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On the other hand, it must be owned that, had the case come up for decision within the twenty, or perhaps, twenty-five years before the Act of 1952 went into effect on January 1, 1953, it is almost certain that the claims would have been held invalid.²⁸

In failing to cite the *Cuno* case, it is evident that Judge Hand finds "patentable invention" sufficiently described by the case law and the statute, and recognizes the legislative right: ". . . reinstate the courts' initial interpretation, even though it may have been obscured by a series of later comments whose upshot is at best hazy."²⁹

Thus, the implication arises that, at best, Judge Hand treats "flash of genius" as an unwarranted deviation from established case law.

Finally, in the case of *R. M. Palmer Co. v. Luden's Inc.*,³⁰ the court held a design patent for a hollow chocolate figure valid, finding that the designs were new, original and ornamental, and, tested objectively, the alleged invention met the standard of 35 U.S.C. 103. Further, the court clearly pointed out that the Act repudiated the "flash of genius" requirement, thus confirming in statutory form what had been case law for many years prior thereto.

²⁸ *Lyon v. Bausch & Lomb Optical Co.*, 224 F. 2d 530, 535 (C.A. 2d, 1955).

²⁹ *Ibid.*, at 537.

³⁰ 128 F. Supp. 672 (E.D. Pa., 1955).

SALES—HOLDER OF CERTIFICATE OF TITLE ESTOPPED BY TRANSFER OF AUTOMOBILE IN ORDINARY COURSE OF BUSINESS

Plaintiffs, who are wholesale automobile dealers in New Mexico and Colorado, sold several automobiles at their places of business to a licensed used car dealer from Utah. Possession of the automobiles was transferred to the purchaser with knowledge that he was a used car dealer and that he intended to take the automobiles to his place of business in Utah for purpose of resale. The foreign certificates of title showing plaintiffs to be the legal owners together with sight drafts were forwarded to a Utah bank on an agreement that the buyer would pay the drafts before obtaining the certificates. The buyer never paid the drafts and never received the certificates. About a month later, the retailer sold the automobiles to the defendants at his place of business in Utah in the usual course of trade for a valuable consideration. Defendants made no inquiry of him as to the title certificates or his authority to sell, and had no actual knowledge of the original sales arrangement. Plaintiffs brought the replevin actions in Utah for the automobiles. The Utah Supreme Court, refusing to apply a Utah automobile statute, denied recovery on the ground of estoppel. *Heaston v. Martinez*, 282 P. 2d 833 (Utah, 1955).

One basic property law rule is that one who has no title can transfer none. However, according to the doctrine of estoppel, if the owner is by his conduct precluded from denying the seller's authority to sell, the buyer may acquire a valid title although the seller had neither title nor authority to transfer title.¹ In order to give rise to an estoppel it is essential that the party estopped shall have made a representation by words or acts that the seller is the owner thereof or has authority to sell the same, and that someone shall have acted on the faith of this representation in such a way that he cannot without damage withdraw from the transaction. A transfer of possession, while in itself insufficient to create an estoppel, may produce that result if possession is transferred to one who habitually sells such goods with authority to exhibit the goods to possible purchasers and obtain offers from them.² The foregoing principle has been the subject of codification.³

The sale of an automobile introduces a situation made complex by the enactment of statutes regulating registration and the certificate of title.⁴ The most complete form of certificate of title law provides for central recordation of encumbrances and changes of title to the auto with the record appearing on a single instrument, the certificate of title. When an auto is sold, the seller's certificate is given to the purchaser, who sends it to the state agency. The state notes the change in ownership and issues a new certificate to the purchaser, and a complete record of changes in title results.⁵

The statutory regulations, not being uniform among the states, produce diverse results when the transferor fails to transfer the certificate of title to the transferee. An arbitrary classification may be formulated:

¹ 2 Williston, Sales §§ 310-316 (rev. ed., 1948).

² "Even in this case an innocent purchaser is not protected, but slight additional circumstances may turn the scale." *Ibid.*, § 315. Consult *Zendman v. Harry Winston, Inc.*, 305 N.Y. 180, 111 N.E. 2d 871 (1953) for a lucid analysis of estoppel in the salesroom cases.

³ Uniform Sales Act § 23; Uniform Trust Receipts Act § 9-2(c); Uniform Commercial Code § 2-403(2): "Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business."

⁴ Certificate of title acts are readily distinguishable from registration laws in that the latter do not and are not intended to control title. The purpose of registration laws is to aid the state in the collection of taxes and in apprehending violators of highway regulations. An owner's registration card, since it is for tax purposes, must be renewed annually, whereas a certificate is good until the car is sold.

⁵ Those states which do not require certificates of title are Alabama, Connecticut, Georgia, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, New Hampshire, New York, Rhode Island, South Carolina, and Vermont.

1. The statute expressly renders the transaction void.⁶ Interpretations of these statutes have been inconsistent,⁷ some courts literally following the language of the statute,⁸ while others give it a liberal interpretation.⁹

2. The statute provides that the owner has committed a misdemeanor but it does not expressly render the transaction void.¹⁰ The courts hold in such a case that the transaction is not rendered invalid.¹¹

A further complication, the one with which the instant case is concerned, arises when a court applies its certificate of title statute in an estoppel situation. Whether a buyer who has not received a certificate of title will be protected will depend upon the phraseology and the judicial interpretation of the local statute.

Utah, a state in the first category, when confronted with that situation in *Swartz v. White*,¹² concluded that there was no estoppel because the buyer was not a bona fide purchaser. The Court stated:

Without attempting to decide the complete meaning or full operation of this provision of the statute, it is sufficient to say that the circumstances in this case, in view of that statute, amount to a flag of warning to any intending purchaser. . . .¹³

The transaction which confronted the Utah court in the instant case included one fact which distinguished it from the *Swartz* case—the automobiles in question were foreign automobiles. Plaintiff's argument was based upon a Utah statute which provided that:

Until the department shall have issued such new certificate of registration and certificate of ownership, delivery of any vehicle required to be registered shall be deemed not to have been made and title thereto shall be deemed not to have passed. . . .¹⁴

⁶ Utah Code Ann. (1953) § 41, c. 1(72). But the Utah code in section 76 of the same chapter also provides that the immediate effect is the commission of a misdemeanor by the owner.

⁷ See *Jackson v. James*, 97 Utah 41, 89 P. 2d 235 (1939) for a dissent which reviews the cases in the field.

⁸ The buyer cannot rescind and recover the purchase price since the court will not aid the parties on a transaction specifically made illegal and void by the legislature. *Reeb v. Danley*, 221 S.W. 2d 579 (Tex. Civ. App., 1949).

⁹ Transfer of an automobile as a gift without the transfer of the certificate of title does not invalidate the gift. *Jackson v. James*, 97 Utah 41, 89 P. 2d 235 (1939).

¹⁰ Uniform Motor Vehicle Anti-Theft Act § 6(b). Nine states have adopted the Act, including Illinois and Utah. Consult the Handbook of the National Conference of Uniform Laws 69 (1943), declaring the act obsolete and abrogating its recommendation for adoption by the states.

¹¹ *Pageanas v. Mixon Motor Co.*, 344 Ill. App. 446, 101 N.E. 2d 280 (1951); *Smith v. Rust*, 310 Ill. App. 47, 33 N.E. 2d 723 (1941).

¹² 80 Utah 150, 13 P. 2d 643 (1932).

¹³ *Ibid.*, at 158, and 646.

¹⁴ Utah Code Ann. (1953) § 41, c. 1(72).

and that, therefore, defendant-purchaser, under the *Swartz* case, was not a bona fide purchaser because of the failure to receive a certificate of title, in violation of the statute, put him on notice and required him to make inquiry. Defendant answered that the statute was not applicable to the set of facts because of another Utah statute which stated that:

When the transferee of a vehicle is a dealer who holds the same for resale . . . , the transferee shall not be required to obtain transfer of registration of such vehicle or forward the certificate of title and registration to the department. . . .¹⁵

The court, following the reasoning of the defendant, ruled that there was an estoppel because the statute cited by the plaintiff did not apply to this particular set of facts.

The position of Illinois, a state in the second category, as to the automobile salesroom cases when the buyer of an automobile fails to receive a certificate of title from a party not authorized to sell the same, is represented by a conflict of decision at the appellate level on the effect of title certificates under the Uniform Motor Vehicle Anti-Theft Act. The appellate court of the second district, in *L. B. Motors, Inc. v. Prichard*,¹⁶ after ruling that there was an estoppel, held that the Illinois certificate of title acts are anti-theft acts only and were not intended as recording statutes, and do not in any way alter the effect of the provisions of the Uniform Sales Act.¹⁷ But *Mori v. Chicago National Bank*,¹⁸ a case on similar facts in the appellate court of the first district, held that the purchaser's failure to get the certificate of title was an incident which, taken together with other evidence, can establish neglect on the part of the purchaser, and refused to invoke the doctrine of estoppel. The factual situation of the instant case, however, has not yet been adjudicated in Illinois.¹⁹

¹⁵ *Ibid.*, at § 65.

¹⁶ *L. B. Motors*, after entering into a conditional sales contract with Hunt, transferred possession of an automobile to him with knowledge that he was a retailer. Hunt, after executing a conditional sales contract to Emma Weiss, assigned the note and the contract to Prichard. Upon default of Weiss, Prichard took possession of the car. A replevin suit instituted by *L. B. Motors* against Prichard was unsuccessful. 303 Ill. App. 318, 25 N.E. 2d 129 (1940). Cf. *Pageanas v. Mixon Motor Co.*, 310 Ill. App. 446, 101 N.E. 2d 280 (1951); *Commercial Credit Corp. v. Horan*, 325 Ill. App. 625, 60 N.E. 2d 763 (1945); *Smith v. Rust*, 310 Ill. App. 47, 33 N.E. 2d 723 (1941).

¹⁷ The introduction of the Uniform Motor Vehicle Anti-Theft Act stated that its purpose was "to facilitate the recovery of stolen or unlawfully taken motor vehicles. . . ." 11 U.L.A. 142 (1938).

¹⁸ *Mori* entrusted his car to a dealer to procure bids and the dealer borrowed money from the bank on the security of a trust receipt covering the car. After the dealer absconded and the bank took possession of the car, *Mori* demanded the automobile, sued for conversion, and was awarded judgment. 3 Ill. App. 2d 49, 120 N.E. 2d 567 (1954); noted in 33 *Chi.-Kent L. Rev.* 21 (1954); 30 *N.Y.U.L. Rev.* 592 (1955).

¹⁹ However, Utah Code Ann. (1953) § 41, c. 1(65) and Ill. Rev. Stat. (1953) c. 95½ § 80(d) are alike since they were both adopted from the Uniform Motor Vehicle Anti-Theft Act.

The problem which the certificate of title laws present to the courts is one of statutory construction. Indicating that uniformity is not to be expected, a Utah dissent summarized a key to the solution:

Only those authorities in states having substantially the same statute as we have will be found helpful, and then only if the facts in each case are carefully considered, for in very few fields of the law is the adage that "circumstances alter cases" more applicable.²⁰

²⁰ Jackson v. James, 97 Utah 41, 51, 89 P. 2d 235, 239 (1939).

TRUSTS—BROAD POWERS OF CONTROL, RIGHT OF
REVOCATION, AND RETENTION OF INCOME
BY SETTLOR HELD NOT TO INVALIDATE
INTER VIVOS TRUST

In a suit by the administrators of the estate of a deceased settlor to determine the validity of declarations of trust and ownership of the corpus of the trust, it was seen that the settlor had purchased stock on four different occasions taking title in his own name as trustee for a beneficiary. At each purchase he had executed an instrument designated "Declaration of Trust-Revocable" in which he recited he held the stock in trust for the beneficiary subject to the following provisions: that all cash dividends were to be paid to him individually for his own personal account and used during his lifetime; that he reserved the right as trustee to vote, sell, redeem, exchange or otherwise deal in or with the stock, but upon any sale or redemption of the stock, the trust would terminate as to the stock sold or redeemed and he would be entitled to the proceeds of the sale or redemption for his own personal account and use; that he reserved the right at anytime to change the beneficiary or revoke the trust, but no such change or revocation except by death of the beneficiary should be effective as to the company until written notice thereof was delivered to the company. In the event the trust was revoked or otherwise terminated, the stock and all rights and privileges thereunder would belong to him. Held, that the trust declarations executed by the deceased constituted a valid inter vivos trust and were not invalid as attempted testamentary dispositions. *Farkas v. Williams*, 5 Ill. 2d 417, 125 N.E. 2d 600 (1955).

The trust "is an institute of great elasticity and generality."¹ The instant case touches the elasticity of the trust in one of its many aspects, namely, the post-mortem distribution of property, or as it is commonly called, the inter vivos trust. Actually, in *effect* it is a testamentary disposition of property which one usually thinks of as being accomplished by a will.² By definition, a will is, "the expression, in the manner required by

¹ Maitland, *Equity* 23 (1936).

² The trust does have 2 of the 3 important qualities of a will; it is revocable and it