LEGISLATION

THE EFFECT OF MOTOR VEHICLE REGISTRATION STATUTES ON SECURITY TRANSACTIONS AND RECORDATIONS

INTRODUCTION

The extensive distribution of automobiles in recent years has brought into prominence the use of motor vehicles as security for debts. Consequently, many unique problems have been raised, problems which are quite distinct from those present in the usual chattel mortgage or conditional sale situation.

The source of these new difficulties may be traced to the fundamental nature of the motor vehicle—its relative mobility in comparison with other chattels; whereas household goods, animals, farm crops, and other frequently mortgaged personalty are comparatively stationary, the automobile is peculiarly susceptible to removal from county or state without arousing any suspicions. Thus, a prospective California purchaser would not be prone to express concern if the automobile he intends to buy had its original situs in Missouri. This problem of the possibly constantly changing situs of an automobile made it exceedingly difficult for mortgagees and other lienholders to protect their interests by an ordinary recordation of the encumbrance, for obviously a mortgage legally and properly recorded in Missouri could hardly be termed constructive notice to the California purchaser; one of two innocent parties, the mortgagee or the subsequent purchaser, must sustain a loss when the mortgagor sells his automobile and fraudulently conceals the prior lien.

Fortunately, other public policy factors[1] have prompted virtually every state legislature in our country to adopt some form of registration act, whereby the title to every existing motor vehicle must be duly registered in an appropriate state or county office. The typical registration statute provides that every automobile owned locally must be thus registered, and further provides that a certificate of registration (a certificate of title) be issued to every such owner as evidence of his compliance with

1. The most compelling reason for the adoption of registration statutes was to combat the increasing wave of auto thefts by making it impossible for a thief, with mere possession and no registration certificate, to sell an automobile to an innocent purchaser.

the provision.[2] This certificate of title, which is generally regarded as prima facie evidence of ownership,[3] must then be indorsed and assigned to the transferee before any assignment of the automobile becomes valid and legally cognizable.[4] Thus the registration statute operates as a protection to all who have occasion to deal with motor vehicle titles, for it obviates the necessity of relying upon circumstantial evidence (usually possession) as to ownership.

It is thus observed that the operation of these various registration statutes has introduced a new legal concept, the certificate of title, which has been subjected to a great variety of judicial definitions and interpretations. It may safely be generalized that this certificate of title, issued to the registered owner of an automobile, is not a muniment of title, but is rather a mere indicium of ownership which raises a rebuttable presumption of title in its holder.[5]

However, many states have made advantageous use of the certificate of title by making it an instrument of notice, whereby all the world may be informed of any existing liens or encumbrances on each particular motor vehicle. It is the interpretation and effect of these statutes, making the certificate of title a notice-giving instrument, with which this note is concerned.

The statutes of the various jurisdictions within the United States may be arbitrarily classified into three groups according to the operation and effect of each particular statute. The first species of statutes is the most strict, providing that all outstanding liens and encumbrances on a motor vehicle must be noted on the certificate of title, otherwise there will be no constructive notice to the world. The second group consists of statutes which merely provide for such liens and encumbrances to be entered onto the certificate of title, but which express no provision as to notice. Obviously, the effect of this type of statute rests heavily on judicial interpretation and construction. The third classification of statutes comprehends those which, although providing for the issuance of certificates of title, make

2. MO. REV. STAT. §§ 301.140-301.240 (1949).
3. Rice St. Motors v. Smith, 167 Pa. Super. 159, 74 A.2d 535 (1950).
4. See note 1 *supra*.
5. Nash Miami Motors v. Bandel, 47 So.2d 701 (Fla. 1950); Rice St. Motors v. Smith, 167 Pa. Super. 159, 74 A.2d 535 (1950).

no provision for the notation of liens and encumbrances on such certificates.

The operation of these various statutes has had a revolutionary effect on security transactions involving automobiles. No conscientious practitioner should undertake the consummation of such a transaction without first consulting and complying with the applicable laws of the appropriate jurisdiction.

STATUTES PROVIDING THAT NOTATION OF ENCUMBRANCE ON CERTIFICATE OF TITLE IS NECESSARY FOR CONSTRUCTIVE NOTICE

The recordation and chattel mortgage laws with respect to motor vehicles have been completely upset in many states adopting strict registration provisions. The typical statute enforced in this group of jurisdictions requires that all liens or encumbrances on motor vehicles must be noted on the certificate of title which is in the owner's possession, otherwise there can be no constructive notice of the lienholder's claim.[6] For example, the usual regulation, as typified by the Missouri statute, provides:

> A mortgage on a motor vehicle shall not be notice to the whole world, unless the record thereof is noted on the certificate of title to the mortgaged vehicle. . . .[7]

In each instance, the statute stipulates the procedure to be followed, so that proper notation may be inscribed on the certificate of title. Usually, provision is made for the mortgagee to secure the certificate from the mortgagor, then forward it, together with a copy of the instrument creating the encumbrance, to some specified state or county office. Thereafter a

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6. Sixteen jurisdictions have adopted this type of statutory provision: ARIZ. CODE ANN. c. 66, § 231 (1939); COLO. STAT. ANN. c. 16, § 13 (18) (Supp. 1950); DEL. REV. CODE §§ 5573, 5574 (1935); D.C. CODE §40-702 (1940); FLA. STAT. § 319.15 (1941); IDAHO CODE c. 49 § 412 (Supp. 1949); MO. REV. STAT. § 443.480 (1949); MONT. REV. CODE c. 53, § 110 (1947); NEB. REV. STAT. c. 60, § 110 (1943); N.M. STAT ANN. c. 68, §§ 115, 119 (1941); OHIO CODE ANN. § 6290-9 (1940); PA. STAT. ANN. tit. 21, § 940.5 (Supp. 1950); TENN. CODE § 5538.55 (Williams, Supp. 1950); TEX. PEN. CODE art. 1436 § 1 (1948); UTAH CODE ANN. tit. 57, c. 3a, § 80 (1943); VA. CODE tit. 46, §§ 69, 71 (1950).

Although some of these statutory provisions may vary in their operations, they all have one common effect: non-compliance with the registration statute negates all constructive notice, notwithstanding compliance with the ordinary chattel mortgage recordation law.

7. MO. REV. STAT. §443.480 (1949).

proper notation is made on the registration records and the certificate of title, and the latter is returned to the owner with a proclamation of the encumbrance now fully indorsed theron.[8]

Thus, through clever utilization of the certificate of title, an elaborate and efficient recordation system has been devised, whereby all parties concerned will be given very adequate and timely notice of outstanding liens and encumbrances on any given vehicle. Because registration statutes require a transfer of the certificate of title in any sale or assignment of an automobile, a prospective purchaser will always have ample opportunity to inspect the certificate before the transaction is consummated. Any encumbrances on the title, noted on the certificate as required by statute, would thereby come to the immediate attention of the intended transferee. Hence the registration statutes of the jurisdictions in this group provide for more positive and effective notice of liens than do ordinary chattel mortgage recordation acts.

These statutes, as one would expect, have a definite impact on the ordinary recording provisions for chattel mortgages. In virtually every jurisdiction employing this strict type of lien registration statute, there has been a judicial or legislative declaration that, insofar as security transactions involving motor vehicles are concerned, the ordinary chattel mortgage recordation act is superseded. For example, in many of these states the registration statutes specifically declare that henceforth it shall be unnecessary to file or record chattel mortgages on automobiles.[9] In fact, the legislature of Arizona has gone so far as to prohibit all county clerks from recording liens or mortgages on motor vehicles.[10] In those states not having an express statutory provision over-ruling the recording act with respect to motor vehicles, the same result has been accomplished by judicial decision.[11]

8. This procedure is illustrated by the typical Arizona provision, ARIZ. CODE ANN. c.66, § 231 (1939).

9. ARIZ. CODE ANN. c. 66, § 231 (1949); COLO. STAT. ANN. c. 16, § 13(18) (Supp. 1950); FLA. STAT. § 319.15 (1941); IDAHO CODE c. 49, § 412 (Supp. 1949); MONT. REV. CODES c. 53, § 110 (1947); TENN. CODE § 5538.55 (Williams, Supp. 1950).

10. ARIZ. CODE ANN. c. 66, § 231 (1939).

11. See, for example, Commercial Credit Co. v. American Mfg. Co., 155 S.W.2d 834 (Tex. Civ. App. 1941), where it was held that the act relating to certificates of title to automobiles repealed and superseded those parts of the chattel mortgage registration statutes, in so far as they affected registration or chattel mortgage liens on automobiles.

To illustrate this conclusive effect of the registration act on recordation there is a recent Texas case[12] where the court was confronted with a situation in which the mortgagee had fully complied with the recordation act in filing his mortgage, but had failed to have the lien noted on the certificate of title in compliance with the motor vehicle registration provisions. The court held that there was no constructive notice to a subsequent purchaser, even though the mortgage was duly recorded and filed. Although the decision may seem harsh, a similar result would have undoubtedly been reached had the case arisen in any of the other jurisdictions adhering to a strict motor vehicle registration statute of the type now under consideration. The reasoning is obvious—a purchaser under such a registration act would justifiably place full reliance on the certificate of title displayed by the owner, and in the absence of any lien notations thereon, he would assume the title is clear. To charge such purchaser with constructive notice of a recorded chattel mortgage not listed on the title certificate would seem to defeat the entire purpose of the statute, for such certificate would no longer be a reliable indication of outstanding encumbrances on a motor vehicle title. The general rule, then, is certainly justifiable. In all jurisdictions employing this strict species of automobile registration statute, it may quite safely be assumed that the ordinary filing and recordation acts do not apply wherever the security transaction involves a motor vehicle.

These strict registration statutes might be criticized by some as imposing an unreasonable burden on the mortgagee. Since the mortgagor has possession of the certificate of title, it might be thought exceedingly difficult for the lienholder to enforce a compliance with the statute by having the encumbrance properly noted. However, such an obstacle should not prove particularly difficult to surmount; the mortgagee, being the party advancing credit, is in a position to dictate his own terms, one of which should be the surrender of the certificate of title in order to have the lien properly indorsed thereon. As the Nebraska Supreme Court point out:

> . . . one holding a lien upon a motor vehicle must, insofar as he can reasonably do so, protect himself and others there-

12. Motor Investment Co. v. Knox City, 141 Tex. 530, 174 S.W.2d 482 (1943).

> after dealing in good faith, by complying and *requiring* compliance with the applicable laws concerning certificates of title . . . .[13] [Emphasis added]

Thus, a definite duty is assigned to every motor vehicle mortgagee to effect a compliance with the registration act.

Of course, when such mortgagee does everything reasonably possible to require such compliance, he should be discharged from further responsibility for a failure of the lien to be registered on the title certificate. For example, a Texas court was confronted with a situation in which an automobile owner executed an application for certificate of title showing a mortgage as an encumbrance; then, after examination and approval by the mortgagee, said owner fraudulently altered the application to show no lien, and subsequently was issued a clear title certificate.[14] The court held the mortgagee was not deprived of his lien, even against a bona fide purchaser, analogizing the situation to that where a forgery in the chain of title deprives an innocent purchaser of all protection.[15] Therefore, while the mortgagee is required to diligently demand and exact a compliance with the registration act, his obligations in this respect are limited by the bounds of propriety.

Another resounding effect of this strict type of registration statute is with respect to the law of pledges. Virtually every jurisdiction adhering to such statute exempts from its provisions all pledges and liens dependent upon possession.[16] The justification for such exemption is obvious; since the lien is effective only so long as possession is retained by the claimant, it is unnecessary to provide for notice to third parties. Certainly no one would deal with a vehicle of which the purported owner is not in possession. For this same reason, pledges and other such possessory liens have usually been omitted from the provisions of chattel mortgage recording acts. However, the motor vehicle registration act has created an important innovation in the law of pledges. If the pledge *is* noted on the certificate of title as an encumbrance, then the pledgor can retain possession

13. Securities Credit Corp. v. Pindell, 153 Neb. 298, 307, 44 N.W.2d 501, 506 (1950).
14. Dublin Nat. Bank v. Chastian, 167 S.W.2d 795 (Tex. Civ. App. 1942).
15. *Ibid.*
16. See note 6 *supra.*

without destroying the security.[17] This is a complete reversal of the common law, under which the security of the pledgee was based solely on his possession.[18] With the lien noted on the certificate of title, no longer need possession of the chattel be relied upon as security, for third parties will have adequate notice of the outstanding encumbrance on the title. This important change wrought by the registration act should greatly facilitate the use of automobile pledges as a security device.[19]

Several jurisdictions, although not adopting the strict registration provision requiring that liens be noted on the title certificate, have invented other statutory devices by which the same results are obtained.[20] In each of these jurisdictions the mortgagee is required to be registered as the legal owner of the automobile in order for third persons to be charged with constructive notice of the encumbrance.[21] For example, code provisions of both California and Hawaii require that the mortgagee take all the necessary steps and make proper application to register himself as the legal owner of the motor vehicle. Only when the registration records disclose that such mortgagee holds legal title will there be deemed to be constructive notice to third parties.[22] Two other states, Nebraska and Washington, have accomplished the same result through a different procedure. The registration acts in these jurisdictions require that the mortgagee retain the certificate of title in order for the mortgage to be valid against third parties.[23]

The operative effect of each of these statutory provisions is to deprive the mortgagor (true owner) of all indicia of title. This is accomplished by either registering the lienholder as legal

17. Pottstown Finance Co. v. Ibach, 58 Montg. 223 (Pa. 1929).
18. BROWN, PERSONAL PROPERTY § 128 (1st ed. 1936).
19. Conditional sales are generally included within the purview of registration provisions. Many of the statutes specifically mention conditional sales as transactions which must be registered on the title certificate: ARIZ. CODE ANN. c. 66, § 231 (1931); MONT. REV. CODES c. 53, § 110 (1947); NEB. REV. STAT. c. 60, § 110 (1943). One state, however, Pennsylvania, specifically exempts conditional sales from the provisions of the registration act, and merely requires that ordinary recordation be made of conditional sales. PA. STAT. ANN. tit. 21, § 940.5 (Supp. 1950).
20. CAL. VEH. CODE §§ 195-197 (1949); HAWAII REV. LAWS § 12758 (1945); NEB. REV. STAT. c. 60, § 110 (1943); WASH. REV. STAT. ANN. § 6312-7 (1937).
21. See note 20 *supra*.
22. CAL. VEH. CODE §§ 195-197 (1949); HAWAII REV. LAWS § 12758 (1945).
23. NEB. REV. STAT. c.60, § 110 (1943); WASH. REV. STAT. ANN. § 6312-7

owner, or by requiring him to retain the title certificate, as aforesaid. The owner is left solely with possession. Any attempt by him to sell, transfer, or further encumber the title to his automobile will inevitably meet with failure, since he technically has no legal title to grant. Even the most cursory of investigations by the intended assignee would arouse his suspicions, for it would reveal that title to the vehicle lies in someone other than the purported owner in possession. Furthermore, in that great majority of jurisdictions which require an assignment of the certificate of title in order to validate a transfer of a motor vehicle, no prospective purchaser would consider dealing with an automobile owner who had no such certificate. Therefore, by removing all indicia of legal title from the owner-mortgagor, he is effectively prevented from selling or further mortgaging his automobile. Hence, both the lienholder and all subsequent innocent parties are adequately protected.

A further noticeable variation is the effect these unique statutes have on the chattel mortgage recordation acts. Two states, California and Washington, in which the mortgagee must register as legal owner, adhere to the general rule that such registration statutes supersede the recordation acts with respect to motor vehicle security transactions.[24] On the other hand, both Nebraska and Hawaii provide the mortgagee with an alternative: he may either file his mortgage in compliance with the ordinary recording statute, or he may follow the procedure prescribed by the motor vehicle registration act to register himself as legal owner of the automobile and/or retain the certificate of title. Compliance with either of the two statutory provisions will operate as constructive notice to third parties.[25] Thus, in the four jurisdictions requiring the mortgagee to register as legal owner, there is an even division of authority as to supersedure of recordation acts.

All of the statutory provisions heretofore discussed have been of a mandatory nature. Compliance with the registration requirements was shown to be necessary in order for the encumbrance to be legally binding on all who dealt with the vehicle. However, a vastly different result obtains when the controversy as to the

24 CAL. VEH. CODE §§ 195-197 (1949); WASH. REV. STAT. ANN. § 6312-7 (1937).

25. HAWAII REV. LAWS §12758 (1945); NEB. REV. STAT. c. 60, § 110 (1943).

validity of the lien or mortgage is solely between the parties to the security transaction. Regardless of the strict provisions of the applicable registration statute, the cases hold with unanimity that a security transaction is valid as between the immediate parties, notwithstanding a failure to properly register, record, or note the encumbrance on the certificate of title.[26]

The propriety of such a rule is unquestionable. The motor vehicle registration acts, as well as chattel mortgage recording statutes, were intended solely for the protection of subsequent innocent third parties who might have occasion to deal with the vehicle. An examination of the language of each statute will disclose that a failure to comply therewith does not invalidate the security transaction, but merely negates all constructive notice and thus renders the encumbrance void as against innocent third parties.[27] Therefore, there is neither judicial precedent nor legislative basis for allowing repudiation of a security transaction because of failure to comply with registration provisions.

Nevertheless, innumerable attempts have been made by motor vehicle owners to resist a mortgagor's lien because it had not been properly noted on the title certificate. In *Clynch v. Bowers*,[28] for example, a foreclosure suit on a chattel mortgage was defended on the ground that failure to note the lien on the certificate of title invalidated the entire transaction. The Texas court, however, properly repudiated this defense and allowed foreclosure, remarking that the mortgage was still binding between the parties to the transaction regardless of non-compliance with any registration act. Justification for any other result is inconceivable, particularly when the specific language of the statutes is considered.

An even more brazen attempt to avoid a mortgage was made by the defendant in a Missouri criminal prosecution.[29] Charged with concealing and removing mortgaged property (an automobile), defendant vehemently argued that, since the mortgage was not accompanied by proper assignment and registration of the title certificate, it was legally invalid; hence the automobile was

26. Janney v. Bell, 111 F.2d 103 (4th Cir. 1940); Milburn v. Athans, 190, S.W.2d 388 (Tex Civ. App. 1945); Clynch v. Bowers, 164 S.W.2d 768 (Tex. Civ. App. 1942).
27. See note 6 *supra*.
28. 164 S.W.2d 768 (Tex. Civ. App. 1942).
29. State v. Griffin, 228 S.W. 800 (Mo. 1921).

technically not "mortgaged" property. The court refused to consider such a defense, and in affirming defendant's conviction, declared the mortgage valid between the parties despite any failure to conform to registration statutes.[30]

It is thus apparent that the motor vehicle registration statute, rigid though its provisions may be, operates solely to protect third parties. A mortgagor cannot avoid his obligations nor defeat his creditor's lien by citing a non-compliance with the motor vehicle registration act, a statute not intended for his protection.

STATUTES PROVIDING FOR LIEN NOTATION ON TITLE CERTIFICATE, BUT WITH NO PROVISION AS TO NOTICE

Probably the most controversial issue in this field is the interpretation and effect of the second group of registration statutes which direct that all liens be noted on the certificate of title, but which make no provision as to constructive notice when the statute is either followed or ignored. The registration acts referred to are those providing that "all liens and encumbrances should be noted on the certificate of title," with no mention of constructive notice nor of the validity of encumbrances not thus noted.[31] Because of the equivocalness of the statutory language, the operative effects of this type of statute rest mainly on judicial construction and interpretation.

The sharpest conflict of authority, as one would expect, concerns the effect of this type of statute on the ordinary recordation acts: does the registration act supersede the recording requirements, or must an automobile security transaction still be filed and recorded the same as any common chattel mortgage? If the former interpretation is given to the registration provisions, the statute then becomes essentially the same as the strict statutes previously discussed.[32] However, if the latter

30. *Ibid.*

31. Fifteen states employ this type of statute: ARK. STAT. ANN. tit. 78, § 106 (1947); ILL. REV. STAT. c. 95½, § 78 (1949); IND. STAT. ANN. tit. 47 § 2502 (Burns, Supp. 1949); KAN. GEN. STAT. ANN. c.8, § 135 (1949); MD. ANN. CODE GEN. LAWS art. 66½ § 25 (Cum. Supp. 1947); MICH. VEH. CODE §§ 217, 222, 238 (1949); NEV. COMP. LAWS § 4419 (1929); N.C. GEN. STAT. ANN. c. 20, § 52 (1943); N.D. REV. CODE c. 39, § 0509 (1943); OKLA. STAT. ANN. tit. 47, § 23.6 (1950); ORE. COMP. LAWS ANN. tit. 115, § 117 (1940); S.D. CODE § 44.0203 (1939); W.VA. CODE ANN. § 1517 (1949); WIS. STAT. § 85.013 (1949); WYO. COMP. STAT. ANN. c. 60, § 208 (Supp. 1949).

32. See note 6 *supra.*

interpretation is applied, the statute assumes an entirely different meaning, since it must co-exist with equally applicable provisions of the recordation act.

First to be considered are those jurisdictions in which this type of registration provision is given a strict interpretation, and held to supersede the recordation act. The most recent decision illustrating this judicial construction is *General Motors Acceptance Corp. v. Davis*,[33] wherein a conditional vendor duly recorded the instrument but failed to note the encumbrance on the certificate of title. Possession of the vehicle and of the certificate was transferred to the conditional buyer, who then sold the automobile to an innocent third party. The Kansas Supreme Court held that the latter acquired a free and clear title, despite the duly recorded conditional sale. The unique reasoning advanced by the court was that the conditional vendor had invested the debtor with full indicia of ownership, possession plus a clear title certificate and hence was estopped subsequently to assert any claim of title.[34] It is significant to note that here, as in similar decisions elsewhere, the court does not expressly declare the recordation act superseded by the motor vehicle registration provisions, yet actually arrives at that result by failing to allow a claim based on a duly recorded conditional sale.

Similarly, the Indiana Supreme Court denied the claim of a conditional vendor when the automobile was subsequently sold to a bona fide purchaser. In this case, the plaintiff had actually noted the lien on the certificate of title, but the conditional purchaser fradulently altered it and obtained a new certificate[35] which was clear. The court, in holding that the conditional vendor should have supervised the filing of the application for a new certificate of title, declared:

> . . . one holding a lien upon a motor vehicle must insofar as he can reasonably do so, protect himself and others thereafter dealing in good faith, by complying and requiring compliance with the provisions of applicable laws concerning certificates of title to motor vehicles.[36]

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33. 169 Kan. 220, 218 P.2d 181 (1950).
34. *Ibid.*
35. In Indiana, a purchaser of a second-hand auto must apply for a new certificate of title, and enclose the old certificate received from his assignor.
36. Central Finance Co. v. Garber, 95 N.E.2d 635, 636 (Ind. App. 1950).

Again, as in the Kansas decision,[37] the language of the court intimates that the registration provisions are paramount to ordinary recordation requirements, yet an express holding to that effect is lacking. No other jurisdictions have as yet adopted the Kansas and Indiana viewpoints, but since the registration statutes are relatively new and the body of interpretive case law comparatively small, it is expected that others will follow in the future.

On the other hand, a considerable number of jurisdictions in this group have specific statutory provisions or judicial decisions declaring that the chattel mortgage recordation act is not superseded by any registration requirements.[38] For example, the registration acts of Maryland and North Dakota, although requiring that all liens be entered on the certificate of title, explicitly provide that the lien or mortgage must also be evidenced by a duly recorded instrument.[39] The same doctrine has been judicially expressed in *King-Godfrey, Inc. v. Rogers*[40] by the Oklahoma Supreme Court, which asserted:

> We are of the opinion that the statute was passed exclusively for the benefit of the state, and that, as a registration act, has no application to creditors and vendees of the person who holds the certificate of registration. . . . We find no language in the act cited by plaintiff indicating that it was the intention of the legislature that this enactment was to supersede the Mortgage Registration Act.[41]

In thus holding, the court denied relief to a mortgagor whose lien was duly noted on the certificate of title, but not filed and recorded with the county clerk. Here, then, is an unequivocal declaration that recordation acts remain applicable to automobile security transactions, in spite of the lien provision of the motor vehicle registration statute.

At least one state, Michigan, occupies a compromising position with regard to this conflict of authority. Its code provides that *either* recordation of the encumbrance or a notation thereof on the certificate of title will be sufficient to create constructive

37. See note 33 *supra.*

38. MD. ANN. CODE GEN. LAWS art. 66½, § 25 (Cum. Supp. 1947); MICH. VEH. CODE §§ 217, 222, 238 (1949); N.D. REV. CODE c. 39, § 0509 (1943); King-Godfrey, Inc. v. Rogers, 157 Okla. 216, 11 P.2d 935 (1942).

39. MD. ANN. CODE GEN. LAWS art. 66½, § 25 (Cum. Supp. 1947); N.D. CODE c. 39, § 0509 (1943).

40. 157 Okla. 216, 11 P.2d 935 (1932).

41. *Id.* at 217, 11 P.2d at 936.

notice.[42] The failure of the certificate to disclose an existing lien on the vehicle will not protect a purchaser from a duly recorded chattel mortgage. Therefore, the mortgagee apparently has the alternative of either recording the instrument or entering the lien on the certificate of title.

This sharp conflict of authority as to the effect of these registration provisions on recordation acts is, to some extent, explainable. In Kansas and Indiana, those states in effect holding the recordation act to be superseded, the motor vehicle registration act requires that the lien always be noted on the certificate of title itself.[43] Thus the provision was obviously intended as a protection to creditors and vendees of the owner of the mortgaged vehicle. On the other hand, in several of the states declaring the recordation act not superseded, the vehicle registration statute provides only that the lien be noted on the application for certificate of title, which is then duly filed at some county office.[44] There is no requirement that any notation be entered on the certificate of title itself. It is thus quite logical to assume that such a statute was never intended to protect parties dealing with the automobile owner, but rather, as the Oklahoma Supreme Court pointed out,[45] was a provision enacted solely for the benefit of the state by establishing competent records of automobile titles. Hence, where the registration statute does not require the lien to be noted on the certificate of title itself, there is no sound basis for the recordation and filing requirements to be disregarded.[46]

With regard to controversies solely between the parties to a security transaction, the general rule observed by the jurisdictions in this group is identical with that followed in states with stricter statutes. Failure to note the lien or encumbrance on the certificate of title does not nullify or invalidate the security transaction; such violation of the registration act only serves

42. MICH. VEH. CODE §§ 217, 222, 238 (1949).

43. IND. STAT. ANN. tit. 47, § 2502 (Burns, Supp. 1949); KAN. GEN. STAT. ANN. c. 8, § 135 (1949).

44. N.D.REV. CODE c. 39, § 0509; OKLA. STAT. ANN. tit. 47, § 23.6 (1950).

45. See note 40 *supra*.

46. The Oregon registration provisions are quite unusual: ORE. COMP. LAWS. ANN. tit. 157, § 117 (1940). While containing the usual requirements for notation of the lien on the certificate of title, the statute further makes it a criminal offense for the mortgagee to fail in this respect and imposes a fifty dollar fine for such failure.

to negate constructive notice to third parties.[47] Hence a mortgagee cannot be denied foreclosure merely because he failed to exact a compliance with the statute, and the certificate of title in the mortgagor's possession consequently shows no registered encumbrance.[48]

The main problem raised by this second group of statutes, which remain silent as to notice, is their effect on the recordation acts. Once it has been determined whether or not the recording act has been superseded (with regard to motor vehicles), the other operative effects of the registration requirements should prove of no material difficulty to the practitioner.[49]

REGISTRATION STATUTES WITH NO PROVISIONS AS TO LIENS AND ENCUMBRANCES

The remainder of the jurisdictions in the United States are those with no express statutory provision for the registration of liens and encumbrances on motor vehicles.[50] Virtually all of these states, however, enforce some form of regulation requiring the registration of motor vehicle titles, and consequently issue certificates of title to vehicle owners. No statutory provision, either express or implied, specifies that there be any notation on these certificates, nor is there any other requirement for a unique mode of registration of encumbrances on motor vehicles. The logical presumption, therefore, is that security transactions involving automobiles must be recorded just as any ordinary chattel mortgage, in conformity with the applicable recording act.[51]

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47. Leopold v. Universal Credit Co., 290 Ill. App. 305, 8 N.E.2d 727 (1937).

48. *Ibid.*

49. If it is determined that the recordation act is superseded and does not apply to automobile transactions, the registration statute will then assume all the qualities of the strict group of statutes previously discussed; but if the recordation act remains applicable, it must be assumed that all the common law rules of chattel mortgages, conditional sales and the like remain in force with regard to motor vehicle security transactions.

50. Fifteen states have no lien provisions: Alabama, Connecticut, Georgia, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, New Hampshire, Rhode Island, South Carolina, Vermont, and New York.

51. There is one particular deviation from this rule. New Jersey has an express statutory provision that chattel mortgages on automobiles must be recorded as any other mortgages, but conditional sales and other devices retaining title in the vendor must be registered with the Commission of Motor vehicles, N.J. STAT. ANN. tit. 39, c. 10, § 14 (Supp. 1950).

The absence of statutory requirements for the notation of liens on the certificates of title, occurring in sixteen states, raises an interesting and highly controversial problem of conflict of laws. Assume, for example, that a chattel mortgage on an automobile is duly executed and legally recorded in State X, wherein there is no provision for the encumbrance to be entered on the certificate. The vehicle is then transported and sold in State Y, which maintains a strict registration statute requiring that all liens be noted on the certificate of title for constructive notice to be given to third parties. The purchaser in State Y obviously relies upon the clear certificate of title in buying what he believes is an unencumbered title. The problem, over which there is an unresolvable controversy today, is whether the mortgagee, having fully complied with the law in the state wherein the mortgage was executed, can now claim his lien in the other state, whose registration laws render the mortgage improperly asserted.

The general conflict of laws rule, with respect to ordinary chattel mortgages, is that proper recordation in the state where the chattel was located when the mortgage was executed is valid and sufficient notice to the entire world, removal of the chattel to another state notwithstanding:[52]

> . . . when personal property incumbered by a mortgage valid as against a subsequent innocent purchaser in the state in which the property was located when the mortgage was given is surreptitiously removed to this state [Arizona], the mortgagee may follow the property, and his rights are superior to those of a similar purchaser within this state. . . .[53]

An example of the application of this principle to an automobile encumbrance is the recent Texas case of *Bank of Atlanta v. Fretz*,[54] in which an automobile mortgaged in another state not issuing certificates of title was brought into Texas and sold to a bona fide purchaser. The court held the foreign mortgage was still valid, even though it was not evidenced by a notation on a certificate of title, as required by the Texas registration statute. This illustrates a clear adherence to the general conflict of laws rule as aforesaid, which refers to the law of the

52. Forgan v. Bainbridge, 34 Ariz. 408, 274 Pac. 155 (1928).
53. *Id.* at 414, 274 Pac. at 157.
54. 148 Tex. 551, 226 S.W.2d 843 (1950).

original situs of the chattel in determining the validly and effect of a mortgage lien.

However, several states with the strict type of lien-notation statutory provision[55] have taken an opposite viewpoint.[56] In a recent Florida case[57] the court was confronted with the claim of a Georgia mortgagee. The mortgage had been duly executed on an automobile in Georgia, where there is no statutory provision for noting encumbrances on the certificate of title. The vehicle was subsequently sold in Florida to an innocent purchaser, who received an assignment of the certificate of title with no indication of an infirmity appearing thereon. Since the code of Florida strictly required that all encumbrances be noted on such certificate, the court refused to allow the mortgagee's claim, even though he had completely complied with the law of the state in which the mortgage was executed. This obvious departure from the general principles of conflict of laws was apparently intended to preserve the integrity and conclusiveness of the certificate of title as an indication of outstanding encumbrances.

The conflict of authority is distinct, based solely on whether or not a given state will apply its own registration provision for lien notations to security transactions consummated in other jurisdictions. There appears to be no sound justification for a departure from the general rule consistently applied to security transactions involving other chattels; a mortgage duly executed and properly recorded in one state should be given full effect in any other jurisdiction, regardless of any strict lien-notation provision the latter may have included in its registration statute. Purchasers in the second state will not be deceived or misled, since either the license, registration receipt, or certificate of title will instantly disclose to them that the automobile originated in another state. With such knowledge, they might reasonably inquire into the lien registration statutes of that state, and thus ascertain whether or not the certificate of title may be relied upon as a conclusive indication of encumbrances. There is therefore no adequate basis for any state to impose its own statutory

55. See note 6 *supra*.

56. Lee v. Bank of Georgia, 159 Fla. 481, 32 So.2d 7 (1947); Rice St. Motors v. Smith, 167 Pa. Super. 159, 74 A.2d 535 (1950); N.M. STAT. ANN. c. 68, § 115 (1941).

57. Lee v. Bank of Georgia, 159 Fla. 481, 32 So.2d 7 (1947).

requirements and the consequent effects thereof on a security transaction properly executed elsewhere.

Nevertheless, courts will still dogmatically demand strict compliance of a foreign lien with their own local registration requirements. This should serve as an ominous warning to practitioners and prospective lienors in those states with no vehicle registration provision as to encumbrances. Compliance with the local law, which probably requires a mere recordation of the security instrument, will not suffice to fully protect the mortgagee. To insure against a possible loss of the lien in another state, a cautious mortgagee should register his claim in accordance with the strictest possible requirements of any other jurisdiction. Hence, a security transaction consummated in a state with no registration provision as to liens should nevertheless be evidenced by a notation on the certificate of title. In this manner, the claim of the lienor will be recognized as against third parties in any state to which the automobile may be transported and sold.

Therefore, compliance with the local law is not the chief problem arising in this third group of jurisdictions, which have no statutory provision for the registration of liens. Rather the problem is to adequately register and note the encumbrance so that the claim cannot be defeated by subsequent purchasers in another state with stricter registration requirements.

SPECIAL PROVISIONS AS TO DEALERS

Many jurisdictions have adopted, through legislative or judicial process, special provisions for automobile dealers with regard to security transactions. One of the main objectives of these special regulations has been to maintain the ordinary channels of automobile commerce free and unobstructed. Accordingly, the statutory requirements for dealers are intended to protect, at all costs, the purchaser who obtains a vehicle in the ordinary course of business.

For example, probably the simplest and most effective statute which creates the necessary protection to the purchaser from a dealer is employed in New York. This enactment specifically provides that any mortgage on vehicles in a dealer's possession is *never* good against a purchaser in the ordinary course of business, even though such mortgage be fully recorded.[58] Conse-

58. N.Y. LIEN LAW § 230 (c) (Supp. 1942).

quently, the purchase of an automobile from a New York dealer is greatly facilitated, there being no necessity for the vendee to investigate the title or search the records for any outstanding encumbrances. The result, of course, is a highly desirable free flow of automobile commerce within the state. The statute might seem unreasonably harsh on mortgagees, who would lose their liens if the dealer should sell the mortgaged vehicles in the ordinary course of business. However, such lienors, given adequate warning by this unequivocal statute, have ample opportunity to protect their claim by merely refusing to allow the dealer-mortgagor to retain possession of the encumbered vehicles. Indeed, the New York law, in few words, completely eliminates the title and constructive notice problems of dealer's mortgages, without the creation of rank injustice to the lienholders.[59]

A substantially different problem with regard to dealers arises in those states requiring that a lien notation be made on the certificate of title. Generally such certificates are issued to the first purchaser of a new vehicle, and are obtained by forwarding the bill of sale and the application for a title certificate to the appropriate state office.[60] However, while the new vehicle is still in the possession of the dealer (who obtained it from the manufacturer), a certificate of title therefor has usually not yet been issued. How, then, can there possibly be a notation of an encumbrance without a title certificate?

Several states, recognizing this problem, have specifically exempted dealer's stock from the lien-notation provision of the registration act.[61] Furthermore, in Missouri the statute,[62] which requires that all encumbrances be entered on the certificate of title, subsequently provides that such procedure does not apply in the case of a purchase-money mortgage on a new car. In interpreting this statute, a Missouri appellate court cited the purpose of this exemption: certificates of title are not issued

59. It would seem absolutely necessary that New York have some provision, inasmuch as that state has no law requiring lien notations on the certificate of title. The only proper way to assert a mortgage would be ordinary recordation. Therefore, without the above statute, a New York purchaser would be compelled to search the voluminous chattel mortgage records to ascertain the clarity of his vendor's title.

60. See, for example, MO. REV. STAT. § 301.190 (1949).

61. FLA. STAT. § 319.15 (1941); Interstate Securities Co. v. Barton, 236 Mo. App. 325, 153 S.W.2d 393 (1941).

62. MO. REV. STAT. § 443.480 (1949).

until at least ten days after the sale of a new car, hence the dealer, as mortgagor, has nothing upon which to note the lien created by the purchase-money mortgage. The court further asserted that in such transactions involving new cars ordinary recordation of the mortgage would suffice to give constructive notice.[63]

On the other hand, Ohio has adopted a directly opposite viewpoint, and specifically declares that encumbrances on a dealer's new cars must be noted on the certificate of title in compliance with the registration act.[64]

The divergence of opinion is readily explained. Unlike Missouri, Ohio requires that the title to every new automobile in a dealer's possession be evidenced by a "manufacturer's certificate of title," a document procured by the dealer from the manufacturer. Upon sale of the vehicle, the purchaser is assigned this manufacturer's certificate which he then exchanges for a new certificate of title naming himself as owner.[65] Thus even while a new automobile remains unsold in an Ohio dealer's possession, its ownership is evidenced by a certificate upon which liens and encumbrances incurred by the dealer (or the first purchaser) may be noted. There is therefore no logical reason for exempting a dealer's new vehicles from the provisions of the registration act.

Two signficant problems are thus raised when the security transaction involves an automobile dealer. The first is created by the desire to maintain a free and unobstructd flow of motor vehicle commerce. In this respect, courts will frequently be prone to protect an ordinary purchaser from outstanding title encumbrances. Hence a prospective mortgagee, before consummating his transaction with a dealer, should be particularly cautious in ascertaining whether or not, under the law of the state, his lien will be valid against a subsequent purchaser in the ordinary course of business. The second problem concerns the notation of liens, as required by the registration act; where the absence of a certificate of title (the vehicle being new and

63. Interstate Securities Co. v. Barton, 236 Mo. App. 325, 153 S.W.2d 393 (1941).

64. Crawford Finance Co. v. Derby, 63 Ohio App. 50, 25 N.E.2d 306 (1939).

65. OHIO CODE ANN. §§ 6290-9 (1940).

unsold) prevents the proper notation of the lien, the mortgagee may usually protect his claim by duly recording the same.

CONCLUSION

The motor vehicle registration statutes have had a crushing impact on the law of chattel mortgages and recordation. No security transaction involving an automobile can safely be consummated today without reference to the applicable registration provisions of the state to ascertain the manner in which constructive notice may be given. Even in the absence of a special statute, the prudent mortgagee will look to the stricter laws of other jurisdictions and comply therewith, thereby eliminating the possibility of an outstate sale defeating his rights.

In any event, a party to a security transaction involving a motor vehicle should be cognizant of the fact that his rights may not be determined solely by the ordinary recordation and chattel mortgage laws. Reference to *both* the recordation act and the motor vehicle registration statute, plus a determination as to which is paramount, is the only procedure which will insure full protection of the party's rights.

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