the Act, additional legislation should be enacted to define more adequately the term "labor disputant."[11]

W. A. E.

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SALES—FRAUDULENT CONVEYANCES—STATUS OF CREDITORS UNDER BULK SALES LAW—[Missouri].—In a recent Missouri case[1] the plaintiff brought an action to set aside the sale in bulk of a retail store. Defendant vendor was indebted to plaintiff on a promissory note. The note had been executed by defendant as surety for a co-defendant and had been reduced to judgment. The note had been given by co-defendant in return for merchandise furnished him by plaintiff. As to the co-defendant, plaintiff was a merchandise creditor; as to the defendant, plaintiff was adjudged a general creditor. *Held:* affirming decision of trial court, that plaintiff was a creditor of defendant within the terms of the Bulk Sales Law.[2]

The question before the court was whether the Bulk Sales Law protects only those creditors who sell merchandise to merchants for resale, or whether it extends to all general creditors of the seller.[3] In two earlier cases involving the same point the Springfield Court of Appeals had expressed contrary opinions. In the first Missouri case[4] the court had favored the broad view of extending protection to all general creditors of the seller, but in the later case of *Rubenstein v. Bryson* the court had adopted a limited construction of the term "creditors."[5] In *Roberts v. Kaemmerer*, the only other Missouri decision on the same point, the St. Louis Court of Appeals, in a well considered opinion, held the Bulk Sales Law extended

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cerns only controversies between employer and employee. Accord, Safeway Stores v. Retail Clerks' Union, (1935) 184 Wash. 322, 51 P. (2d) 322, arising under statute later declared unconstitutional in Blanchard v. Golden Age Brewing Co. (Wash. 1936) 63 P. (2d) 397. See criticisms of these holdings in comments (1937) 31 Ill. L. Rev. 688; (1935) 35 Mich. L. Rev. 340.

11. This difference of interpretation has arisen in spite of the confident expression of the Senate Committee on the Judiciary (S. R. Report 163, 72d Congress, First Session), favorably reporting the bill: "Section 13 of the bill defines various terms used in the act, and it is not believed that any criticism has been or will be made to these definitions. * * * In order that the limitation may not be whittled away by refined definitions of what persons are to be regarded as legitimately involved in labor disputes, the bill undertakes specifically to designate those persons who are entitled to invoke the protections of the procedure required."

1. McKnight-Keaton Grocery Co. v. McFadden (Mo. App. 1937) 107 S. W. (2d) 176.

2. R. S. Mo. (1929) sec. 3127-3131.

3. McKnight-Keaton Grocery Co. v. McFadden (Mo. App. 1937) 107 S. W. (2d) 176. For general treatment of subject see 84 A. L. R. 1406; also 102 A. L. R. 565.

4. Joplin Supply Co. v. Smith (1914) 182 Mo. App. 212, 167 S. W. 649.

5. Rubenstein v. Bryson (Mo. App. 1922) 245 S. W. 585, where the court held the statute did not apply to a note for a personal debt for family supplies not intended for resale.

to all creditors without qualification.[6] In deciding the instant case, the Springfield Court of Appeals overruled *Rubenstein v. Bryson* and adopted the reasoning of the St. Louis Court of Appeals.[7]

The principal case follows the majority view that the term "creditors," in whose favor the statute declares a bulk sale fraudulent and void, is not restricted to any particular class of creditors, but includes all persons who were creditors of the seller at the time of the sale, even though they were merely general creditors of the seller in other transactions and not creditors for merchandise.[8] The great majority of courts have tended to adhere to the prevailing view in the belief that to limit protection of the Bulk Sales Laws to those creditors who sell to merchants for resale would partially defeat the purpose of the statutes[9] and obviously be contrary to the manifest intention of the legislature.[10] The acknowledged purpose of bulk sales legislation is to protect all the creditors of a vendor from loss as a result of the disposal in bulk by the vendor of goods relied on by the creditors as security, and consequently, the framers of the statutes have used the word "creditors" or the phrase "all creditors" without qualification.[11] The majority of courts, therefore, have given force to the express terms, and held that the clear language employed negatives any contrary intent on the part of the legislature.[12] Under a few statutes, by reason of

6. Roberts v. Kaemmerer (1926) 220 Mo. App. 582, 287 S. W. 1057.

7. Supra, notes 1 and 6.

8. Huckins v. Smith (C. C. A. 8, 1928) 29 F. (2d) 907, 13 Am. Bankr. Rep. (N. S.) 166, (writ of certiorari denied in 280 U. S. 561, 50 S. Ct. 19, 74 L. ed. 615, 14 Am. Bankr. Rep. (N. S.) 750); Johnson Bros. Co. v. Washburn (1917) 16 Ala. App. 311, 77 So. 461; Prins v. American Trust Co. (1925) 165 Ark. 455, 275 S. W. 914; Iowa State Savings Bank of Malvern v. Young (1932) 214 Iowa 1287, 244 N. W. 271; Winthrop Restaurant Co. v. Kournetas (1932) 265 Ill. App. 535; Burnett v. Trimmell (1918) 103 Kan. 130, 173 Pac. 6, L. R. A. 1918E 1058; Brunson v. Monroe Automobile and Supply Co. (1934) 180 La. 1064, 158 So. 558, 96 A. L. R. 1206; Fidelity and Deposit Co. of Maryland v. Thomas (1918) 133 Md. 270, 105 Atl. 174; Newcomb v. Montague (1919) 265 Mich. 80, 171 N. W. 433; Touris v. Karantzalis (1915) 156 N. Y. S. 526; In re Pastene (1914) 156 N. Y. S. 524; Galbraith v. Oklahoma State Bank (1912) 36 Okl. 807, 130 Pac. 541. See Billig and Smith, Bulk Sales Laws: A Study in Statutory Interpretation (1932) West Virginia L. Q. 309, 320.

9. Joplin Supply Co. v. Smith (1914) 182 Mo. App. 212, 167 S. W. 649; see note, 84 A. L. R. 1406, 1407.

10. Winthrop Restaurant Co. v. Kournetas (1932) 265 Ill. App. 535. In Fidelity and Deposit Co. of Maryland v. Thomas (1918) 133 Md. 270, 105 Atl. 174, 175, the court says: "It would be peculiar if it were otherwise, as most if not all merchants who do business of any consequence owe debts other than on merchandise accounts, such as promissory notes, rent, clerk hire, etc. It could not be pretended that a merchant who had borrowed money and paid for his merchandise would not be subjected to the Sales in Bulk Act, but that one who still owes for the merchandise would be."

11. The statutes are substantially identical. For classification and comparison of statutes see Billig and Smith, Bulk Sales Laws: A Study in Statutory Interpretation (1932) 38 West Virginia L. Q. 309, 310.

12. Roberts v. Kaemmerer (1926) 220 Mo. App. 582, 287 S. W. 1057, and cases cited.

restrictive words therein, only a creditor whose goods are included in the bulk sale to a third person can attack the sale on the ground that it was made without the formalities required by law.[13] It has been suggested that such statutes limited to one class of creditors would be unconstitutional on the ground of class legislation, it being an unlawful discrimination between creditors.[14] The majority construction, therefore, follows the canon of construing a statute in favor of its constitutionality. From this standpoint, too, the court's decision in the instant case would seem to be a desirable interpretation of the Bulk Sales Law.

A. B. H.

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TAXATION—CHAIN STORES—STATE TAX GRADUATED ACCORDING TO NUMBER OF OUTLETS THROUGHOUT COUNTRY—[United States].—A Louisiana statute[1] imposed a license tax upon "chain stores," the amount of tax per retail outlet operated within the state being graduated according to the total number of outlets in the chain, whether they were located within the state or not.[2] The Great Atlantic & Pacific Tea Company challenged the validity of the levy under the Fourteenth Amendment, contending that the act arbitrarily discriminated against national chains in violation of the "equal protection" clause,[3] and that it attempted to tax property beyond the jurisdiction of the state in violation of the "due process" clause.[4] The Supreme Court of the United States, in a four to three decision, upheld the constitutionality of the act.[5]

The extraordinary growth of chain stores within recent years has caused many states to attempt to restrict their increase by imposing taxes which fall more heavily upon them than upon independent retailers. The taxes most frequently assume the form of graduated license taxes,[6] the amount

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13. For cases on this point see cases cited in 27 C. J., Fraudulent Conveyances (1922) 879, sec. 888. In Singletary v. Boerner-Morris Candy Co. (1908) 129 Ky. 556, 112 S. W. 637, a proviso incorporated within the Act was interpreted as expressly limiting the protection of the statute to goods sold and delivered by manufacturer, wholesale merchant, or jobber. A similar proviso in the Missouri Bulk Sales Law (R. S. Mo. (1929) sec. 3128) was so construed by the court in Joplin Supply Co. v. Smith (1914) 182 Mo. App. 212, 167 S. W. 649, as to extend protection of the statute to *all* creditors of the seller.

14. McKinster v. Sager (1904) 163 Ind. 171, 72 N. E. 854, 68 L. R. A. 273, 106 Am. St. Rep. 268. See also Roberts v. Kaemmerer (1926) 220 Mo. App. 582, 287 S. W. 1057, and Joplin Supply Co. v. Smith, supra.

1. La. Acts of 1934, 251.

2. Amount of the tax ranged from $10 per store where chain consisted of not more than ten stores to $550 per store of chain having more than 500 stores.

3. U. S. Const. Amend. XIV.

4. Ibid.

5. Great Atlantic and Pacific Tea Co. v. Grosjean (1937) 301 U. S. 412, 57 S. Ct. 772, 81 L. ed. 735.

6. Eighteen states at the present time impose such a levy. Ala. Acts of 1935, 505; Colo. Laws of 1935, 1090; Fla. Gen. Laws (1935) ch. 16848; Idaho Laws of 1933, ch. 113; Ind. Burns Stat. (1935) sec. 42-301; Iowa