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AUTOMOBILES - REGISTRATION OF TITLE AND TRANSFER - EFFECT ON OWNERSHIP

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COMMENTS

AUTOMOBILES — REGISTRATION OF TITLE AND TRANSFER — EFFECT ON OWNERSHIP — "Who owns this automobile?" is a question of frequent interest both to the state and to its citizens. Identification of it and its owner may be a leading clue to the solution of crime; its owner must often be apprehended as the first step toward punishment of one of the considerable list of offenses peculiar to the operation of motor vehicles; it constitutes an important item of taxable property. The private citizen is interested in its ownership to identify the proper defendant in his tort action; it is an obvious source of satisfaction of his claim against a debtor; or he may want to lend money to, or buy it from, its rightful owner.

To supply the desired information of ownership, there is in every state, it may be assumed, some kind of official register of automobiles and owners, and some mechanism will usually be provided for cor-

recting the register when an automobile is sold. In three-fourths of the states, moreover, the statutes requiring registration of cars and of transfers of interests therein are in such form that they might reasonably be expected to affect ownership.

I.

First to be dismissed are those statutes which will probably be held to have no effect[1] on the rights of individual claimants to an automobile and to give legal advantages, if any, only to the state. The Minnesota registration statute has been considered in two recent cases[2] and said to be of that character. In that state an *annual* registration certificate is issued *upon payment of vehicle taxes*. When ownership is transferred, the certificate is required to be indorsed with an assignment and a notice of transfer and returned to the registrar *by the transferor*.[3] In *Bolton-Swanby Co. v. Owens* the Supreme Court of Minnesota said:

> "Registration does not determine or affect title. The purposes of the act are taxation and identification of automobiles. . . . The provisions of the act are appropriate for the purposes of taxation and identification, but not for registration of title. . . . Section 2677 . . . requires the name and address of the holder and a description of the motor vehicle to be stated, but not the nature of his title."[4]

Indeed, there is little in the Minnesota statute to indicate that the register thereby provided could be safely relied on or to indicate that the legislature meant to change the law applicable to transfer of chattels.

The statutes which will be considered here represent a distinct advance: they generally coexist with license statutes like that in Minnesota; they purport to create documents of title as distinguished from tax receipts; by more or less complicated administrative machinery they attempt to keep an accurate record of vehicle owners; they often prescribe the effects of failure to comply with their requirements.

Most of the statutes follow a single basic form of administrative mechanism, which is well illustrated in the Uniform Motor Vehicle Anti-Theft Act.[5] An owner is required to obtain a "certificate of title" before he may register his automobile. When he sells the vehicle he is

[1] Even under such statutes, registration will be some evidence of ownership and therefore important in fact. See note 46, infra; 42 C. J. 750 (1927).

[2] Bolton-Swanby Co. v. Owens, (Minn. 1937) 275 N. W. 855; Davis v. Grossman, (Minn. 1937) 275 N. W. 858.

[3] 1 Minn. Stat. (Mason, 1937), §§ 2677, 2681. A similar statute was 62A N. Y. Consol. Laws Ann. (McKinney, 1929), § 61. Under later amendments (McKinney, Supp. 1937), this section apparently does not require notice of transfer.

[4] (Minn. 1937) 275 N. W. 855 at 857, noted 22 MINN. L. REV. 720 (1938).

[5] 9 Uniform Laws Ann. 305 (1932), 11 ibid. 142 (1938).

required to indorse the certificate to his transferee and deliver the certificate with the vehicle. The purchaser must return the certificate to a state official, who records the transfer and issues a new certificate in the transferee's name. Compliance with this or similar procedure is in five states apparently only "required";[6] non-compliance is in three states penalized by fine;[7] in nineteen it is punishable as a crime;[8] in eight a non-compliant transfer is declared void, or other specific effect is given it.[9]

The last class invites further subdivision. In Kansas and Missouri a non-compliant transfer is declared "fraudulent and void."[10] The California statute is representative of a group of five:

> "No transfer of the title or any interest . . . shall pass nor shall delivery . . . be deemed to have been made and any attempted transfer shall not be effective for any purpose until transfer or registration has been made . . . except as a transferor may be estopped by law to deny a transfer. . . ."[11]

Still more elaborate is the recent Ohio act:

> "No person acquiring a motor vehicle from the owner thereof

[6] Ariz. Sess. Laws (1937), c. 67, § 24, p. 263, amending Rev. Code, § 1653; Ga. Code (1933), § 68-207; 2 Nev. Comp. Laws (Hillyer, 1929), §§ 4414-4432; Okla. Sess. Laws (1936-1937), c. 50, art. 7, p. 348; Va. Code (Supps. 1932, 1934), § 2154 (59) to 2154 (85).

[7] 1 Fla. Comp. Gen. Laws (1927), § 3979; N. C. Pub. Laws (1937), c. 407, § 38; 5 Ore. Code Ann. (Supp. 1935), §§ 55-203, 55-204.

[8] 3 Colo. Ann. Stat. (Courtright's Mills 1930), § 5008f[3]; Del. Rev. Code (1935), § 5587; 3 Idaho Code Ann. (1932), § 48-420; Ill. Rev. Stat. (1937), c. 95½, § 90; 8 Ind. Stat. (Burns, 1933), § 47-303; Ky. Stat. (Carroll, 1930), §§ 2739g-13, 2739g-14, 2739g-65; 2 La. Gen. Stat. (Dart, 1932), §§ 5168 (b), 5187, and cf. § 5168 (d); Md. Ann. Code (Bagby, Supp. 1929), art. 56, § 202; Mich. Pub. Acts (1931), No. 65, amending Comp. Laws (1929), § 4661; N. J. Rev. Stat. (1937), § 39:10-5, 39:10-9, 39:10-24; N. M. Stat. Ann. (1929), § 11-621; N. D. Laws (1927), c. 180, § 19; 75 Pa. Stat. Ann. (Purdon, Supp. 1937), § 37; 2 S. D. Comp. Laws (1929), § 8666-Z25; Tex. Comp. Stat. (Supp. 1931), Penal Code, art. 1434; Wash. Laws (1937), c. 188, §§ 2, 82; W. Va. Code (1931), § 17-7-3; Wis. Stat. (1937), § 85.01 (8) (e); Wyo. Sess. Laws (1935), c. 94, §§ 8 (a), 15. See also Uniform Motor Vehicle Anti-Theft Act, 9 UNIFORM LAWS ANN. 305 (1932), 11 ibid. 142 (1938), §§ 6(a), 18-20.

[9] Cal. Vehicle Code (Deering, 1937), § 186; Iowa Code (1935), § 4964; Kan. Laws (1937), c. 72, § 5 (c) (6); 2 Mo. Rev. Stat. (1929), § 7774 (c); Mont. Laws (1937), c. 72, § 6, amending 1 Rev. Code (1935) § 1758.2 (e); Neb. Comp. Stat. (1929), § 60-312; Ohio Ann Code (Page, Supp. 1937), § 6290-4; Utah Laws (1935), c. 46, § 71, Laws (1937), c. 69, §§ 2, 3. See also the Minnesota statute in force 1919-1921: Minn. Sess. Laws (1919), c. 510, § 7; Walker v. Fitzgerald, 157 Minn. 319, 196 N. W. 269, 197 N. W. 259 (1923).

[10] See citations in note 9, supra.

[11] California, Iowa, Montana, Nebraska and Utah. Citations given in note 9, supra.

> . . . shall acquire any right, title, claim, or interest in or to said motor vehicle until he shall have had issued to him a certificate of title . . . nor shall any waiver or estoppel operate in favor of such person against a person having possession of such certificate of title . . . for a valuable consideration. No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to any motor vehicle, hereafter sold or disposed of, or mortgaged or encumbered, unless evidenced by a certificate of title. . . ."[12]

A further important feature of the registration statutes is their operation as lien-recording systems.[13] Liens are generally required to appear on the certificates of title. And although most statutes have afforded no real protection to lienors or against liens to subsequent purchasers, recent amendments increase such protection. An ever larger number of acts make record constructive notice of liens or deny complete validity to unrecorded liens.[14]

2.

It is clear that a certificate of title or similar document is not conclusive proof of ownership.[15] A situation where this negative rule is important is suggested by *Winship v. Standard Finance Co.*[16] A bailee stole the certificate of title, forged an assignment thereon, and procured a loan upon mortgage of the car. The original owner was allowed to recover for conversion by the mortgagee. This result seems correct even though it is assumed the mortgagee was a bona fide purchaser and complied strictly with the applicable statute. It is submitted also that the certificate should not be conclusive between a vendor and his vendee.[17]

[12] Ohio Ann. Code (Page, Supp. 1937), § 6290-4.

[13] The problem and the statutes are thoroughly discussed in 12 WIS. L. REV. 92 (1936).

[14] See 12 WIS. L. REV. 92 at 94, notes 11, 12 (1936). The following is a revised list of statutes with "constructive notice" or equivalent provisions: Ariz. Sess. Laws (1937), c. 67, § 23; Cal. Vehicle Code (Deering, 1937), §§ 195, 196; Del. Rev. Code (1935), § 5574; Mont. Laws (1937), c. 72, § 7, amending 1 Rev. Code (1935), § 1758.3; Ohio Ann. Code (Page, Supp. 1937), § 6290-9; 75 Pa. Stat. Ann. (Purdon, Supp. 1937), § 38; Utah Laws (1935), c. 46, §§ 79, 84-86; Va. Code (Supp. 1934), § 2154 (64) (b). By some such statutes, automobiles are exempted from other recording acts. 12 WIS. L. REV. 92 at 94 (1936).

[15] See Meskiman v. Adams, 83 Ind. App. 447, 149 N. E. 93 (1925).

[16] 40 Ariz. 382, 12 P. (2d) 282 (1932). The Torrens land title registration acts have established a contrary rule. Eliason v. Wilborn, 335 Ill. 352, 167 N. E. 101 (1929); 39 YALE L. J. 292 (1929).

[17] See discussion, infra, of rights between vendor and purchaser.

There should be no greater doubt of the right of a non-compliant purchaser who has had possession to maintain any possessory action.[18] And by the same reasoning it would be held that a non-compliant purchaser in possession has some insurable interest.[19] But a theoretically inconsistent result was reached in Missouri and thus far has not been changed; a similar rule in Kansas has been changed by statute.[20] The leading cases of Ohio and Texas, however, which denied any insurable interest, have been repudiated in those jurisdictions.[21]

3.

A more difficult problem is of the respective rights of vendor and purchaser after a non-compliant transfer. Of the several rights and liabilities normally appertaining to owners, only the right to possession will be considered here.[22] The decisions on this question are divided.

[18] Parke v. Franciscus, 194 Cal. 284, 228 P. 435 (1924); Moody v. Goodwin, 53 Cal. App. 693, 200 P. 733 (1921) (statute: title deemed not to have passed nor delivery to have been made); Rankin v. Wyatt, 335 Mo. 628, 73 S. W. (2d) 764 (1934) (statute: non-compliant sale fraudulent and void); Briedwell v. Henderson, 99 Ore. 506, 195 P. 575 (1921); Wiedman v. Campbell, 108 Ore. 55, 215 P. 885 (1923) (statute: non-compliant sale invalid). Perhaps *contra* under a line of decisions now overruled: Goode v. Martinez, (Tex. Civ. App. 1922) 237 S. W. 576; Sabine Motor Co. v. W. C. English Auto Co., (Tex. Civ. App. 1926) 283 S. W. 224, reversed (Tex. Comm. App. 1927) 291 S. W. 1088 (statute: non-compliant sale punishable).

[19] See VANCE, INSURANCE 135-136 (1930). No cases, however, have been decided on the ground that possession alone constituted an insurable interest. The following found such interest, saying non-compliance did not affect the validity of a transfer: Hartford Fire Ins. Co. v. Knight, 146 Miss. 862, 111 So. 748 (1927); Hennessy v. Automobile Owners' Ins. Assn., (Tex. Comm. App. 1926) 282 S. W. 791 (statute: non-compliant transfer punishable). Cf. Abraham v. Hartford Fire Ins. Co., 215 Iowa 1, 244 N. W. 675 (1932).

[20] State ex rel. Connecticut Fire Ins. Co. v. Cox, 306 Mo. 537, 268 S. W. 87 (1924). Cf. Evens v. Home Ins. Co. of New York, (Mo. App. 1935) 82 S. W. (2d) 111 (statute: noncompliant transfer fraudulent and void); Morris v. Firemen's Ins. Co., 121 Kan. 482, 247 P. 852 (1926); Bradley v. Retailers Fire Ins. Co., 126 Kan. 27, 267 P. 23 (1928) (non-compliant transfer unlawful); cf. Kan. Gen. Stat. (Supp. 1937), § 8-152.

[21] Ohio Farmers' Ins. Co. v. Todino, 111 Ohio St. 274, 145 N. E. 25 (1924); overruled, Commercial Credit Co. v. Schreyer, 120 Ohio St. 568, 166 N. E. 808 (1929); Hennessy v. Automobile Owners' Ins. Assn., (Tex. Comm. App. 1926) 282 S. W. 791.

[22] For the effect of non-compliance on the vendor's action for the price, see 37 A. L. R. 1465 at 1466 (1925); 52 A. L. R. 701 at 702, 704 (1928); 63 A. L. R. 688 at 689, 692 (1929); 94 A. L. R. 948 at 952 (1935). For the effect on tort liability, see 34 MICH. L. REV. 1224 (1936); 35 MICH. L. REV. 487 (1937); Endres v. Mara-Rickenbacker Co., 243 Mich. 5, 219 N. W. 719 (1928), noted, 38 YALE L. J. 386 (1929); cf. the liability founded on non-registration, 111 A. L. R. 1258 (1937).

On the one side, there is obvious injustice in allowing a non-compliant transferor to profit by his own wrong, replevy his automobile, and reap a benefit from a statute not intended to protect him. On the other side, it may well be that the non-complying purchaser ought to be penalized. The threat of loss of his property (or at least of his bargain) may be a necessary sanction to enforce compliance on his part. And only by his insisting on compliance will the statute be effective to prevent disposition of stolen automobiles.

Authority for the stricter position, however, is clearly the weaker. Its immediate results are objectionable; and probably the choice of rules will little affect the behavior of purchasers. Under any statute and any construction the prudent buyer will insist on full compliance. In California it was held that a non-compliant transfer could not be disturbed in spite of a strongly worded statute.[23] In Missouri a contrary rule seems to be established under the statute declaring non-compliant transfers fraudulent and void.[24] And both rules have been indicated where non-compliance was only punishable.[25] Under such a statute the court of last resort of New Jersey apparently held the vendor's right stronger at law.[26] But it seems not to have disapproved the decision of an inferior equity court that the purchaser may in equity compel compliance by his vendor.[27]

[23] Boles v. Stiles, 188 Cal. 304, 204 P. 848 (1922); Kenny v. Christianson, 200 Cal. 419, 253 P. 715 (1927). Cf. the present form of the California statute, quoted supra, note 11. *Contra*, under a statute declaring title should not pass, In re Estate of Wroth, 125 Neb. 832, 252 N. W. 322 (1934). Plaintiff claimed decedent had made a gift to her of his automobile. There had been no compliance with the statute; possession was in decedent at his death. The decision against a gift was based on non-compliance with the statute. Criticized, 12 NEB. L. BUL. 399 (1934).

[24] Perkins v. Bostic, 227 Mo. App. 352, 56 S. W. (2d) 155 (1933). See also Weaver v. Lake, (Mo. App. 1928) 4 S. W. (2d) 834. *Contra*, Platner v. Bourne, (Mo. App. 1925) 275 S. W. 590. *Accord*, where transfer declared invalid (dictum); Swank v. Moisan, 85 Ore. 662, 166 P. 962 (1917).

[25] Ownership remained in the vendor: Thomas v. Mullins, 153 Va. 383, 149 S. E. 494 (1929) (loss from destruction by fire falls on the vendor); Williams v. Casner Motor Co., (Tex. Civ. App. 1925) 279 S. W. 282, overruled, Hennessy v. Automobile Owners' Ins. Assn., (Tex. Comm. App. 1926) 282 S. W. 791. See Scarborough v. Detroit Operating Co., 256 Mich. 173, 239 N. W. 344 (1931) (purchaser recovered full price after cars used). *Contra*, Cardish v. Tomazowski, 99 Pa. Super. 360 (1930); Commercial Credit Co. v. McNelly, (Del. Super. 1934) 171 A. 446; Parrott v. Gulick, 145 Okla. 129, 292 P. 48 (1930) (dictum); Commercial Credit Co. v. Schreyer, 120 Ohio St. 568, 166 N. E. 808 (1929) (dictum).

[26] Merchants' Securities Corp. v. Lane, 106 N. J. L. 169, 147 A. 385 (1929), 106 N. J. L 576, 150 A. 559 (1930).

[27] Gaub v. Mosher, 3 N. J. Misc. 605, 129 A. 253 (1925); accord (dictum), Parrott v. Gulick, 145 Okla. 129, 292 P. 48 (1930).

4.

The class most commonly thought of as protected by land recording statutes is that of subsequent purchasers. *A* conveys to *B*, who fails to record. *A* thereafter conveys to *C*, a purchaser for value without notice who records. *C*'s right by the recording acts is the better.[28] Do automobile recording acts have the same effect? No statute expressly requires such effect. The nearest approach to expression of the result is in the recent Ohio statute quoted above: "nor shall any waiver or estoppel operate in favor of [a person acquiring a motor vehicle from the owner thereof] against a person having possession of such certificate of title . . . for a valuable consideration."[29] Under other acts it is not at all clear that any such general rule of priority is established. It could have been established only by judicial legislation—a series of careful decisions determining under precisely what circumstances non-compliant transfers were invalidated by the statute.

But many cases have given the practical effect of such a rule by way of the doctrine of estoppel.[30] In *Parke v. Franciscus*,[31] a leading California decision, the registered owner made a conditional sale, then assigned the sale contract to the plaintiff. No transfer of title by certificate was made to plaintiff. Thereafter the conditional vendor and the vendee in possession sold to defendant, a bona fide purchaser. It was held that plaintiff could not recover possession after default on the sale contract; by leaving certificate of title and vehicle in the hands of vendor and vendee he was estopped to claim title against an innocent purchaser. And in *Miller v. Colonial Underwriters Insurance Co.*,[32] governed by the Missouri statute, the insurance company paid indemnity for theft to and received an assignment from the holder of record title; and when the automobile was recovered, the insurer prevailed over a purchaser who had bought before the theft but had not complied with the statute. This ruling was made even on the assumption that the non-compliant transfer was valid between the parties.[33] In *C. A. Oesterman, Inc. v. King Auto Finance Co.*[34] it was held that a prior non-compliant sale did not constitute a breach of warranty of

[28] See WEBB, RECORD OF TITLE, §§ 154, 201 (1890); Aigler, "The Operation of the Recording Acts," 22 MICH. L. REV. 405 at 407-411 (1924).

[29] Ohio Ann. Code (Page, Supp. 1937), § 6290-4.

[30] Cf. Aigler, "The Operation of the Recording Acts," 22 MICH. L. REV. 405 at 407 (1924).

[31] 194 Cal. 284, 228 P. 435 (1924).

[32] 117 Kan. 240, 230 P. 1030 (1924).

[33] Cf. Missouri decisions, note 24, supra.

[34] 111 N. J. L. 119, 166 A. 704 (1933).

title.[35] But where the subsequent purchaser is not regarded as a bona fide purchaser, it seems he should not be preferred either on an estoppel theory nor by analogy to the land recording act rules.[36]

5.

In connection with subsequent purchase and in connection with such doctrines as purchase of legal title from which equitable interests are outstanding, it becomes important to determine whether a transferee is a bona fide purchaser. The title statutes could conceivably affect the question in two ways. It might be held that the record gives notice of the interest set forth. Or bona fide purchase could be denied in every case where the statute (or some essential step commanded by it) has not been followed.

No registration statute declares that registration of any interest shall constitute giving constructive notice thereof.[37] And cases isolating the problem of notice are few. In *Helwig v. Warren State Bank*[38] the owner of a vehicle made a compliant bill of sale absolute in form but intended to operate only as a mortgage to the bank. Thereafter the mortgagor sold by bill of sale to the defendant. Each bill of sale was filed as required by the statute; the bank's was not recorded as a chattel mortgage. The bank prevailed, for record "was notice to the world of its rights in the premises." This decision is said to be over-

[35] See also Guaranty Discount Corp. v. Bowers, 94 Ind. App. 373, 158 N. E. 231 (1927); Bailey v. Hoover, 233 Ky. 681, 26 S. W. (2d) 522 (1930); Gropper v. Hoover, 5 N. J. Misc. 649, 137 A. 837 (1927). See dicta in Moore v. Wilson, 230 Ky. 49 at 52, 18 S. W. (2d) 873 (1929): "except as against innocent third parties, one may show [ownership in another than the registered owner]"; in Commercial Credit Co. v. Schreyer, 120 Ohio St. 568 at 585, 166 N. E. 808 (1929): "purchasers . . . may unreservedly rely upon the files . . . in ascertaining the title to motor vehicles"; and in Thiering v. Gage, 132 Ore. 92 at 104, 284 P. 832 (1930): "[a non-compliant transferee's] title is good against the world, except such persons, creditors or innocent purchasers who have been misled by the record or by failure to make the proper changes in the record."

[36] Dowd v. Russell, 78 Cal. App. 262, 248 P. 293 (1926); Littell v. Brayton M. & A. Co., 70 Colo. 286, 201 P. 34 (1921). See WEBB, RECORD OF TITLE, § 201 et seq. (1890).

[37] Cf. provisions for constructive notice of liens, notes 13 and 14 supra. In the absence of express enactment to the contrary, record of liens probably gives no constructive notice. See Kaufman & Baer v. Monroe Motor Line, 124 Pa. Super. 27 (1936); MICH. ATTY. GEN. OP. 605 (1930-1932). In Re Fell, (D. C. Pa. 1936) 16 F. Supp. 987, a lienor was protected by the provision for constructive notice while a registered owner lost to the trustee in bankruptcy because there was no comparable constructive notice of ownership.

[38] 115 Ohio St. 182, 152 N. E. 298 (1926). See also Truitt v. Patten, 75 Utah 567, 287 P. 175 (1930). *Contra*, In re Fell, (D. C. Pa. 1936) 16 F. Supp. 987.

ruled in *Commercial Credit Co. v. Schreyer*,[39] decided on somewhat similar facts. There a dealer sold an automobile and took back a mortgage, which was duly recorded by the credit company to which it was assigned. The mortgagor then retransferred to the dealer, who sold to defendant. At each transfer there was compliance with the statute except that filing of the bills of sale occurred after the three-day period allowed. The credit company's mortgage was held valid against defendant. By this decision it was established, overruling the *Todino* case,[40] that failure to comply within three days was not fatal to the transaction. And it is clearly indicated that a purchaser acquires an insurable interest in spite of complete non-compliance. But beyond these two propositions the case cannot be said to go.

There is ample authority, however, that no purchaser is bona fide without compliance. The rule has been applied where purchase was from an agent who exceeded his actual authority;[41] where the original owner was defrauded or for other reason retained an equity of rescission;[42] and under chattel mortgage and conditional sale recording acts.[43] But in California, Delaware,[44] and apparently Pennsylvania[45] courts have treated as bona fide purchasers those who had not complied. In the converse situation, where bona fide purchase is found, certificate of title in the hands of an agent or legal owner is at least one of the important indicia of ownership which may be relied on to estop the

[39] 120 Ohio St. 568, 166 N. E. 808 (1929).

[40] Ohio Farmers' Ins. Co. v. Todino, 111 Ohio St. 274, 145 N. E. 25 (1924), noted 23 MICH. L. REV. 417 (1925); 13 GEORGETOWN L. J. 180 (1925).

[41] Merchants' Securities Corp. v. Lane, 106 N. J. L. 169, 147 A. 385 (1929), 106 N. J. L. 576, 150 A. 559 (1930) [cf. Cropper v. Hoover, 5 N. J. Misc. 649, 137 A. 837 (1927)]; Swartz v. White, 80 Utah 150, 13 P. (2d) 643 (1932); see also Ferris v. Langston, (Tex. Civ. App. 1923) 253 S. W. 309, overruled, Hennessey v. Automobile Owners' Ins. Assn., (Tex. Comm. App. 1926) 282 S. W. 791.

[42] Security Credit Corp. v. Whiting Motor Co., 98 N. J. L. 45, 118 A. 695 (1922); Anderson v. Arnold-Strong Motor Co., 229 Mo. App. 1170, 88 S. W. (2d) 419 (1935); Wallich v. Sandlovich, 111 Neb. 318, 196 N. W. 317 (1923), criticized 12 NEB. L. BUL. 399 (1934).

[43] Hammond Motor Co. v. Warren, 113 Kan. 44, 213 P. 810 (1923); Muzenich v. McCain, 220 Mo. App. 502, 274 S. W. 888 (1925). See also Goode v. Martinez, (Tex. Civ. App. 1922) 237 S. W. 576; Ferris v. Langston, (Tex. Civ. App. 1923) 253 S. W. 309; both overruled, Hennessy v. Automobile Owners' Ins. Assn., (Tex. Comm. App. 1926) 282 S. W. 791.

[44] Chucovich v. San Francisco Securities Corp., 60 Cal. App. 700, 214 P. 263 (1923). The rule is criticized in 15 CAL. L. REV. 505 (1927). Cf. the present form of the California statute quoted in the text, supra, note 11. Accord, Commercial Credit Co. v. McNelly, (Del. Super. 1934) 171 A. 446.

[45] Cardish v. Tomazowski, 99 Pa. Super. 360 (1930). See also Davis v. Grossman, (Minn. 1937) 275 N. W. 858, under the Minnesota statute considered not to affect the rules of property.

principal or equitable owner.[46] And it seems that a certificate of ownership or even of registration would have something of that character even though its effect is no greater.

6.

Such statutes as those of California ("nor shall delivery . . . be deemed to have been made . . ."[47]) and of Missouri ("sale . . . without the assignment of such certificate of ownership, shall be fraudulent and void"[48]) suggest that non-compliant transfers might be set aside by creditors of the transferor.[49] Here, again, there is no statutory language expressly giving creditors the right to hold motor vehicles for the debts of their registered owners. Nor do any decisions clearly establish the right.

But a few seem to look in that direction. In *Crandall v. Shay*[50] and *General Motors Acceptance Corp v. Dallas*[51] levying creditors of the transferors were preferred over non-compliant transferees. In the first case the transfer occurred on May 11. The creditor levied May 12. A new certificate was issued to the transferee May 13. But the decision here, as in the second case, purports to be based on a literal application of the statutory decree that no title shall pass.[52] Decisions reaching the opposite result are no more clear or helpful.[53] Of course, the alleged transferee's failure to comply may in any jurisdiction be important evidence for creditors that no actual transfer was intended.[54]

Altogether it can hardly be said yet that motor vehicle registration and transfer acts have extended a complete recording system into a

[46] See Shockley v. Hill, 91 Colo. 451, 15 P. (2d) 623 (1932); Walker v. Fitzgerald, 157 Minn. 319, 196 N. W. 269, 197 N. W. 259 (1923); cases cited in notes 31-35, supra.

[47] Cal. Vehicle Code (Deering, 1937), § 186.

[48] 2 Mo. Rev. Stat. (1929), § 7774 (c).

[49] See in general, GLENN, FRAUDULENT CONVEYANCES, c. 19, p. 467 (1931).

[50] 61 Cal. App. 56, 214 P. 450 (1923); Chelhar v. Acme Garage, 18 Cal. App. (2d) 775, 61 P. (2d) 1232 (1936); See Thiering v. Gage, 132 Ore. 92, 284 P. 832 (1930). *Contra*, Kruse v. Carey, 259 Mich. 157, 242 N. W. 873 (1932).

[51] 198 Cal. 365, 245 P. 184 (1926).

[52] Cf. 15 CAL. L. REV. 505 (1927) and case discussed at note 31, supra.

[53] See Gropper v. Hoover, 5 N. J. Misc. 649, 137 A. 837 (1927); Cerex Co. v. Peterson, 203 Iowa 355, 212 N. W. 890 (1927); Crook v. Blackburn, 254 Ky. 405, 71 S. W. (2d) 986 (1934); also Moore v. Wilson, 230 Ky. 49, 18 S. W. (2d) 873 (1929), noted 18 KY. L. J. 71 (1929); 15 ST. LOUIS L. REV. 411 (1930). Cf. Bolton-Swanby Co. v. Owens, (Minn. 1937), 275 N. W. 855, where the car was originally registered in the debtor's name although paid for and owned by the debtor's employer.

[54] Cf. Braham & Co. v. Steinard-Hannon Motor Co., 97 Pa. Super. 19 (1929), with Menamin v. Automobile Banking Corp., 107 Pa. Super. 372, 163 A. 53 (1932).

new field: there is too little agreement as to their operation. The cases have almost invariably been analyzed and discussed from one of two viewpoints: if the statute is penal in form, a non-compliant transfer is assimilated to an illegal contract; [55] if a transfer is declared void, the literal meaning of the statute is emphasized.[56] Both of these approaches encouraged rigid application of the acts. They account for the sweeping statements (in which the cases abound) that non-compliant transfers are ineffective for any purpose and, on the other side, that the statutes do not affect the rules of property. In two jurisdictions, Ohio and Texas, where such generalizations were made the courts later reversed their stand.[57] And then the unconsidered disapproval of all the earlier cases may in truth have destroyed all civil effect of the acts; apparently no property questions have thereafter been decided under them.

But it should appear from this discussion at least that these broad dicta have never represented the whole law in most of the jurisdictions where they were laid down.

Gerald M. Stevens

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[55] Ohio Farmers' Ins. Co. v. Todino, 111 Ohio St. 274, 145 N. E. 25 (1924); State ex rel. Connecticut Fire Ins. Co. v. Cox, 306 Mo. 537, 268 S. W. 87 (1924); see also 38 YALE L. J. 386 (1929); 1 ROCKY MT. L. REV. 144 (1929).

[56] State ex rel. Connecticut Fire Ins. Co. v. Cox, 306 Mo. 537, 268 S. W. 87 (1924).

[57] Commercial Credit Co. v. Schreyer, 120 Ohio St. 568, 166 N. E. 808 (1929); Hennessy v. Automobile Owners' Ins. Assn., (Tex. Comm. App. 1926) 282 S. W. 791.