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Sales - Transfer of Title - Effect of Motor Vehicle Act

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SALES—TRANSFER OF TITLE—EFFECT OF MOTOR VEHICLE ACT—Plaintiffs, wholesale automobile dealers in New Mexico and Colorado, each sold a used car to a Utah dealer. The wholesalers forwarded drafts, with certificates of title attached, for payment by the dealer. The dealer sold the cars from his lot without ever having paid the drafts, and, consequently, without ever having obtained the foreign title certificates. Plaintiffs brought replevin against the purchasers of the autos and recovered judgments. On appeal, *held*, reversed. The wholesalers knew that the purchaser was a used car dealer. They had transferred more than mere possession and clothed him with apparent ownership. Therefore, under the provisions of the Uniform Sales Act,¹ the plaintiffs were estopped to assert their title against a buyer in the ordinary course of trade. The purchasers were not put on notice by their vendor's lack of title because the Utah Motor

¹ Utah Code Ann. (1953) tit. 60, §60-2-7. This section is identical to §23(1) of the Uniform Sales Act, 1 U.L.A. (1950) §23(1).

Vehicle Code² did not require cars held for sale by a used car dealer to be registered prior to sale. *Heaston v. Martinez*, (Utah 1955) 282 P. (2d) 833.

Motor vehicle certificate of title acts generally have two purposes. They facilitate the collection of taxes and they provide a means of identifying a property interest in an article which, because of its great mobility and ready resale market, is a convenient subject of theft and fraudulent sale.³ The instant case is illustrative of the conflict between the latter aim of the acts and the application of the doctrine of estoppel to an owner who retains the certificate of title while relinquishing possession of a vehicle to one who is in the business of selling used cars. As such, the case is to be distinguished from those situations where possession and the certificate of title have been given up.⁴ Precisely what conduct by an owner will estop him from asserting his title against an innocent purchaser from a third party who has been entrusted with possession plus indicia of ownership is, in every case, a factual question. As a general rule, mere possession by a third party is not sufficient unless the latter happens to be a dealer in commodities of the type with which he is entrusted.⁵ If he is such a dealer, the question then becomes whether the owner has knowledge of this fact.⁶ In the case of articles other than those required to be registered, the knowledge of the owner will generally estop him.⁷ If the article is required to be registered, the result should turn on whether the effect given the statute allows an owner to rely on the notice afforded by the registration requirements.⁸ Some jurisdictions have held the certificate to be mere evidence of ownership and not a muniment of title,⁹ while at the other extreme transfers not in conformity with the registration statute have been completely voided for all purposes.¹⁰ In order to protect the purchaser, the court in the principal case took advantage of a provision that dealers are not required to forward for registration certificates of cars held as stock in trade. This interpretation ignores another provision of the same section requiring the dealer to execute a warranty of title on the certificate when

² Utah Code Ann. (1953) tit. 41, §41-1-65.

³ See 37 MICH. L. REV. 758 at 759 (1939).

⁴ See 2 WILLISTON, SALES, rev. ed., §316 (1939).

⁵ Id., §314.

⁶ Where the owner has knowledge that the entrusted person is a dealer, the result turns on principles of agency. *Freitas v. Marsh*, 70 Cal. App. (2d) 711, 161 P. (2d) 565 (1945); *First Galesburg Nat. Bank & Trust Co. v. Ryelets*, 306 Ill. App. 499, 29 N.E. (2d) 114 (1940). See *VOLD, SALES* 400 (1931).

⁷ See note 6 supra.

⁸ It is in this area that motor vehicle codes are most analogous to land registration systems. For a comparison of the two registration systems, see 48 YALE L.J. 1238 (1939).

⁹ *Bolton-Swanby Co. v. Owens*, 201 Minn. 162, 275 N.W. 855 (1937); *Al's Auto Sales v. Moskowitz*, 203 Okla. 611, 224 P. (2d) 588 (1950). See 37 MICH. L. REV. 758 at 759 (1939).

¹⁰ *State ex rel. Connecticut Fire Ins. Co. of Hartford v. Cox*, 306 Mo. 537, 268 S.W. 87 (1924) (insurable interest voided); *Taylor v. Burdick*, 320 Mich. 25, 30 N.W. (2d) 418 (1948) (gift causa mortis struck down); *Dee v. Sutter*, (Mo. App. 1949) 222 S.W. (2d) 541 (resulting trust in auto denied).

a transfer is made to a purchaser.¹¹ A certificate of title is thus made a requirement for transfer in any event. Although it is commendable to attempt to protect an innocent purchaser, such protection should not devitalize the most desirable features of the certificate of title acts.¹² It is certainly reasonable to assume common knowledge of a requirement for some indicia of title to an automobile other than mere possession. In addition, the purchase of an automobile is not so frequent an occurrence as to make it cumbersome to demand evidence of title in a vendor. These factors should combine to justify an owner's reliance on the statute to protect his interest when he retains control over the certificate of title, even though possession is given to one known to be a dealer.

Charles G. Williamson, Jr., S.Ed.

¹¹ Utah Code Ann. (1953) tit. 41, §41-1-65.

¹² The instant case represents the view of a minority of states. For similar decisions, see, e.g.: *Siegel v. Bayless*, 113 Cal. App. (2d) 661, 248 P. (2d) 968 (1952); *Commercial Credit Co. v. McNelly*, 36 Del. 88, 171 A. 446 (1934); *Inman v. Rowsey*, (Fla. 1949) 41 S. (2d) 655; *American Aggregates Corp. v. Wente*, 100 Ind. App. 59, 190 N.E. 552 (1934); *Rasmussen v. Lee & Co.*, 104 Mont. 278, 66 P. (2d) 119 (1937); *Snyder v. Lincoln*, 156 Neb. 190, 55 N.W. (2d) 614 (1954); *Kelly Kar Co. v. Finkler*, 155 Ohio St. 541, 99 N.E. (2d) 665 (1951); *Beck v. New Bedford Acceptance Corp.*, 62 R.I. 58, 3 A. (2d) 55 (1938).

Cases representing the opposite view are *Slaton v. Lamb*, 260 Ala. 494, 71 S. (2d) 289 (1954); *Dobbins v. Martin Buick Co.*, 216 Ark. 861, 227 S.W. (2d) 620 (1950); *Jorgensen v. Morris*, 122 Colo. 94, 220 P. (2d) 359 (1950); *Personal Auto Finance Co. v. Bove*, 135 Conn. 461, 66 A. (2d) 126 (1949); *East Atlanta Bank v. Nicholson*, 83 Ga. App. 557, 63 S.E. (2d) 699 (1951); *Mori v. Chicago Nat. Bank*, 3 Ill. App. (2d) 49, 120 N.E. (2d) 567 (1954); *Nelson v. Fisch*, 241 Iowa 1, 39 N.W. (2d) 594 (1949); *Farmers & Merchants State Bank v. Hunter*, 166 Kan. 52, 199 P. (2d) 196 (1948); *Commercial Security Co. v. Hugh Robertson Motors*, (La. App. 1954) 77 S. (2d) 591; *Drettman v. Marchand*, 337 Mich. 1, 59 N.W. (2d) 56 (1953); *Schroeder v. Zykan*, (Mo. App. 1953) 255 S.W. (2d) 105; *Grappone, Inc. v. Hasko*, 98 N.H. 45, 94 A. (2d) 372 (1953); *Bustin v. Craven*, 57 N.M. 724, 263 P. (2d) 392 (1953); *Utica Trust & Deposit Co. v. Decker*, 244 N.Y. 340, 155 N.E. 665 (1927); *Wilson v. Commercial Finance Co.*, 239 N.C. 349, 79 S.E. (2d) 908 (1954); *Onwiler v. Burtrum*, (Tex. Civ. App. 1950) 236 S.W. (2d) 157; *Richardson v. Seattle First Nat. Bank*, 38 Wash. (2d) 314, 229 P. (2d) 341 (1951).