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TRUSTS-RESULTING TRUST IN REGISTERED AUTOMOBILE

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TRUSTS—RESULTING TRUST IN REGISTERED AUTOMOBILE—Suit was brought by plaintiff against the administrator of the estate of X to establish title to an automobile which plaintiff alleged had been purchased with funds furnished by her. Title was in the name of deceased, X, in whose name plaintiff claimed

to have registered the car because she did not drive and X would do most of the driving. The sole heir of X was permitted to intervene as a party defendant and claimed that lawful ownership had been in X. Decree was for defendants and it was directed that the car be turned over to the administrator. On appeal to the St. Louis Court of Appeals, *held,* affirmed. While a resulting trust may exist in an automobile, the official certificate of title is prima facie evidence of ownership, and plaintiff failed to introduce sufficient evidence to prove such resulting trust. *Dee v. Sutter,* (Mo. App. 1949) 222 S.W. (2d) 541.

It is clear that resulting trusts can exist in chattels,[1] but it is less clear that the court was correct in its assumption that they may exist in automobiles registered under the Missouri statute,[2] or that the certificate of title obtained under that statute is only prima facie evidence of ownership. There are several types of automobile registration statutes in effect in the various states.[3] The most common is patterned on the Uniform Vehicle Anti-Theft Act,[4] and it is that type which is in effect in Missouri. It is true that in most states which have this statute it has been held that the state-issued certificate of title is but prima facie evidence of ownership;[5] but this is not universally true,[6] and has not been true in the past in most cases under the Missouri statute. That law differs from most of the others in that it provides not only that a certificate of ownership must be obtained in accordance with statutory procedure, but "the sale of any motor vehicle or trailer registered under the laws of this state, without the assignment of such certificate of ownership, shall be fraudulent and void."[7] This provision has been interpreted to be controlling on sales of automobiles, and the courts have felt that it must be strictly construed.[8] For this reason, the Missouri courts have held that, if the provisions of the statute are not complied with, a purchaser acquires

[1] TRUST'S RESTATEMENT §440, comment *b* (1935).

[2] Mo. Rev. Stat. Ann. (1949 Cum. Supp.) §§8366-8382.

[3] For a summary of the various types, see LUSK, EFFECT OF REGISTRATION AND CERTIFICATE OF TITLE ACTS ON THE OWNERSHIP OF MOTOR VEHICLES (1941); 37 MICH. L. REV. 758 (1939).

[4] Uniform Motor Vehicle Anti-Theft Act, 11 U.L.A. 142.

[5] Smith v. Rust, 310 Ill. App. 47, 33 N.E. (2d) 723 (1941); Commercial Credit Corp. v. Horan, 325 Ill. App. 625, 60 N.E. (2d) 763 (1945); Green v. Conn. Fire Ins. Co. of Hartford, 61 N.D. 376, 237 N.W. 794 (1931); Cardish v. Tomazowski, 99 Pa. Super. Ct. 360 (1930); In re Brown's Estate, 343 Pa. 230, 22 A. (2d) 821 (1941); Jackson v. James, 97 Utah 41, 89 P. (2d) 235 (1939). Other cases are collected in LUSK, EFFECT OF REGISTRATION AND CERTIFICATE OF TITLE ACTS ON THE OWNERSHIP OF MOTOR VEHICLES (1941).

[6] In re Estate of Wroth, 125 Neb. 832, 252 N.W. 322 (1934) (gift void for non-compliance with statute); Noorthoek v. Preferred Auto. Ins. Co., 292 Mich. 561, 291 N.W. 6 (1940) (non-complying buyer gets no insurable interest); In re Estate of Nielsen, 135 Neb. 110, 280 N.W. 246 (1938); Endres v. Mara-Rickenbacker Co., 243 Mich. 5, 219 N.W. 719 (1928); Bos v. Holleman De Weerd Auto Co., 246 Mich. 578, 225 N.W. 1 (1929); Scarborough v. Detroit Oper. Co., 256 Mich. 173, 239 N.W. 344 (1931); Taylor v. Burdick, 320 Mich. 25, 30 N.W. (2d) 418 (1948); Barton v. Mercantile Ins. Co., 127 Kan. 271, 273 P. 408 (1929).

[7] Mo. Rev. Stat. Ann. (1949 Cum. Supp.) §8382(d).

[8] In refusing replevin to purchaser who had not gotten a certificate of title to car which seller later seized for non-payment of part of the purchase price, a Missouri court said: "If the sale could be upheld on equitable grounds, the plain mandate of the statute referred to would be avoided and the beneficent purpose of that statute frittered away." Weaver v. Lake, (Mo. App. 1928) 4 S.W. (2d) 834.

no insurable interest in an automobile;[9] a vendor may replevy the car from such a purchaser;[10] and if a proper certificate of title is not assigned to the purchaser, the vendor may not collect the purchase price.[11] Indeed, at least one Missouri decision has been consistent to the point of holding that an attaching creditor of the seller may seize an automobile from a purchaser who has not obtained a proper title certificate.[12] These decisions reveal a feeling that the statute is designed to do more than to prevent motor thefts. They indicate that its purpose is also to control title transfer in some such manner as the Torrens system of land registration controls titles to land.[13] This has the advantage of making title apparent on the face of a single instrument, and of ending the problem created by undisclosed liens, mortgages, and other encumbrances. If this is the purpose of the Missouri Act, there can be no such thing as an undisclosed resulting trust in a registered automobile. If the title were to pass from the purchaser *X* to the plaintiff in the principal case, it must pass via the statutory channels, and the usual rules as to trusts would not apply. This point is nowhere discussed, the court stating flatly that the title certificate is merely prima facie evidence of title. Had attention been called to the point, it is difficult to see how the court could have gotten around the language in an earlier case where it was said that there was "no case in this jurisdiction, or in any other having statutes similar to ours, that lends encouragement to the theory that the legal holder of a title to an automobile can hold it in trust for another."[14] The force of this statement is weakened, however, by a recent holding of the same court of appeals that, despite lack of compliance with the statute, equitable title could be passed to a purchaser.[15] That decision was affirmed by the Missouri Supreme Court[16] upon a different theory, with language impliedly rejecting the lower court's view. The principal case seems to indicate a continuing reluctance upon the part of the St. Louis Court of Appeals to allow the statute to supplant old equitable principles of ownership. All other considerations aside, it is unfortunate that such an attitude should arise to prevent the certainty which is so much to be desired in the law.

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

[10] Quinn v. Gehlert, (Mo. App. 1927) 291 S.W. 138; Perkins v. Bostic, 227 Mo. App. 352, 56 S.W. (2d) 155 (1933); Hoshaw v. Fenton, 232 Mo. App. 137, 110 S.W. (2d) 1140 (1937); Payne v. Strothcamp, (Mo. App. 1941) 153 S.W. (2d) 402; Riss & Co. v. Wallace, 350 Mo. 1208, 171 S.W. (2d) 641 (1943).

[11] Universal Credit Co. v. Story, (Mo. App. 1939) 128 S.W. (2d) 654.

[12] Paragould Wholesale Groc. Co. v. Middleton, 208 Mo. App. 592, 235 S.W. 469 (1921).

[13] See 48 YALE L.J. 1238 (1939).

[14] Hoshaw v. Fenton, supra, note 10, at 141.

[15] Peper v. Am. Exch. Nat. Bank, (Mo. App. 1947) 205 S.W. (2d) 215.

[16] Peper v. Am. Exch. Nat. Bank, 357 Mo. 652, 210 S.W. (2d) 41 (1948).