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The Motor Vehicle Registration Act as a Limitation on the Chattel Mortgage Recording Act

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FIFTH ANNUAL INSTITUTE OF GOVERNMENT TO INCLUDE SECTION ON EXCISE AND UNEMPLOYMENT COMPENSATION TAXES

This year the Annual Institute of Government which will be held July 24-26 at the University of Washington is of more than usual interest to attorneys of the State of Washington.

This is so by reason of the fact that included among the various sections of the institute will be a section on taxation which will deal specifically, over the three-day period, with the subjects of the Washington State Excise and Unemployment Compensation Taxes.

The Advisory Committee of the Taxation Section, headed by Frank P. Helsell, has arranged a very instructive program which will be of great interest to attorneys.

Other sections of the Institute will deal with the subjects of Law Enforcement, Traffic Control and Safety, Personnel Administration, Public Library Administration, Planning, School Finance and Public Health.

The registration fee of two dollars includes admission to all sections and a copy of the Institute Proceedings. Single lecture coupons are available: charge, 50c.

COMMENT

THE MOTOR VEHICLE REGISTRATION ACT AS A LIMITATION ON THE CHATTEL MORTGAGE RECORDING ACT

Because motor vehicles are so easily moved from place to place, and because of the intricacies of successive security transactions in relation to them, it has become expedient to provide for a more adequate method of ascertaining the title to any given motor vehicle than the chattel mortgage recording act provides. In the absence of a title registration act giving the same force and effect to certificates of title for motor vehicles as that given to similar certificates under a Torrens system of land registration, in many instances a purchaser cannot be certain he is buying a clear title without a tremendous amount of search in the records of several counties, nor can an encumbrancer be certain of the priority of his lien without a similar search.

Motor vehicle registration acts divide themselves into three groups, classified as to their effect on later purchasers and encumbrancers of the vehicle.¹ In the first group the act is held to be merely a police or revenue measure and hence to have no effect on third persons dealing with the vehicle. In the second group the court has held that the effect of the certificate of ownership is that of a conclusive title instrument, title to the car not passing until the certificate of ownership is changed. The change in the certificate being the operative factor in a sale or mortgage, such sale or encumbrance under this type of statute is absolutely void, often even as between the parties, until the certificate of ownership is taken up and changed. In the third group there is a compromise. The statutes are not clear enough in expressed intention to justify holding

¹For comprehensive lists of jurisdictions having these acts and the classifications into which they fall see Comments (1939) 48 *YALE L. J.* 1238, at 1246; (1939) 37 *MICH. L. REV.* 758; and (1939) 28 *CALIF. L. REV.* 64.

the title instruments conclusive, but they are clear enough to justify a holding that the acts should have more effect than that of a police measure and should affect in some manner the rights of third persons dealing with the motor vehicle. In states having this type of act third parties who rely on the certificate of title may acquire rights superior to those of prior parties who have failed to conform to the requirements of the registration act.

The Washington legislature in 1937 passed a registration act for motor vehicles.² A portion of this act provides:

"If, after a certificate of ownership is issued, a mortgage is placed on the vehicle described in the certificate of ownership, the registered owner shall, within ten days thereafter, present his application to the state treasurer, signed by the mortgagee, to which shall be attached the certificate of license registration and application shall be upon a form provided by the director of licenses . . . fee of fifty cents (50c). The state treasurer . . . if he is satisfied that there should be a reissue of said certificates . . . (shall) note such change upon his records and issue to the registered owner a new certificate of license registration and to the mortgagee a new certificate of ownership. . . ."³

There is little evidence in the act which would tend to show that it was intended to be a conclusive title instrument act. The penalty provided for non-compliance is that it is "unlawful for any person to sell or transfer any vehicle without complying with all the provisions of this chapter."⁴ In addition the statute requires that "certificates of ownership when assigned and returned to the director of licenses together with subsequently assigned reissues thereof, shall be retained by the director of licenses and appropriately filed and indexed so that at all times it will be possible to trace ownership to the vehicle designated therein."⁵ But on the other hand there is no provision making the file and index constructive notice of its contents; no repeal of the chattel mortgage act as regards constructive notice from a filed chattel mortgage on a motor vehicle; nor any provision providing that the transaction will be void if the act is not complied with.

In the recent case of *Merchant's Rating & Adjusting Co. v. Skaug*⁶ the issue was squarely presented to court whether the registration provisions of REM. REV. STAT. § 6312-7 was to be of no effect as to purchasers and encumbrancers, thus leaving intact the chattel mortgage filing provisions, or whether the effect of the registration act would be to make the title instrument conclusive and to that extent render ineffective the provisions of the chattel mortgage filing act as applied to motor vehicles.

The case arose on the following facts: A owned the car and mortgaged it to B. B recorded the mortgage, but neglected to comply with

²Wash. Laws of 1937, ch. 188, p 782; REM REV. STAT. Vol. 7A, 6312-1 to 6312-14.

³REM. REV. STAT. § 6312-7. See Wash. Laws of 1939, ch. 182, p. 563, for an amendment of this section involving a slight change in procedure.

⁴REM. REV. STAT. § 6312-2.

⁵REM. REV. STAT. § 6312-6 (d).

⁶104 Wash. Dec. 67, 102 P. (2d) 227 (1940).

the provisions of REM. REV. STAT. § 6312-7 (registration act). Then *A* sold to *C*, giving the certificate of license registration to *C*. *C*, exhibiting the certificate of ownership, sold to *D* the car in question. *D* financed the purchase by giving a purchase-money mortgage to *E*. *B* then attempted to foreclose his mortgage by notice of sale. *D* and *E* intervened, removing the proceedings to superior court, and there contended that REM. REV. STAT. § 6312-7 was intended as a registration act of the type to make the certificate of ownership a conclusive title instrument, hence that it superseded the chattel mortgage act as applied to motor vehicles. *B*'s contention was that the filing of his chattel mortgage was sufficient to protect his interest because it gave notice to third parties under REM. REV. STAT. § 3782.

With that issue squarely presented, the court had an opportunity to give a definitive answer, but chose instead to rest its decision on an alternative ground, namely, that *D* and *E* were the most innocent of the two parties, and hence as between them and *B* who made the fraud possible by not taking up the certificate of ownership, *B* should be the one to suffer. There is some precedent in this state for declining to apply a recording statute on the theory of estoppel.⁷ The doctrine relied on by the court though not in terms stated to be an estoppel, rests on the same foundation. In effect the basis of the decision is that *B* made a representation that he owned no interest in the car, and *D* and *E* relied on that representation to their detriment. However, the court was unwilling to take the next step and hold that the registration act overruled the recording act. Since the facts of the *Skaug* case are typical it is difficult to conceive of a similar case arising where the result could be contrary to the decision of that case.⁸

In the situation presented by the *Skaug* case it is seen that when a subsequent purchaser relies on the certificate of ownership and has no actual notice of the prior mortgage he is protected.⁹ Assume a second situation in which all factors are the same but the purchaser did not rely on the outstanding certificate of ownership. In such a case it would seem that the prior mortgagee's negligence in not taking up the certificate and having it changed would not be the cause of the subsequent purchaser's loss, and the basis used for holding the prior mortgagee liable in the *Skaug* case would be gone. Thus it would be arguable that the recorded chattel mortgage would give good notice to such a purchaser. It is not clear from the opinion in the *Skaug* case whether in any event the registration act must be complied with before the chattel

⁷*Northwestern Finance Co. v. Russell*, 161 Wash. 389, 297 Pac. 186 (1931).

⁸Statutes with language substantially similar to that of the Washington Act have been held in many instances to be police measures only. *Amick v. Exchange State Bank*, 164 Minn. 136, 204 N. W. 639 (1925); *Band Lumber Co. v. Timmons*, 82 Mont. 497, 267 Pac. 802 (1928); *King-Godfrey, Inc. v. Rogers*, 157 Okla. 216, 11 P. (2d) 935 (1932). But a number of courts have used the same approach as that used by our court in the *Skaug* case, and come to the same conclusion. *Tharp v. San Joaquin Valley Securities Corp.*, 20 Cal. App. (2d) 20, 66 P. (2d) 230 (1937); *Comm. Credit Co. v. McNelly*, 171 Atl. 446 (Del. Sup. Ct. 1934); *Thiering v. Gage*, 132 Ore. 192, 284 Pac. 832 (1930).

⁹Would the same result have followed if *Skaug* had relied on the certificate of license registration rather than the certificate of ownership? Also, some provision should be made to protect other lienors of the vehicle such as repairmen.

mortgage on file will give good notice. But it would seem reasonable, in view of the court's express language that they were not limiting the effect of the chattel mortgage recording act, that in such a situation the recordation would be good notice.

Assume a third situation wherein the mortgagee does not file his chattel mortgage at all, but does properly change the certificates of ownership and license registration. Would such change alone be sufficient to protect his interest? It would as to a buyer actually seeing the certificates for he then would have actual knowledge of the mortgagee's interest and could not be a bona fide purchaser protected by the Recording Act. But can it be said that the requirement for a bona fide purchaser within the protection of the recording act has been raised to *require* that he examine the certificate of ownership? The registration act sets out the duties of a buyer of a motor vehicle,¹⁰ and it seems that if a buyer fails to get the certificate of ownership transferred to him the loss attends his own wrongful act, under the same type of reasoning as that employed in the *Skaug* case. Thus it would be a fair prediction that should such a case arise the loss will fall on the purchaser. However, it must be noted that the *Skaug* case sheds very little light on this particular problem. Should the court hold that the buyer would lose in such a case, that would do away with the chattel mortgage recording act for all practical purposes for a mortgagee would be protected by having the certificate of ownership changed.

Until the uncertainty of the effect of the registration act is resolved by further litigation or by statute a cautious mortgagee should both comply with the registration act and file under the chattel mortgage act. The solution best fitted to the complex problems in this field would be an enactment by the legislature of an act making the title instruments conclusive.¹¹

JOHN M. DAVIS.

¹⁰REM. REV. STAT. § 6312-6.

¹¹Under such a statute probably it would be appropriate to have the certificate of ownership convey more information about the true condition of the title, showing mortgagor as owner and including the material facts of the mortgage thereon. Some provision should be made for other lienors of the vehicle, such as repairmen, to protect their liens on the vehicle.