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The Impact of Automobile Certificate of Title Laws on Ownership and Encumbrance

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THE IMPACT OF AUTOMOBILE CERTIFICATE OF TITLE LAWS ON OWNERSHIP AND ENCUMBRANCE

The automobile is an expensive, mobile, and common piece of property. It is relatively easy and very profitable to steal, resulting in an enormous traffic in stolen automobiles. In order to minimize these thefts thirty-three states[1] have enacted certificate of title laws which have, of necessity, produced great changes in the law of ownership and encumbrance of motor vehicles. Such a law in its most complete form provides for central recordation of encumbrances on and changes of title to the automobile with the record appearing on a single instrument, the certificate of title. When an automobile is sold the seller's certificate is given to the purchaser, who sends it to the state agency. The state notes the change in ownership and issues a new certificate to the purchaser, resulting in a complete record of changes in title.[2] This system has been favorably compared to the Torrens system of land registration[3] except that it is an administrative official instead of a court who changes and records title to the motor vehicle.

Certificate of title acts are readily distinguishable from registration laws in that the latter do not and are not intended to control title.[4] The purpose of registration laws is to aid the state in the collection of taxes, in apprehending violators of highway regulations and, only incidentally, in the recovery of stolen automobiles.[5] An owner's registration card, since it is for tax purposes, must be renewed annually, whereas a certificate is good until the car is sold.[6] The only effect of registration on ownership is that the

1. Arkansas, Arizona, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming. Tennessee reportedly passed a certificate of title law to take effect on July 1, 1951.

2. Although the Minnesota registration law operates similarly, Minn. Stat. § 168.15 (1949), it is not classed as a title state because its provisions are for tax purposes, it lacks the elements of anti-theft provisions found in title states, and it does not call for any central recordation of liens by way of the "registration certificate."

3. Comment, *A Comparison of Land and Motor Vehicle Registration*, 48 Yale L. J. 1238 (1939).

4. Union Bank & Trust Co. v. Willey, 237 Iowa 1250, 24 N. W. 2d 796 (1946); Moore v. Wilson, 230 Ky. 49, 18 S. W. 2d 873 (1929); Bolton-Swanby Co. v. Owens, 201 Minn. 162, 275 N. W. 855 (1937), 22 Minn. L. Rev. 720 (1938).

5. *See* Gonchar v. Kelson, 114 Conn. 262, 264, 158 Atl. 545 (1932); Union Bank & Trust Co. v. Willey, *supra* note 4 at 1262, 24 N. W. 2d at 804; Bolton-Swanby Co. v. Owens, *supra* note 4 at 164, 275 N. W. at 857.

6. See Uniform Vehicle Code, Act I, § 45 (1944).

registrant is generally considered prima facie the owner,[7] while under some certificate of title laws, the certificate is conclusive of ownership.[8]

I. OWNERSHIP

In their attempt to control traffic in stolen cars most states having certificate of title laws make it a misdemeanor to sell or buy an automobile without transferring the certificate, but do not expressly render the transaction void.[9] Although the courts agree that the purpose of the certificate acts is to protect the public by minimizing auomobile thefts,[10] there is a conflict as to how the legislatures meant to achieve this result. While the general rule is that illegal contracts or sales are void and unenforceable,[11] a majority of courts hold that the legislatures intended that the penalty imposed be exclusive and the transaction effective even though the certificate is not transferred in compliance with the statute.[12]

Other courts, however, in interpreting their statutes, have in various ways altered the usual incidents of sales law regarding automobiles if the certificate is not transferred to the purchaser. For example, in *Scarborough v. Detroit Operating Co.*,[13] the buyer was allowed to rescind and recover the purchase price because the certificate was not delivered. The court, in an earlier decision,[14] stated that to hold otherwise would rob the statute of its intent to protect the public from fraud. Virginia has relied on the same

7. *E.g.*, Shipp v. Davis, 25 Ala. App. 104, 141 So. 366 (1932); Flaugh v. Egan Chevrolet, Inc., 202 Minn. 615, 279 N. W. 582 (1938).

8. See note 18 *infra*.

9. *E.g.*, Ind. Ann. Stat. § 47-2502(a) (Burns Supp. 1951). "The failure of the seller to deliver to the purchaser, at the time such vehicle is sold or delivered, a proper certificate of title, . . . shall be a misdemeanor." See also Okla. Stat. Ann. tit. 47, § 23.11 (1941).

10. *See* Van Houton v. Gizang, 3 N. J. Misc. 233, 234, 127 Atl. 681, 682 (Sup. Ct. 1925); Al's Auto Sales v. Moskowitz, 203 Okla. 611, 614, 224 P. 2d 588, 591 (1950). See Tex. Stat. Pen. Code art. 1436-1, § 1 (1948) (legislative intent is to prevent thefts of vehicles and the importation into this state of stolen automobiles), Reeb v. Danley, 221 S. W. 2d 579, 584 (Tex. Civil App. 1949).

11. Dunlop v. Mercer, 156 Fed. 545, 555 (8th Cir. 1907). See 6 Corbin, Contracts § 1512 (1951); 3 Williston, Sales § 668 (rev. ed. 1948).

12. London Assurance v. Lutfy, 184 F. 2d 40 (9th Cir. 1950) (under Illinois law, owner has insurable interest although the certificate is not properly transferred); Fogle v. General Credit, Inc., 122 F. 2d 45 (D.C. Cir. 1941); Commercial Credit Co. v. McNelly, 36 Del. 88, 171 Atl. 446 (1934); Wilson v. Mosko, 110 Colo. 127, 130 P. 2d 927 (1942); Al's Auto Sales v. Moskowitz, 203 Okla. 611, 224 P. 2d 588 (1950). (Colorado has since passed a new title law which specifically prevents title from passing unless the certificate is properly transferred, see note 18 *infra*.)

13. 256 Mich. 173, 239 N. W. 344 (1931).

14. *See* Endres v. Mara-Rickenbacker Co., 243 Mich. 5, 8, 219 N. W. 719, 721 (1928).

reasoning in holding that unless the certificate is transferred the contract remains executory and title does not pass.[15] In *Majors v. Majors*,[16] the Pennsylvania court allowed a judgment creditor of a husband to levy on the automobile which the wife purchased on the ground that she had the certificate made out to her husband. It has also been held under this type of statute that unless the seller transfers the certificate he cannot recover the purchase price.[17]

The legislatures of twelve states have gone further in attempting to regulate the transfer of title to motor vehicles by expressly preventing title from passing if the certificate is not transferred when the vehicle is sold.[18] There has also been little consistency in the interpretation of these statutes.[19] In some instances the courts have stressed the strictness of the title act and have, in effect, made it conclusive as to ownership. For example, in *Loyal's Auto Exchange, Inc. v. Munch*,[20] the seller sold and gave possession of the car to the purchaser. The seller kept the certificate and sold it to the plaintiff. In replevin, the plaintiff prevailed over the purchaser, the court stating that the only evidence of a property interest is the certificate. Other courts have held that if the certificate is not transferred, there can be no action by the seller for the purchase price;[21] nor can the buyer rescind and recover the purchase price, since the court will not aid the parties or enforce any rights based on a transfer specifically made illegal and void by

15. Thomas v. Mullins, 153 Va. 383, 149 S. E. 494 (1929); Sauls v. Thomas Andrews Co., 163 Va. 407, 175 S. E. 760 (1934).

16. 153 Pa. Super. 175, 33 A. 2d 442 (1943). *Contra:* Henry v. General Forming, Ltd., 33 Cal. 2d 223, 200 P. 2d 785 (1948). Note that the California statute, note 18 *infra*, prevents any transfer of interest unless the certificate is transferred; whereas the Pennsylvania court had to read this into their statute, and yet the respective courts reached opposite results.

17. Van Houton v. Gizang, 3 N. J. Misc. 233, 127 Atl. 681 (Sup. Ct. 1925); Stonebraker v. Zullinger, 139 Pa. Super. 134, 11 A. 2d 698 (1940). Although the Pennsylvania statute calls only for a monetary penalty in case of noncompliance, another provision states that no person shall *own* a vehicle unless a certificate has been obtained pursuant to the act, Pa. Stat. Ann. tit. 75, §§ 31, 37 (Supp. 1950), and the court relied heavily on the latter provision in the *Stonebraker* case.

18. Cal. Vehicle Code § 186 (1943); Colo. Stat. Ann. c. 16, § 13(8) (Supp. 1950); Fla. Stat. § 319.22(1) (1949); Idaho Code Ann. § 49-404 (1948); Kan. Gen. Stat. Ann. § 8-135(c)(6) (1949); Mo. Rev. Stat. Ann. § 8382(c) (1943); Mont. Rev. Code Ann. § 53-109(d) (1947); Neb. Rev. Stat. § 60-105 (1943); Ohio Code Ann. § 6290-4 (1948); Tex. Stat. Pen. Code art. 1436, § 33 (1948); Utah Code Ann. § 57-3a-72 (1943).

19. *See* Jackson v. James, 97 Utah 41, 51, 89 P. 2d 235, 239 (1939) (dissenting opinion, which reviews the cases in this field and points out how circumstances alter the decisions).

20. 45 N. W. 2d 913 (Neb. 1951) (two dissents on the basis of unconstitutionality), 30 Neb. L. Rev. 656.

21. Ludwig v. Steger, 99 Cal. App. 235, 278 Pac. 494 (3d Dist. 1929); Hento v. Melmer, 44 N. W. 2d 212 (S.D. 1950).

the legislature.[22] Moreover, the seller has been held liable for the buyer's negligence in the operation of the car,[23] and the buyer has been held to be without an insurable interest.[24]

The above cases show that in some instances the courts strictly apply the certificate acts with the loss usually falling on the purchaser. On the other hand, many courts, interpreting similar statutes, strain to reach an equitable result by bestowing ownership on the purchaser. The Utah law[25] states that no delivery or transfer shall be effective for any purpose unless the certificate passes with the automobile. Yet, the court allowed a plaintiff to recover an automobile from her husband's estate on her claim that the husband gave it to her as a gift although the certificate was never transferred.[26] In *Cerex v. Peterson*,[27] the court held that an Iowa statute which prevented title from passing unless the registration card was transferred did not affect the transfer of title between the parties since only the state could take advantage of the provision. Although the Missouri courts have emphasized that a similar act must be strictly construed regardless of the equities,[28] they have allowed replevin to a plaintiff who did not have a valid certificate,[29] and in *Dee v. Sutter*[30] went so far as to state that the certificate is only prima facie evidence of title.

The Ohio law,[31] which is an example of the most stringent certificate act, states that no court shall recognize any claim or interest to an automobile unless evidenced by a certificate, nor shall any waiver or estoppel operate in favor of a purchaser as against one holding a valid certificate. Yet, the holder of a valid

22. Reeb v. Danley, 221 S. W. 2d 579 (Tex. Civil App. 1949), 2 Baylor L. Rev. 97 (reviews the inconsistent holdings of the court under their certificate law).

23. Bunch v. Kin, 2 Cal. App. 2d 81, 37 P. 2d 744 (3d Dist. 1934); Endres v. Mara-Rickenbacker, 243 Mich. 5, 219 N. W. 719 (1928).

24. Noorthoek v. Preferred Automobile Ins. Co., 292 Mich. 561, 291 N. W. 6 (1940); Evens v. Home Ins. Co., 231 Mo. App. 932, 82 S. W. 2d 111 (1935); *cf.* Morris v. Firemen's Ins. Co., 121 Kan. 482, 247 Pac. 852 (1926).

25. Utah Code Ann. § 57-3a-72 (1943).

26. Jackson v. James, 97 Utah 41, 89 P. 2d 235 (1939).

27. 203 Iowa 355, 212 N. W. 890 (1927). This statute was subsequently repealed, but instead of passing a more stringent statute, the legislature passed the present act which calls for only a monetary penalty. See Iowa Code Ann. § 321.67 (1939).

28. *See* Weaver v. Lake, 4 S. W. 2d 834, 835 (Mo. App. 1928).

29. Pearl v. Interstate Securities Co., 357 Mo. 160, 206 S. W. 2d 975 (1947); *cf.* Peper v. American Exchange National Bank, 205 S. W. 2d 215 (Mo. App. 1947), *rev'd and remanded*, 357 Mo. 652, 210 S. W. 2d 41 (1948).

30. 222 S. W. 2d 541 (Mo. App. 1949), 48 Mich. L. Rev. 1221 (1950).

31. Ohio Code Ann. § 6290-4 (1948).

certificate was denied replevin against a subsequent purchaser who was given a fraudulent certificate,[32] the court stating that the purchaser had actual ownership with possession and control. Some courts, however, would allow the seller to bring replevin against the buyer where the seller has retained the certificate pending payment of the purchase price,[33] apparently on the basis that if there is nothing inherently immoral about the illegal act, the court will not leave the parties where they find them.[34]

Certificate of title acts which void the sale, and those judicial interpretations which reach the same result, have radically altered the law of sales,[35] in that the passing of title no longer depends on the intention of the parties. This, coupled with the obvious disadvantage of a layman's relying on the automobile dealer as to the legality of the transaction, is probably responsible for the inconsistent and sometimes inequitable results reached by the courts. The Minnesota court has noted the serious consequences of making the certificate "conclusive" as to ownership.[36] Furthermore, it is extremely doubtful whether statutes voiding the sale are any more effective in accomplishing the objective of minimizing car thefts than a law relying only on a monetary penalty.[37] This penalty, coupled with the fact that the certificate is used as a basis for lien recordation, should just as often cause the purchaser to insist on receiving the certificate as if the law voided the sale. The latter type of statute seems unnecessary as well as impractical.

II. ENCUMBRANCES

Originally, liens[38] on motor vehicles were recorded locally, somewhat in the same manner as liens on land. But these two types of liens are antithetical. Land is stationary, the automobile is made

32. Yarwood v. De Lage, 91 N. E. 2d 272 (Ohio App. 1949).

33. Hoshaw v. Fenton, 232 Mo. App. 137, 11 S. W. 2d 1140 (1937); *see* Ludwig v. Steger, 99 Cal. App. 235, 238, 278 Pac. 494, 495 (3d Dist. 1929).

34. Ludwig v. Steger, *supra* note 33.

35. See Uniform Sales Act § 18.

36. *See* Amick v. Exchange State Bank, 164 Minn. 136, 137, 204 N. W. 639, 640 (1925).

37. The National Automobile Theft Bureau states that there is no doubt that a certificate of title law reduces car thefts. Communication from National Automobile Theft Bureau, on file, University of Minnesota Law Library. However, there are no statistics showing which certificate law, if either, reduces thefts the most. The Uniform Vehicle Code has never advocated that a transfer of ownership be ineffective if the certificate is not passed, but rather provides for monetary penalty in case of noncompliance. Uniform Vehicle Code, Act 1, §§ 52, 53, 99 (1944).

38. The term "lien" here refers to liens and encumbrances such as conditional sales, conditional leases, chattel mortgages, etc., except those liens and encumbrances dependent on possession.

to travel—one is indestructible, the other has a life span of only years and may change owners a dozen times within that period. To attempt local recording on this unique property is sheer folly. To make a search for a lien on an automobile in Minnesota (a non-title state) would necessitate a search in every county and first class city in the state.[39] This means that there is no practical way of knowing whether a motor vehicle is encumbered. When one considers that there is more automobile installment sale credit outstanding than all other such consumer credit combined[40] it is apparent that this is a matter of utmost concern to commercial interests and purchasers.[41]

Under the hodgepodge of local recording in non-title states the finance companies, who assume the large majority of liens from the dealer who sells the car, often do not consider it worthwhile to record their liens.[42] Besides the time and expense, there is the danger of recording in the wrong locality.[43] Furthermore, many courts protect the purchaser if the sale was made by a dealer in the usual course of business,[44] apparently recognizing that it is highly impractical for a prospective purchaser to wade through recording books when buying consumer goods.[45] Consequently, a reserve fund must be created to protect against loss of the security resulting in higher interest rates to the security debtor.

Other courts, however, strictly construe their local recording statutes to permit the lienor to recover the car from the purchaser even though the latter bought from a dealer in the usual course of

39. Minn. Stat. §§ 511.01, 511.04, 511.18, 511.20, 511.26 (1949).

40. 37 Fed. Reserve Bull. 1190 (Sept. 1951) (figures as of July 1951).

41. It is noteworthy that in other forms of transportation, as rail and air, there has been central recording of ownership for some time. The federal government records liens on airplanes, 52 Stat. 1006 (1938), as amended, 49 U. S. C. § 523 (1946), and state laws call for central recording of railroad stock, *e.g.*, Minn. Stat. §§ 222.17, 222.18 (1949); Ill. Ann. Stat. c. 114, § 50 (Supp. 1950).

42. Consultation with a large finance company revealed that under usual conditions they do not file in Minnesota unless the balance is over two thousand dollars. Another company stated that if the purchaser is "sub-standard" they will file if the balance is over five hundred dollars.

43. See Miller Motor Co. v. Jaax, 193 Minn. 85, 257 N. W. 653 (1934); Snyder Automotive Inc. v. Boyle, 162 Minn. 261, 202 N. W. 481 (1925).

44. Moore v. Ellison, 82 Colo. 478, 261 Pac. 461 (1927); Al's Auto Sales v. Moskowitz, 203 Okla. 611, 224 P. 2d 588 (1950); *cf.* Flynn v. Colonial Discount Co., 149 Misc. 607, 269 N. Y. Supp. 394 (N.Y. City Ct. 1933). See 2 U. L. A., Conditional Sales Act § 9 (1922); Uniform Commercial Code § 9-307 (1950 draft); 23 Minn. L. Rev. 846 (1939).

45. *See* Flynn v. Colonial Discount Co., *supra* note 44 at 610, 269 N. Y. Supp. at 397; Boice v. Finance and Guaranty Corp., 127 Va. 563, 570, 102 S. E. 591, 593 (1920) (the court emphasized the unreasonableness and hardship of requiring a purchaser of consumer goods to examine record books).

trade.[46] Then the only recourse is against the seller (too often only a theoretical advantage) even though the purchaser may have searched in vain through many of the local record books only to miss the one that contained the lien.[47]

Since a certificate of title is based on central recording of ownership it is obvious that the certificate could also be used as a recording device for encumbrances by having a copy of the lien agreement and the certificate mailed to the motor vehicle department where the lien is recorded, noted on the certificate, and returned to the lienor or the debtor. To various degrees, all the states having certificate laws have incorporated this plan into their act. Unfortunately, in the majority of cases this has resulted in making a deplorable situation worse. While under local recording there is the recognized possibility of "hidden" security interests, under some centralized recording systems, one may be lulled into a sense of security by the "diploma" of ownership embodied in the certificate, only to find that the real evidence of ownership is still hidden in the various counties of the state. However, as will be seen, this condition need not and does not exist in a few states that have made the certificate a positive recording device.

Statutes using the certificate for the recordation of liens may be placed in three classifications. The first are those states that require liens to be centrally recorded and noted on the certificate only when application is made for a certificate, i.e., whenever an automobile is transferred to a new owner.[48] The second group requires *all* liens to be recorded and noted on the certificate, whether the lien attaches when the car is sold or in the hands of the present owner.[49] However, in neither of these groups is recordation con-

46. *E.g.*, General Credit Corp. v. Rohde, 122 Conn. 100, 187 Atl. 676 (1936); Whitehurst v. Garrett, 196 N. C. 154, 144 S. E. 835 (1928). For an extended treatment of how finance companies seek to protect their interest, see Note, 43 Mich. L. Rev. 605 (1944).

47. For an example of the purchaser's predicament under local recording, see Merchants Rating & Adjustment Co. v. Skaug, 4 Wash. 2d 46, 102 P. 2d 227 (1940).

48. Ark. Stat. Ann. § 75-111 (1947); Ill. Ann. Stat. c. 95½, § 77 (Supp. 1950); Ind. Ann. Stat. § 47-2501 (Burns Supp. 1951); Kan. Gen. Stat. Ann. § 8-135(c)(1) and (2) (1949); Md. Ann. Code Gen. Laws art. 66½, § 22 (Cum. Supp. 1947); N. J. Stat. Ann. §§ 39:10-8, 39:10-11 (Supp. 1950); N. C. Gen. Stat. Ann. § 20-52(a)(3) (1943); N. D. Rev. Code 39-0505(3) (1943); Okla. Stat. Ann. tit. 47, § 23.3 (1941); S. D. Code § 44.0202 (1939); W. Va. Code Ann. § 1517 (1949); Wis. Stat. § 85.01 (3) (1949).

49. Mich. Stats. Ann. §§ 9.1917, 9.1938 (Supp. 1949); Nev. Comp. Laws Ann. § 4435.14(a) (Supp. 1949) (chattel mortgages only); Ore. Comp. Laws Ann. §§ 68-203 (Supp. 1943), 115-114 (Supp. 1947); Wash. Rev. Stat. §§ 6312-3, 6312-7 (Rem. Supp. 1947); Wyo. Comp. Stat. Ann.

structive notice,[50] and consequently the lienor must still record locally to protect himself. A third group of states completely eliminates local recording by having all liens recorded centrally and noted on the certificate, such filing being constructive notice.[51]

The first two groups present a situation precarious to all parties. A lienor is not likely to waste time and money recording on a certificate that does not constitute constructive notice even though a monetary penalty is involved, but will record locally if he records at all. This allows the one in possession of the vehicle to exhibit to a prospective purchaser a clear certificate, resulting in possible loss to one of the parties.[52] Notwithstanding the fact that the certificate is not constructive notice, the lienor, although he records locally, may find that he is not protected against the purchaser unless he takes all the steps allowed in protecting himself under the certificate of title act.[53] Consequently, the lienor is often burdened by a double recording system and the purchaser may still have to hunt through the local records.[54] Nothing is accomplished by this except deception and some states in these first two groups carry this to its extreme by stating directly on the certificate that all liens from the records of the motor vehicle department are noted on the certificate.[55] Others, however, carefully point out that they do not record

§§ 60-204, 60-208(f) (Supp. 1951). Washington, Nevada, and Oregon appear to allow subsequent recording on the certificate only as to chattel mortgages, and the latter two states make such recording constructive notice.

50. Carolina Discount Corp. v. Landis Motor Co., 190 N. C. 157, 129 S. E. 414 (1925); *cf.* Security National Bank v. Bell, 125 N. J. L. 640, 17 A. 2d 552 (Ct. Err. & App. 1941).

51. Ariz. Code Ann. § 66-231 (1939); Cal. Vehicle Code §§ 195, 196, 198 (1948); Colo. Stat. Ann. c. 16, § 13(18) (Supp. 1950); Del. Rev. Code § 5574 (1935); Fla. Stat. §§ 319.15, 319.27 (1949); Idaho Code Ann. §49-412 (Supp. 1951); Mo. Rev. Stat. Ann. §§ 3488, 3515 (1942) (purchase money chattel mortgages are exempted); Mont. Rev. Code Ann. § 53-110 (1947); Neb. Rev. Stat. § 60-110 (1943); N. M. Stat. §§ 68-115 (Supp. 1951), 68-119 (1941); Ohio Code Ann. § 6290-9 (1948); Pa. Stat. Ann. tit. 75, § 33, tit. 21, § 940.5 (Supp. 1950); Tex. Stat. Pen. Code art. 1436, §§ 41-44 (1948); Utah Code Ann. § 57-3a-80 (1943).

52. ". . . in a majority of States chattel mortgages and other liens against motor vehicles are recorded locally, and the owner may or may not admit the existence of such liens in his application for certificate of title, although required to do so by State law. . . . This is one of the most serious deficiencies in the certificate of title . . . laws. . . ." The President's Highway Safety Conference, Report of Committee on Laws and Ordinances 41 (1949).

53. Nichols v. Bogda Motors, Inc., 118 Ind. App. 156, 77 N. E. 2d 905 (1948); Sorensen v. Pagenkopf, 151 Kan. 913, 101 P. 2d 928 (1940). *But cf.* Community State Bank v. Crissinger, 89 N. E. 2d 78 (Ind. App. 1949).

54. For a good treatment of the numerous recording problems created in one state by this type of statute, see Note, 25 Ind. L. J. 337 (1950).

55. *E.g.*, Illinois, Kansas, North Dakota, North Carolina, South Dakota. For illustrations of certificates of title in these states see Peck's Title Book (Stephens-Peck, Inc., rev. ed. 1950).

nor guarantee the existence of liens.[56] A few states in the first two groups mail the encumbered certificate to the lienor.[57] This has some virtue in that a prospective purchaser is put on guard by the absence of the seller's certificate. However, it has been held that even though the certificate is in possession of the lienholder, the purchaser may be protected if the sale is made in the usual course of business.[58]

The third group of states has recognized and answered the problem of the migratory automobile by using the certificate of title as a positive recording device. Under this system a purchaser may reasonably rely on the certificate, which "travels" with the car and its owner, rather than searching through voluminous record books under local recording in a county which the two may have ceased to inhabit or where the fraudulent seller falsely registered.

It has been held that recording by means of the certificate, when it is used as a positive recording device, protects the lienholder even though the purchaser buys from a dealer in the usual course of business,[59] thus denying to the purchaser the protection normally afforded him.[60] In defense of this result, it can be argued that the purchaser has an expedient means of ascertaining whether the vehicle is encumbered by merely insisting that the seller produce the certificate. It should be noted that failure to record the lien on the certificate has no effect on validity of the lien *as between the parties.*[61]

Most recording systems have defects and centralized recording by means of the certificate is no exception. The purchaser is

56. *E.g.,* Maryland, West Virginia. See Peck's Title Book, *supra* note 55.

57. *E.g.,* N. C. Gen. Stat. Ann. § 20-57(f) (1943); N. D. Rev. Code § 39-0505 (1943); Wash. Rev. Stat. § 6312-4(d) (Rem. Supp. 1947). In Merchants Rating & Adjusting Co. v. Skaug, 4 Wash. 2d 46, 102 P. 2d 227 (1940), P filed his mortgage locally but allowed the mortgagor to keep the clear certificate. The mortgagor sold the car and the court held for the purchaser because the fraud was made possible by P's omission in not taking up the certificate.

58. L. B. Motors, Inc. v. Prichard, 303 Ill. App. 318, 25 N. E. 2d 129 (1940); *cf.* Fogle v. General Credit, Inc., 122 F. 2d 45 (D.C. Cir. 1941) (chattel mortgage).

59. Crawford Finance Co. v. Derby, 63 Ohio App. 50, 25 N. E. 2d 306 (1939); *cf.* Nelson v. Fisch, 241 Iowa 1, 39 N. W. 2d 594 (1949). *See* Colonial Finance Co. v. Hunt, 290 Ky. 299, 304, 160 S. W. 2d 591, 594 (1942).

60. See note 44 *supra.*

61. Janney v. Bell, 111 F. 2d 103 (4th Cir. 1940) (the court, in construing the Virginia act, rejected the argument that because of the ease in which vehicles may be transported and sold, central recording is more than the usual recordation scheme); Clynch v. Bowers, 164 S. W. 2d 768 (Tex. Civil App. 1942).

burdened with the added expense of obtaining the certificate[62] besides the registration card, which in some states, as Minnesota, is free. Coupled with this increased expense is the fact that the direct, primary beneficiaries of such a law are the automobile finance companies, banks, and car dealers. This, however, should not be considered a shortcoming of the certificate of title law for there are numerous reasons why the commercial interests and the buying public have a duplicity of interest in a workable recording system.

A more valid objection is the possibility of fraud through the use of a duplicate certificate. The fraud works in this way: *A* buys a car free of liens and receives a clear certificate. He then pretends to have lost that certificate and is given another, plainly marked "duplicate." *A* mortgages the car, giving the mortgagee the duplicate which is sent to the state, filed, and returned. Subsequently, *A* sells the car, presenting the original, clear certificate to the unsuspecting purchaser. This practice, however, should be a rarity for *A* has no way of knowing whether the purchaser will check with the state, where the lien is of record.[63]

If it be agreed that these imperfections of centralized recording are slight compared to the advantages gained, then why is the system spreading as slowly as it is? In defense of the legislatures it may be said that the usual proponents of enlightened lawmaking, the National Conference of Commissioners on Uniform State Law, did not lead the way. That group, in cooperation with the National Conference on Street and Highway Safety,[64] drafted a Uniform Vehicle Code in 1926 which provided, in essence, for recordation in the same manner as the first group of states previously mentioned,[65] that is, liens to be noted only on application

62. This added expense may be offset by two factors: 1) Theft insurance premiums may be reduced (communication from the National Automobile Theft Bureau, on file, University of Minnesota Law Library); 2) finance companies' losses in their security interest may be reduced, resulting in lower interest rates.

63. This assumes that the title law calls for the lien to be centrally recorded as well as noted on the certificate. The Uniform Vehicle Code, Act 1, §§ 64, 65 (1944) and most states so provide. Virginia, however, calls for the lien to be noted only on the certificate. Va. Code Ann. § 46-70 (1950). This should be avoided for it makes the duplicate certificate of title racket almost foolproof.

64. This group was dissolved in 1946 and is now a part of the President's Highway Safety Conference. Communication from C. W. Stark, secretary, National Committee on Uniform Traffic Laws and Ordinances, on file, University of Minnesota Law Library.

65. See note 48 *supra*.

for a certificate.[66] Fortunately, the Code was declared obsolete in 1943.[67] However, the National Conference on Street and Highway Safety thoroughly revised the Code in 1944 and it now provides for the certificate to be used as a basis for positive recording of liens.[68]

One political hindrance towards centralized recording may be the loss in revenue to the counties caused by the elimination of local recording. But the administrative work at the local level need not necessarily be extinguished inasmuch as a few states use the facilities of both county and state agencies in recording the lien on the certificate.[69] This has the disadvantage of duplication in administrative work but the advantage of being convenient and expedient since constructive notice arises when the lien is noted on the certificate by the county.[70]

III. INTERSTATE TRANSACTIONS

Suppose *X* has a lien on his automobile in state *A*. He "skips" with the car into state *B* with the intention of selling the car to a dealer in state *B*. If *A* is a non-title state, all *X* need show is his registration card and a bill of sale. The latter, of course, will show only liens retained by *X's* seller, or, as is often done, *X* shows a faked bill of sale. If state *A* is in group one or two previously mentioned[71] the dealer in state *B* may mistakenly rely on the certificate to show all the outstanding liens.[72] After buying the car, the dealer will register it locally and then sell to a purchaser who

66. 11 U. L. A., Uniform Motor Vehicle Anti-Theft Act §§ 4, 5 (1930).

67. Handbook of the National Conference of Commissioners on Uniform State Laws 69 (1943). The Conference, however, has since re-endorsed the Code and is participating in its further development. Communication from C. W. Stark, see note 64 *supra*.

68. Uniform Vehicle Code, Act 1, § 64 (1944). The Uniform Commercial Code, Art. 7, Part 8 (1949 draft), also had a complete centralized recording system for automobiles prepared by the reporter, but these provisions were omitted in the 1950 draft, which leaves motor vehicles to be recorded locally unless the state has a certificate of title system. Uniform Commercial Code § 9-401(1)(b) (1950 draft).

69. Colo. Stat. Ann. c. 16, § 13(19) (Supp. 1950); Mo. Rev. Stat. Ann. § 3488 (1949); Neb. Rev. Stat. § 60-110 (1943); Ohio Code Ann. § 6290-9 (1948).

70. *E.g.*, Colo. Stat. Ann. c. 16, § 13(25) (Supp. 1950); Neb. Rev. Stat. § 60-110 (1943).

71. See notes 48 and 49 *supra*.

72. *Cf.* Rice Street Motors v. Smith, 167 Pa. Super. 159, 74 A. 2d 535 (1950). *P* sold to *X* by conditional sale in Minnesota which is a non-title state with local recordation. However, on the registration card appears the meaningless words, "This is also Minnesota Title." *X*, without *P*'s knowledge, sold the car in Pennsylvania and *P* seeks to repossess. The court held for the purchaser, stating that the latter was justified in relying on the possession of *X* and the Minnesota "certificate" which showed no liens. *Cf.* Kelley Kar Co. v. Finkler, 99 N. E. 2d 665 (Ohio 1951).

has no knowledge of the out-of-state origin of the car. The lienor now discovers the car and seeks to recover. At first glance, the conflict of laws rule that the law of the place where the lien was created governs might appear to settle the issue,[73] especially in light of the near disintegration of the minority rule,[74] culminating in *Bank of Atlanta v. Fretz*.[75] There has, however, been a general trend in the legislatures towards protection of the local purchaser.[76] Florida, for example, refuses to recognize foreign liens on automobiles unless they are also recorded in Florida.[77] New Mexico has sought a unique remedy by recognizing foreign liens on automobiles only if the state of origin uses the certificate as a positive recording device.[78] Although this approach has been criticized,[79] there is much in its favor. If New Mexico owners must pay for a certificate resulting in protection to buyers in other states, why should New Mexico buyers of out-of-state cars from non-title states suffer from the possibility of having their cars repossessed?

The best protection that a state can give its citizens against thieves and skip operators is to require as a condition to registration that a title search be made in the state of origin unless the certificate in the latter state is a positive recording device.[80] A few states have incorporated substantially this plan into their certificate of title acts.[81]

As long as some states abstain from using the certificate as a positive recording device it can be expected that other states will legislate to protect their local purchasers from out-of-state liens.

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73. Hinton v. Bond Discount Co., 214 Ark. 718, 218 S. W. 2d 75 (1949); Goodrich, Conflict of Laws §§ 157, 158 (3d ed. 1949); Restatement, Conflict of Laws § 268(1) (1934).

74. General Motors Accept. Corp. v. Nuss, 195 La. 209, 196 So. 323 (1940); Metro-Plan, Inc. v. Kotcher-Turner, Inc., 296 Mich. 400, 296 N. W. 304 (1941); Bankers' Finance Corp. v. Locke & Massey Motor Co., 170 Tenn. 28, 91 S. W. 2d 297 (1936).

75. 226 S. W. 2d 843 (Tex. Sup. Ct. 1950). *Contra:* Rice Street Motors v. Smith, 167 Pa. Super. 159, 74 A. 2d 535 (1950).

76. Goodrich, *op. cit. supra* note 73 at 481. For a complete analysis of interstate automobile lien transactions, see Leary, *Horse and Buggy Lien Law and Migratory Automobiles*, 96 Pa. L. Rev. 455 (1948).

77. Fla. Stat. § 319.15, Inman v. Rowsey, 41 S. 2d 655 (Fla. 1949), 3 U. of Fla. L. Rev. 117 (1950).

78. N. M. Stat. Ann. § 68-104 (Supp. 1951). Also see Colo. Stat. Ann. c. 16, § 13(31) (Supp. 1950) which states that foreign liens will be recognized only if stated on the certificate.

79. Leary, *supra* note 76, at 467.

80. The Uniform Vehicle Code has never called for a lien search, but Act 1, § 35(4) (1944) gives the motor vehicle department authority to require any additional information which will enable it to determine whether the vehicle is entitled to registration.

81. Arizona, Idaho, Utah. See Leary, *supra* note 76, at 478.

CONCLUSION

Although the trend is towards elimination of recording in individual consumer goods,[82] the automobile presents a formidable exception because of its relatively high value. If automobile liens are worth recording, then local recording, such as used in Minnesota, should be abolished for it affords little protection to the lienor and is a trap for the unwary purchaser.[83] If commercial interests are to continue making installment sales and loans on motor vehicles at comparatively low interest rates they should be in a position to protect their interest. This means that a purchaser must have a simple and certain means of acquiring knowledge of that interest. At present, the certificate of title is the only practical way of acquiring this knowledge. However, the provisions in many states which void the transfer of title if the certificate is not passed with the car are not necessary for the protection of either party. Their only purpose is to urge the passing of the certificate and this can be accomplished just as readily by making the certificate a positive recording device and substituting a monetary penalty for noncompliance.

82. Uniform Commercial Code § 9-303(c) and comment (1950 draft).

83. *See* Snyder Automotive Inc. v. Boyle, 162 Minn. 261, 263, 202 N. W. 481, 482 (1925). The court, in considering whether an automotive lien was recorded properly, said, "It is sometimes difficult to determine the legal situs of personal property at a given moment. But possible difficulties furnish no reason why we should not give effect to the obvious legislative purpose. . . . It is for lienors and counsel to meet the situation as best they may."