Comment on Recent Decisions

AUTOMOBILES—EFFECT OF NON-COMPLIANCE WITH REGISTRATION STATUTE.—Plaintiff claimed an automobile attached as another's property, and was allowed to show except as against innocent third parties that his vendor was the true owner, although not holding under a bill of sale from the former owner as required by the statute respecting the registration and sale of automobiles. *Moore et al. v. Wilson* (Ky. 1929) 18 S. W. (2d) 873.

The purchase of an automobile in total disregard of a statute governing the sale and transfer of such property is void and affords the purchaser no defense in a replevin suit instituted by the plaintiff having a lawful claim to the property. *Hammond Motor Co. v. Warren* (1923) 133 Kan. 44, 213 Pac. 810. It has been held that one who buys an automobile from a person other than a regular dealer having an established place of business, not complying with statutes as to such transfers has no insurable interest against the theft of the automobile, although the statute did not expressly declare the sale void, it having been passed to protect the public against fraud, and to facilitate the recovery of stolen automobiles as well as to prevent theft. *Morris v. Firemen's Ins. Co.* (1926) 121 Kan. 482, 247 Pac. 852. And where the buyer of an auto under a Missouri contract failed to comply with R. S. Mo. (1919) sec. 7651, requiring indorsement and transfer of the registration certificate, and the seller collected from the defendant insurer for the stolen car, assigning his title to the insurer, the latter, in replevin by the buyer, could invoke the Missouri statutory provision making void sales in violation thereof. *Miller v. Colonial Underwriters' Ins. Co.* (1924) 117 Kan. 240, 230 Pac. 1030; *State ex rel. Connecticut Fire Ins. Co. v. Cox* (1924) 306 Mo. 537, 268 S. W. 87; *Muzenich v. McCain* (Mo. A. 1925) 274 S. W. 888. The Missouri registry statute expressly provides that a failure to comply with its provisions will render the sale fraudulent and void. In *Aratzky v. Kropnitzsky* (1923) 98 N. J. L. 344, 120 Atl. 921, where there had been a sale without an assignment of the bill of sale, and the vendor was suing to obtain payment of a check given as part of the purchase price, the court said, "If the courts should undertake to enforce contracts made in such violation of the terms of the statute they would be aiding therein and encouraging the very mischief that the act was passed to prevent."

But in *Hennessy v. Automobile Owners' Ins. Ass'n* (Tex. 1926) 282 S. W. 791, it was held that a provision in a statute passed to prevent the theft of motor vehicles, making it unlawful under penalty to sell a second-hand car without the transfer of the license fee receipt and the giving of a bill of sale, does not render a sale without so doing void, so as to vest no insurable interest in the buyer. And in *King v. Cline* (1920) 49 Cal. App. 696, 194 Pac. 290, it was held that an assignment by the conditional vendor of an automobile was not invalid for failure to comply with the statute as to registration. See also *Swank v. Mosian* (1917) 85 Ore. 662, 166 Pac.

962. Such statutes are a police regulation to protect the general public from fraud and imposition, and the theft of motor vehicles. *Carolina Discount Corp. v. Landes' Motor Co.* (1925) 190 N. C. 157, 129 S. E. 414; *Williams v. Stringfield et al.* (1925) 76 Colo. 696, 231 Pac. 658. The statutes in these jurisdictions provide for liability under the penal provisions, but not that failure to comply with the provisions would render the sale void.

The theft of motor vehicles has no relation to sales and transfers, and a statute passed as a measure against fraud and theft should not be construed as rendering contracts unenforceable. Neither compliance nor noncompliance with the terms of a registration statute should be regarded as conclusive of title. E. S., '31.

CONSTITUTIONAL LAW—INTERNAL REVENUE—GIFT TAX NOT INVALID AS DIRECT TAX UNAPPORTIONED.—Plaintiff sued to recover a tax alleged to have been illegally exacted upon gifts made by him after the passage of the Revenue Act of 1924, 43 Stat. 253, 313, as amended by sec. 324 (a) of the Revenue Act of 1926, 44 Stat. 86, 26 U. S. C. A. 1131, providing for a tax on gifts *inter vivos* not made in contemplation of death. *Held*, not invalid under U. S. Const. Art. 1, sec. 2, par. 3 and Art. 1, sec. 9, par. 4, as imposing a direct tax not apportioned, since such tax was but an excise or impost applicable only to a limited exercise of property rights. *Bromley v. McCaughn* (1929) 50 S. Ct. 46.

Art. 1, sec. 8 of the Constitution authorizing the levy and collection of taxes and requiring uniformity throughout the country is limited by sec. 2 of the same article which requires that "direct" taxes be apportioned, and by sec. 9 which provides that "no capitation or direct tax shall be laid, unless in proportion to the census." It has been consistently held that a tax laid upon a particular use of property incidental to ownership is an excise, and therefore need not be apportioned. *Hylton v. United States* (U. S. 1796) 3 Dall. 171; *Nicol v. Ames* (1898) 173 U. S. 509; *McCray v. United States* (1903) 195 U. S. 27; *Knowlton v. Moore* (1899) 178 U. S. 41.

The statute in question imposes a graduated tax upon the exercise of the power to give property *inter vivos.* In *Knowlton v. Moore,* above, it was held that a graduated tax on legacies does not violate the Constitution. *Accord: Brushaber v. Union Pacific R. R. Co.* (1915) 240 U. S. 1; *Stebbins v. Riley* (1924) 268 U. S. 137.

The tax in question is levied only upon the power to give the property. There is no logical distinction between this tax and the one on the disposition of property by legacy upheld in *Knowlton v. Moore,* above; the tax upon the manufacture and sale of colored oleomargarine sustained in *McCray v. United States,* above; or the tax upon the sale of grain upon an exchange held valid in *Nicol v. Ames,* above. A recognized distinction exists between a tax imposed upon the exercise of a single one of those powers incident to ownership and a tax levied upon the owner of property regardless of the use made of the property. *Billings v. United States* (1913) 232 U. S. 261. The reason for the distinction lies first in the fact