTES OF DECISIONS

###### 1. Under former similar statute

- (1) Notice
- (2) Purchaser's rights and liabilities
- (3) Remedies of creditors

- (4) Waiver
- (5) "Void"
- (6) Pleading and proof

#### 1. Under former similar statute

(1) **Notice.** Notice had to be given to creditors whose demands were not yet due. *Hartwig v. Rushing*, (1919) 93 Or 6, 182 P 177.

Notice mailed to a creditor by the vendor after the sales contract had been completed and the money paid was not a compliance with the section. *Castleman v. Stryker*, (1923) 109 Or 207, 219 P 1084.

A creditor who had ample notice and knowledge of the sale of the merchandise by his debtor, and approved the same, could not subsequently insist that the section was not complied with to his disadvantage. *In re Scranton & Short*, (1925) 7 F2d 473.

(2) **Purchaser's rights and liabilities.** A sale made in violation of the statute was valid as between the seller and buyer. *Benson v. Johnson*, (1917) 85 Or 677, 165 P 1001, 167 P 1014; *Oregon Mill & Grain Co. v. Hyde*, (1918) 87 Or 163, 169 P 791; *Syerson v. Serry*, (1921) 101 Or 514, 200 P 921; *Castleman v. Stryker*, (1923) 109 Or 207, 219 P 1084.

A person who took possession of property in direct violation of the statute could not be a bona fide holder within the Bankruptcy Law. *Goodwin v. Tuttle*, (1914) 70 Or 424, 141 P 1120.

Where the section was not complied with but the vendee paid off a mortgage on the goods, he was subrogated to the rights of the mortgagee. *Hicks v. Beals*, (1917) 83 Or 82, 163 P 83.

Where the statute was not complied with the purchaser became liable to the seller's creditors for the value of the items received. *Gillen-Cole Co. v. Fox & Co.*, (1934) 146 Or 208, 29 P2d 1019.

(3) **Remedies of creditors.** The statute was for the benefit of the creditor only, who might or might not elect to claim the benefit thereof. *Benson v. Johnson*, (1917) 85 Or 677, 165 P 1001, 167 P 1014; *Oregon Mill & Grain Co. v. Hyde*, (1918) 87 Or 163, 169 P 791; *Castleman v. Stryker*, (1923) 109 Or 207, 219 P 1084.

A seller's creditor could garnish goods transferred to a purchaser in violation of the statute. *Oregon Mill & Grain Co. v. Hyde*, (1918) 87 Or 163, 169 P 791.

The same remedy which would afford relief against actual or common-law fraud was equally available for relief against statutory fraud. *Id.*

A judgment creditor who attempted to collect its debt directly from judgment debtor was not estopped from proceeding against a purchaser who had not changed his position because of the creditor's action. *Id.*

A trust in favor of creditors of the seller, he being without assets and they having reduced their claim to judgment, would be impressed on land obtained by the buyer of the stock of goods in exchange therefor, and then conveyed to others without consideration. *Hartwig v. Rushing*, (1919) 93 Or 6, 182 P 177.

If the transfer was fraudulent it made no difference whether it was common-law or statutory fraud; the creditor could not sue the purchaser directly as on a personal liability unless he had reduced his claim to a judgment against the seller and debtor, or had obtained a lien. *Id.*

Equitable remedies are available in an appropriate case

for tracing assets in order to carry out the intent of the statute. *Brownson v. Lewis*, (1962) 233 Or 152, 377 P2d 327.

(4) **Waiver.** Where the statute was strictly complied with a creditor lost his right to avoid the sale if he made no move to protect his claim. *Rice v. West*, (1916) 80 Or 640, 157 P 1105.

Where a creditor waited two years before attempting to avoid a sale by repudiating his approval of same, he had waived his rights under the statute. *Id.*

A creditor did not waive the benefit of the statute by sending the vendor's note to a collecting bank upon learning of the sale. *Castleman v. Stryker*, (1923) 109 Or 207, 219 P 1084.

Actual knowledge could, in some circumstances, dispense with formal "notice." *Brownson v. Lewis*, (1962) 233 Or 152, 377 P2d 327.

(5) **"Void."** Although the word "void" was used, a sale was merely voidable at the instance of a creditor of the seller. *Oregon Mill & Grain Co. v. Hyde*, (1918) 87 Or 163, 169 P 791; *Brownson v. Lewis*, (1962) 233 Or 152, 377 P2d 327.

Under certain circumstances the sale of a fractional interest in a business could be equally defective. *Brownson v. Lewis*, (1962) 233 Or 152, 377 P2d 327.

(6) **Pleading and proof.** Failure to comply with the statute resulted in a conclusive presumption of fraud. *Goodwin v. Tuttle*, (1914) 70 Or 424, 141 P 1120; *Hartwig v. Rushing*, (1919) 93 Or 6, 182 P 177; *Castleman v. Stryker*, (1923) 109 Or 207, 219 P 1084.

The statute was not construed as raising a conclusive presumption of fraud against a vendee where a creditor's name was accidentally or fraudulently omitted from the list furnished the vendee by the seller. *Coach v. Gage*, (1914) 70 Or 182, 138 P 847.

Where the original answer set up the defense of violation of the statute, the court had no power to allow defendant to file an amended answer after trial, alleging actual fraud in the transfer. *Golden Rod Milling Co. v. Connell*, (1917) 84 Or 551, 164 P 588.

The statute had to be pleaded by the creditor who would avail himself of it. *Benson v. Johnson*, (1917) 85 Or 677, 165 P 1001, 167 P 1014.

For the purpose of defeating a transfer of property it was sufficient to allege the facts bringing the transaction within the statute and the law would draw the conclusion that a statutory fraud had been committed. *Fitzhugh v. Munnell*, (1919) 92 Or 47, 179 P 679.

An allegation that the vendee had purchased goods in bulk without first having demanded and received from his vendor a statement of creditors and without notifying the plaintiff was sufficient, taken in connection with the interrogatories and in the absence of a proper challenge at the appropriate time. *Castleman v. Stryker*, (1923) 109 Or 207, 219 P 1084.

An allegation that debtor, who assigned his assets in trust for creditors, did not furnish a list of creditors nor comply with the section was a mere conclusion of law. *Bown v. Frank*, (1927) 121 Or 482, 256 P 190.

FURTHER CITATIONS: *Patterson v. Baker Grocery Co.*, (1914) 73 Or 433, 144 P 673; *Price v. The Boot Shop*, (1915) 75 Or 343, 146 P 1088.

LAW REVIEW CITATIONS: 45 OLR 174.