Masthead Logo

DePaul Law Review

Volume 3
Issue 2 *Spring-Summer 1954*

Article 17

Sales - Blank Endorsements of Motor Vehicle Title Certificates

DePaul College of Law

federal courts are establishing precedent to the effect that the employer may lock out his union employees to counteract a whipsaw, unless the purpose of the lockout is to interfere with the concerted activities protected by Section 7, or to escape the duty to bargain collectively, as prescribed by Section 8(d)(4) of the National Labor Relations Act.[83]

SALES–BLANK ENDORSEMENTS OF MOTOR VEHICLE TITLE CERTIFICATES

The plaintiff brought an action against the defendant finance company to recover possession of an automobile which had been wrongfully mortgaged by a used car dealer who had agreed to sell that vehicle for the plaintiff owner. The owner had delivered two vehicles to the used car dealer together with the title certificates endorsed in blank, but with the spaces for the names of the assignees left blank. The dealer was to fill in the name of the assignee for each vehicle when he had made the sale and was also to have the certificates notarized. Before any sale had been made, the dealer gave chattel mortgages on the two automobiles to the finance company on the strength of the two title certificates which had been endorsed in blank. The dealer later defaulted on the mortgages, and the finance company took possession of one of the two automobiles. The court held that failure to fill the blank spaces on the certificates and the failure to have the certificates notarized made the certificates defective on their face. *Hawkins v. M. & J. Finance Corp.*, 238 N.C. 174, 77 S.E. 2d 669 (1953).

The defendant argued that the owner had estopped himself from claiming ownership as against the finance company by cloaking the dealer with indicia of ownership. Testimony was introduced that the custom of used car dealers is to buy old cars without a formal assignment made to the dealer by the former owner. Upon resale of the vehicle, the name of the new buyer is inserted in the space reserved for the name of the assignee, thus creating the impression that the transaction took place between the original owner and the subsequent buyer without intermediate ownership by the dealer.

The court discussed the North Carolina statute[1] regulating the transfer of title to automobiles and held, that compliance with the statute was required in the assignment of the certificate of title before the certificate could be an indicium of ownership. The court stated that the assignment of title by the owner's blank endorsement, which does not name the

[83] 61 Stat. 142 (1947), 29 U.S.C.A. § 101 (1947).

[1] N.C. Gen. Stat. (recompiled, 1953) c. 20, § 72.

purchaser, was fatally defective and that the incomplete assignment gave the finance company constructive notice of the holder's want of title.

It should be noted that the same statute had been interpreted in *Carolina Discount Corp. v. Landis Motor Co.*[2] as not affecting the legality or effectiveness of a sale made without substantial compliance with the statutory requirements. The court said: "A sale of personal property is not required to be evidenced by any written instrument in order to be valid. This rule had been of such long standing prior to the enactment of the Motor Vehicle Registration Act, we cannot assume that the legislature intended to change this rule, unless it says so."[3]

The existence of similar statutes in other states has led to varying interpretations. In Missouri, the statute[4] specifically provides that the sale of any motor vehicle without a proper assignment of the certificate of ownership shall be fraudulent and void. In an interpretation of this provision it was held that such a purported sale without a valid assignment of the certificate of title would serve only to create an executory contract which might be repudiated by either seller or buyer.[5]

The result is not so clear where such a mandatory provision does not exist. Until recently, the courts in other jurisdictions had tended to follow a line of reasoning similar to that used in *Pageanas v. Mixon Motor Co.*[6] where the court ruled that the Illinois title registration statute[7] is not a recording statute and does not affect the sale of a vehicle which is otherwise valid.

In Washington, *Hutson v. Walker et ux.*[8] held that one who delivers both a certificate of title and a separate bill of sale both endorsed in blank to a wrongdoer together with the automobile has estopped himself as against a subsequent purchaser without notice. This case was apparently overruled in *Richardson v. Seattle First National Bank*,[9] on a similar set of facts. However, in *Hutson v. Walker*,[10] it must be noted that the wrongdoer had subsequently inserted his own name in the space provided

[2] 190 N.C. 157, 129 S.E. 414 (1925).

[3] 129 S.E. 414, 416 (1925).

[4] Mo. Rev. Stat. (1949) § 301.210, subd. 4.

[5] Smith v. G.F.C. Corp., 255 S.W. 2d 69 (Mo. App., 1953).

[6] 344 Ill. App. 446, 101 N.E. 2d 280 (1951).

[7] Ill. Rev. Stat. (1951) c. 95½, § 80 provides that the owner of a motor vehicle for which a certificate of title is required shall not sell the vehicle unless he has obtained a certificate of title thereto nor unless he shall in every respect comply with the requirements of this section.

[8] 37 Wash. 2d 12, 221 P. 2d 506 (1950).

[9] 38 Wash. 2d 314, 229 P. 2d 341 (1951).

[10] 37 Wash. 2d 12, 221 P. 2d 506 (1950).

for the name of the buyer on the bill of sale and had presented the bill of sale regular on its face to the subsequent purchaser. It was held then that the bill of sale was sufficient indicium of ownership notwithstanding the defectiveness of the assignment of the certificate of title. *Richardson v. Seattle First National Bank et al.*[11] actually hinged upon whether or not estoppel was available as a defense. Because of the statutory definition of larceny as including the wrongful taking of goods by fraud, it was held that the wrongdoer had only possession as a result of a larceny by fraud and could not possibly pass good title to a subsequent purchaser.

Minnesota presents a slightly different situation in that the registration certificate is assigned by the execution of the bill of sale which is on the reverse side of the certificate.[12] In a recent interpretation of the Minnesota statute, it was held by a North Dakota court that delivery of the automobile together with delivery of such a bill of sale endorsed in blank by the registered owner to a used car dealer constituted indicia of ownership on which a subsequent purchaser could rely.[13] However, the Minnesota Supreme Court interpreted the same statute differently in holding that possession of such a bill of sale endorsed in blank did not constitute the possessor of the automobile the prima facie owner.[14]

Most of the reported cases involve only the question of estoppel of the registered owner and do not consider the validity of sales made in violation of such statutes. However, Missouri holds that even though the sale would have been good in the absence of the statute, where the registered owner had intended to sell the car to the person to whom he gave the certificate endorsed in blank and where the seller has received good and adequate consideration, that the title remains vested in the seller unless the certificate has been properly assigned.[15]

Other jurisdictions have also considered the question of whether or not the title registration statutes are to be considered as being mandatory. In a recent Ohio decision,[16] it was held that title to an automobile does not pass unless the seller complies with the statute[17] by assigning and delivering his certificate of title to the buyer. This decision is significant because it permitted persons injured as a result of the negligence of the buyer to secure judgments against the dealer and against the insurance company that had issued a public liability insurance policy to the seller.

[11] 38 Wash. 2d 314, 229 P. 2d 341 (1951).

[12] Minn. Stat. (1949) §§ 168.15, 168.30.

[13] Comml. Credit Corp. v. Dassenko, 77 N.D. 412, 43 N.W. 2d 299 (1950).

[14] Moberg v. Comml. Credit Corp., 230 Minn. 469, 42 N.W. 2d 54 (1950).

[15] Peper v. American Exchange Natl. Bank, 357 Mo. 652, 210 S.W. 2d 41 (1948).

[16] Garlick v. McFarland, 159 Ohio St. 539, 113 N.E. 2d 92 (1953).

[17] Ohio Code (Throckmorton, 1948) §§ 6290-3, 4, 5.

Recovery on the insurance policy was based on the theory that the purported buyer was using the seller's automobile with the latter's permission.

The Michigan statute[18] is similar to those of Ohio,[19] North Carolina,[20] and Illinois,[21] in that there is no specific provision calling compliance mandatory to pass title. However, in *Bayer v. Jackson City Bank & Trust Co.*,[22] the court ruled that the provision calling non-compliance with the statute a misdemeanor[23] was in itself sufficient to render void any attempted sale of a motor vehicle where there was failure to comply with the statutory requirements.

Texas provides a situation similar to that in Missouri since its title registration statute specifically provides that all sales made in violation of a statute shall be void and that no title shall pass until the provisions of the statute have been satisfied.[24] For that reason it is not surprising to note that in a factual situation almost identical with that of the instant case,[25] the court arrived at the same conclusion.[26] It should be observed that the court did not place too much stress on the fact that the certificate of title had been endorsed in blank but based its decision on the fact that the owner's signature had not been notarized.

Carried to a logical conclusion, it appears that the trend seems to favor the interpretation of such statutes as being mandatory,[27] with the result that the sale of motor vehicles would be taken outside the scope of the Uniform Sales Act.[28]

Illinois still holds that the sale of a motor vehicle is valid without any written instrument.[29] In *L. B. Motors, Inc. v. Prichard*,[30] the court in-

[18] Mich. Pub. Acts (1949) No. 300, § 257.233–.235–.239.

[19] Ohio Code (Throckmorton, 1948) §§ 6290–3, 4, 5.

[20] N.C. Gen. Stat. (recompiled, 1953) c. 20, § 72.

[21] Ill. Rev. Stat. (1951) c. 95½, § 80.

[22] 335 Mich. 99, 55 N.W. 2d 746 (1952).

[23] Mich. Pub. Acts (1949) No. 300, § 257.239.

[24] Tex. Stat. Penal Code (Vernon, 1948) art. 1436–1, §§ 33, 52, 53.

[25] Hawkins v. M. & J. Finance Corp., 238 N.C. 174, 77 S.E. 2d 669 (1953).

[26] Erwin v. Southwestern Inv. Co., 147 Tex. 260, 215 S.W. 2d 330 (1948).

[27] Compliance is made mandatory by statute in the following jurisdictions: Texas: Tex. Stat. Penal Code (Vernon, 1948) art. 1436–1, § 53; Missouri: Mo. Rev. Stat. (1949) § 301.210, subd. 4; California: Cal. Veh. Code (Deering, 1948) § 186. Ruled mandatory by the courts: Bayer et al. v. Jackson City Bank & Trust Co., 335 Mich. 99, 55 N.W. 2d 746 (1952); Garlick v. McFarland, 159 Ohio St. 539, 113 N.E. 2d 92 (1953).

[28] § 3.

[29] Pageanas v. Mixon Motor Co., 344 Ill. App. 446, 101 N.E. 2d 280 (1951).

[30] 303 Ill. App. 318, 25 N.E. 2d 129 (1940).

terpreted the effect of the title registration statutes[31] by saying: "These acts, in our opinion, were not intended as recording statutes and do not in any way alter, modify or change the effect of the provisions of the Uniform Sales Act as construed by our courts. . . ."[32] This was reaffirmed in *Pageanas v. Mixon Motor Co.*[33] when the court said: "It is settled law in this state that the cited statute is not a recording statute and does not affect the validity of sale of a motor vehicle which is otherwise valid."[34] In the latter case, it was held that title passed despite the fact that the used car dealer made no attempt to deliver a certificate of title to the buyer. However, in the earlier case of *Rice v. Galkowski*,[35] there was dicta to the effect that the incompleteness of a purported assignment would put a buyer on notice as to any defect in title.

There are several factors which might merit attention in this connection. First of all is the fact that the Illinois Supreme Court has never ruled whether or not the statute is a mandatory one. Second is the similarity between the provisions of the Illinois statute and those which have been interpreted in Michigan[36] and North Carolina.[37] Third is the possibility that the state legislature may amend the statute to make compliance with it mandatory.

[31] Ill. Rev. Stat. (1951) c. 95½, § 80.

[32] 303 Ill. App. 318, 323, 25 N.E. 2d 129, 131 (1940).

[33] 344 Ill. App. 446, 101 N.E. 2d 280 (1951).

[34] Ibid., at 448 and 281.

[35] 333 Ill. App. 652 (abstract of decision only), 77 N.E. 2d 889 (1948). Summary of facts appears in 18 A.L.R. 2d 838 (1951).

[36] Mich. Pub. Acts (1949) No. 300, § 257.239: as interpreted by Bayer et al. v. Jackson City Bank & Trust Co., 335 Mich. 99, 55 N.W. 2d 746 (1952).

[37] N.C. Gen. Stat. (1953) c. 20, § 72: as interpreted by Hawkins v. M. & J. Finance Corp., 238 N.C. 174, 77 S.E. 2d 669 (1953).