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THE TEXAS CERTIFICATE OF TITLE ACT

Helen Wood*

BECAUSE a motor vehicle is an easily movable chattel and is often the subject of successive security transactions, it has frequently been the subject matter of fraud. The increasing number of automobiles has made it imperative that rights relating to ownership and security interests be clearly and carefully defined. To meet the situation and to assure better protection to lien holders and innocent purchasers, the Texas Legislature enacted the Certificate of Title Act¹ in 1939. It is a penal statute designed to govern every transaction in the life of a motor vehicle from the time it is first offered for sale until it is junked. It regulates sales and the manner of evidencing liens and provides a means of complete identification of the vehicle.

The intent and public policy, as declared in the Act, is “to lessen and prevent the theft of motor vehicles and house trailers, and the importation into this State of, and traffic in, stolen motor vehicles and house trailers, and the sale of encumbered motor vehicles and house trailers without the enforced disclosure to the purchaser of any and all liens for which any such motor vehicle or house trailer stands as security, and the provisions hereof, singularly and collectively, are to be liberally construed to that end.”² It is a penal statute, but it sets out in detail the effect of non-compliance on civil rights and liabilities. Though there are penalty provisions for violations, the statute is obviously more than a mere police measure.

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* B.A., B.B.A., University of Texas; LL.B., Southern Methodist University; member of the Texas bar.


² § 1.
The Act provides that applications for certificates are to be made through the tax collector's office in the county of the applicant's domicile, and certificates are issued by and under authority of the Texas State Highway Department. The three documents defined in the statute are "certificate of title," "manufacturer's certificate," and "importer's certificate." In order to determine when each of these documents is required, it is necessary to observe carefully the statutory definition of terms, such as "owner," "importer," "new car," "used car," "first sale," and "subsequent sale."

When a new car is originally shipped and sold by a manufacturer to a Texas dealer, a manufacturer's certificate is the proper document on the car. No application for a certificate of title need be made unless and until the automobile is transferred to an "owner." An "owner" is defined as "any person, firm, association, or corporation other than a manufacturer, importer, distributor, or dealer claiming title to, or having a right to operate pursuant to a lien on a motor vehicle after the first sale as herein defined." An "owner" is the ultimate consumer or user of an automobile; he is the one who purchases an automobile for his own personal use. The term specifically excludes manufacturers or dealers. As long as the automobile is in the hands of a manufacturer, distributor, or dealer, a manufacturer's certificate is the only document required. A manufacturer's certificate is defined as an instrument "showing original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for certificate of title must show thereon, on appropriate forms to be prescribed by the Department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer to owner." (Emphasis added.) It is made out by the manufacturer

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3 § 4.
4 § 22.
on a form prescribed by the State Highway Department, and it should be transferred with each "first sale." The statutory definition of "first sale" is a "bargain, sale, transfer or delivery within this State with intent to pass an interest therein, other than a lien of a motor vehicle which has not been previously registered or licensed in this State." Any transfer from manufacturer to dealer, dealer to dealer, or from dealer to "owner" constitutes a "first sale" if the automobile is not yet required to be registered. Thus, the term "first sale" includes every transfer beginning with the manufacturer to his transferee and all subsequent transfers including the first transfer to an owner or ultimate consumer. When the automobile gets into the hands of an owner, it is for the first time necessary to apply for a certificate of title. Successive "first sales" may occur in Texas, but registration of the automobile is not required until title is to pass to an "owner." At the time of registration the "owner" should have in his possession the manufacturer's certificate, showing all previous first sales and showing the applicant to be the last transferee. He is required to present the manufacturer's certificate with his application for a certificate of title.

According to a recent Texas civil appeals case, the analysis in the preceding paragraph applies only where an automobile is originally shipped and sold by a manufacturer to a Texas dealer and all transfers before registration are Texas transactions. If a car is originally shipped and sold to a dealer or distributor outside of Texas and then, before registration, imported by a Texas dealer for sale, the law may be different. In this instance, an im-

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5 § 7. In defining "first sale" this section uses the phrase "within this State," but Section 10 indicates that a "first sale" may take place outside of Texas as well as within Texas.

6 The transfer of a second-hand car to a dealer constitutes a "subsequent sale" if the vehicle is one which has been or should have been previously registered; the seller is required to transfer to the dealer an assigned certificate of title. Texas Automotive Dealers Ass'n v. Harris County Tax Assessor-Collector, --- Tex. ---, 229 S.W. 2d 787 (1950), rev'g on other grounds 225 S.W. 2d 586 (Tex. Civ. App. 1949).

porter's certificate, in lieu of a manufacturer's certificate, seems to be required for registration. An importer means "any person, except a manufacturer, who brings any used motor vehicle into this State for the purpose of sale within this State." (Emphasis added.) The Act declares: "No such designated agent shall issue a receipt for a certificate of title to any used motor vehicle imported into this State for the purpose of sale within this State without delivery to him by the applicant of an importer's certificate properly assigned by the importer upon a form to be prescribed by the Department." (Emphasis added.) The statutory definition of the word "used" causes difficulty in the interpretation of the sections pertaining to importation, particularly since a manufacturer's certificate is a document required for a vehicle which is a "new car." The term "used car" is defined as a "motor vehicle that has been the subject of a first sale whether within this State or elsewhere." In other words, any car which has been the subject of a first sale becomes a "used car," though it has never been transferred to an owner or consumer. The manufacturer, then, is the only person who does not handle a "used" vehicle. Anyone, other than the manufacturer himself, who brings a car into Texas for sale would be handling a "used" vehicle and is an importer; and an importer's certificate should be obtained. An applicant for a certificate of title is required to present the importer's certificate properly assigned to him.

From the foregoing analysis it appears that imported and non-imported cars are treated differently. It seems that a car is non-imported if it is brought to Texas by the manufacturer himself and all transfers before registration are strictly Texas transactions. In this instance the Department requires registration on the basis of a manufacturer's certificate for a "new car." The statutory definition of "new car" is "a motor vehicle which has never

8 § 17.
9 § 29. The "designated agent" means the local tax collector.
10 § 10.
11 See case cited supra note 7.
been the subject of a first sale.” Yet it appears that if all transfers prior to registration take place in Texas, a car does not become a “used” vehicle until it is transferred to an “owner.” There may be several first sales in Texas, but a car does not lose its status as a “new car” if the interest passes in Texas and no “owner” takes title. On the other hand, a vehicle becomes a “used car” if the passing of an interest takes place outside of Texas, under the sections pertaining to importation, even though there is no “owner.” In this instance, registration is based on an importer’s certificate for a “used car.”

If any person, other than a manufacturer or importer, brings a vehicle into the state, a certificate of title is the proper document to be obtained before the car may be sold or encumbered.

Another important term defined in the Act is “subsequent sale.” It has been seen that a “first sale” means a transfer of a vehicle which has not previously been registered. The term “subsequent sale” means a transfer of a vehicle after it has been registered. The statutory definition of “subsequent sale” is “the bargain, sale, transfer or delivery within this State, with intent to pass an interest therein, other than a lien of a motor vehicle which has been registered or licensed within this State or when it has not been required under law to be registered or licensed in this State.” Any sale after registration is a “subsequent sale,” as distinguished from a “first sale” or any sale prior to registration. Since the final “first sale” to an owner compels registration, any sale thereafter made by an owner or later transferee is a “subsequent sale.” This distinction is material because of the rule laid down by the Act that an application for a certificate of title is essential to the validity of a “subsequent sale.” Thus, the first owner of an automobile should apply for a certificate of title, and he should transfer his certificate of title when and if he sells the car. Failure to obtain a certificate of title in a “subsequent sale” transaction pre-

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12 § 9.
13 § 30.
14 § 8.
vents a vendee from acquiring legal title. On the other hand, failure to transfer a manufacturer’s certificate in a “first sale” transaction does not make a “first sale” void, but the purchaser should secure a manufacturer’s certificate in order to avail himself of protection under the Act. Moreover, presentation of the manufacturer’s certificate is a condition precedent to the right to receive a certificate of title.

It seems clear, from the language used in the statute, that an application for a certificate of title is a condition precedent to the right to transfer a vehicle in a “subsequent sale.” The Act provides: “Before selling or disposing of any motor vehicle required to be registered or licensed in this State on any highway or public place within this State, except with dealer’s metal or cardboard license number thereto attached as now provided by law, the owner shall make application to the designated agent in the county of his domicile upon form to be prescribed by the Department for a certificate of title for such motor vehicle.” The Act further declares that no motor vehicle may be disposed of at a “subsequent sale” unless the owner shall make “an affidavit to the effect that the signer is the owner of the motor vehicle, and that there are no liens against such motor vehicle, except such as are shown on the certificate of title and no title to any motor vehicle shall pass or vest until such transfer be so executed.” This prohibits a “subsequent sale” without the required


16 See Motor Investment Co. v. City of Hamlin, 142 Tex. 486, 179 S. W. 2d 278 (1944), rev’d 177 S. W. 2d 101 (Tex. Civ. App. 1943); Motor Investment Co. v. Knox City, 141 Tex. 530, 174 S. W. 2d 482 (1943), aff’d 169 S. W. 2d 245 (Tex. Civ. App. 1943).

17 § 27.

18 § 33. This section requires only “owners” to transfer before a notary public in order to consummate a “subsequent sale.” Dealers are not required to apply for a new certificate of title when they purchase a previously registered car; they may transfer the same certificate of title which was transferred to them, by merely endorsing the back of the certificate (no affidavit required). Texas Automotive Dealers Ass’n v. Harris County Tax Assessor-Collector, ............. Tex.........., 229 S. W. 2d 787 (1950), rev’d 225 S. W. 2d 586 (Tex. Civ. App. 1949).
execution of transfer before a notary public, and indicates that failure to obtain a certificate of title will prevent a vendee from acquiring legal title. Furthermore, it is made unlawful to sell or execute a contract lien on a vehicle registered or licensed in the state without having in possession the proper receipt or certificate of title covering the vehicle.\(^\text{19}\) It is also made unlawful to buy or acquire any title, other than a lien, to any vehicle registered or licensed in the state, without demanding of the seller the registration receipt or certificate of title.

The term lien is defined as "every kind of lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other written instrument of whatsoever kind or character whereby an interest, other than absolute title, is sought to be held or given in a motor vehicle, also any lien created or given by Constitution or Statute."\(^\text{20}\) It is to be noted that this expressly covers constitutional and statutory liens as well as contractual liens.

The notation of a lien on a certificate of title has about the same effect as that of filing an ordinary chattel mortgage with the county clerk. It is definitely settled that the Act repealed and superseded the civil statutes relating to chattel mortgages in so far as they affected contract liens on motor vehicles.\(^\text{21}\) Registration in the county clerk's office no longer furnishes constructive notice to innocent purchasers and subsequent lien holders.\(^\text{22}\) The

\(^{19}\) The term "receipt" is a written acknowledgment from the local tax collector of having received an application for certificate of title, and authorizes operation of the vehicle for 10 days.

\(^{20}\) § 3.


only constructive notice is by notation of the lien on a valid certificate of title issued by the Department; but failure to recite the lien on the certificate does not destroy the lien between the parties and those having actual knowledge of its existence, even though it is not registered as required by statute.  

The statute provides that no lien "shall be valid as against third parties without actual knowledge thereof, or enforceable against the motor vehicle of any such third parties, unless the notation of said lien shall have been caused to be made on receipts and certificates of title on said motor vehicle, as provided in this Act." Liens thus noted on a certificate of title are enforceable against the world, and all liens take priority according to the order of time they appear on the title certificate. Liens are noted on a certificate at the time it is issued. If a lien is created after issuance of a title certificate, the old certificate must be surrendered and a new one issued showing the lien. It is the lienor's duty to see that the mortgagor has complied with these provisions. In other words, a person desiring to fix a valid lien on a motor vehicle must see that the lien is endorsed on the certificate of title. If through his negligence this is not done, the lien cannot be enforced against a vehicle in the hands of an innocent purchaser for value. When the lien has been satisfied, the mortgagor can procure a new certificate of title by presenting the old certificate and an affidavit acknowledging that the lien has been discharged.

Manufacturer's and dealer's liens are noted on the manufacturer's certificate. The Act provides: "No lien shall be valid on any motor vehicle which is hereafter the subject of a first sale,


See cases cited supra note 22. C.f. Clync v. Bowera, 164 S. W. 2d 768 (Tex. Civ. App. 1942), where two chattel mortgages were executed on a truck trailer, and neither was noted on a certificate of title. The subsequent lienor had no actual or constructive notice of the existing lien. The court held the lienor prior in time prevailed.

or be enforceable against any such motor vehicle unless there is noted on the importer's or manufacturer's certificate the date, name and address of the mortgagees whose rights arise out of or are incident to such first sale by reason of the execution of any written instrument by the transferee.\textsuperscript{26} If this section is to be given literal effect, it would invalidate the lien between the parties and against third parties with actual knowledge unless there is the required notation of the lien on the manufacturer's certificate. This construction is doubtful, particularly in view of the Texas rule that a chattel mortgage lien on personal property is good between the parties whether registered or not.\textsuperscript{27}

It is further provided: "Only liens noted on a receipt or certificate of title shall be valid as against creditors of the mortgagor in so far as concerns the motor vehicle."\textsuperscript{28} This section renders all liens void against creditors of the owner, unless they are noted on the certificate of title. No effect is given to actual knowledge of the creditor of the existence of such liens. The term "creditor" apparently means any creditor holding a lien by some process of law.\textsuperscript{29}

**Failure to Transfer Certificate of Title**

The case of *Elder Chevrolet Co. v. Bailey County Motor Co.*\textsuperscript{30} involved several transactions in which all the parties ignored the Certificate of Title Act. Plaintiff sold an automobile to Bailey Company without transferring the certificate of title. A note and chattel mortgage were executed and delivered, but the chattel

\textsuperscript{26} § 41.

\textsuperscript{27} Concerning the construction of Section 41, no case in point has been found. In Commercial Credit Co. v. American Mfg. Co., 155 S. W. 2d 834 (Tex. Civ. App. 1941) er. ref., there was dictum to the effect that it is a well-known Texas rule that a chattel mortgage lien on personal property is good between the parties whether registered or not.

\textsuperscript{28} § 46.

\textsuperscript{29} A broader meaning of the term "creditor" was assumed by the court in *In re Boston*, 84 F. Supp. 594, 596 (N. D. Tex. 1949). The assumption was made that the term included creditors holding a lien either "by contract or some process of law."

\textsuperscript{30} 151 S. W. 2d 938 (Tex. Civ. App. 1941).
mortgage was never recorded. Bailey Company sold the car to a sub-vendee, who likewise executed a promissory note and chattel mortgage on the automobile. Again there was no assignment of certificate of title and no attempt to procure one. Southwestern Company purchased the note and chattel mortgage executed by the sub-vendee under Bailey Company. The purchase of this note was in due course and for value, and there was no notice of plaintiff's lien. The sub-vendee defaulted, and Southwestern Company took possession of the car. At the time suit was filed to foreclose its chattel mortgage, plaintiff held a certificate of title to the car, reciting no liens.

The motor vehicle involved was a second-hand automobile, and the sales were "subsequent" sales. The pertinent section of the Certificate of Title Act is Section 53, which provides: "All sales made in violation of this Act shall be void and no title shall pass until the provisions of this Act shall have been complied with."

The court recognized a distinction between a sale and a contract to sell, and said:

"Of the essence of the sale is the present transfer of title to the property to the possessor; of the essence of the contract to sell, the present passage of title is not contemplated, but same is to pass in the future.

"The transaction of March 18, 1940, between plaintiff and Bailey County Motor Company was insufficient to vest the title to the 1939 model Ford in Bailey County Company. For this purpose same was void and ineffective. This does not necessarily mean that it was entirely void and ineffective. An ineffective attempt to convey may in some cases be construed as a contract to convey. This transaction, in our opinion, was sufficient to bind the plaintiff so far as in its power to take initial steps necessary to enable Bailey County Motor Company to obtain a certificate of title. Surrender of the physical possession of the car to that company was not forbidden by the Act. Possession of the car was security for the performance of the obligation of the plaintiff. This obligation plaintiff has never performed, never offered to perform."\(^{31}\)

\(^{31}\) Id. at 942.
The court held that legal title to the automobile never passed from the plaintiff and said further:

"Rights plaintiff may have as to this motor car, but the right to foreclose a lien thereon it has not. It may have a right to recover the title and possession of the car from defendant Bailey County Motor Company, but such right is subject to an adjustment of equities. The lawful contract of March 18, 1940, has never been performed by plaintiff. Without performance or tender of performance it cannot recover thereon."

The court awarded possession of the car to Southwestern Company. This right to possession was a succession to the rights of plaintiff's vendee, Bailey Company, and of the sub-vendee under Bailey Company. The sub-vendee never had title to the car. He had the right against his vendor, Bailey Company, to have a valid title transferred to him, subject to the mortgage. He also had the right as against Bailey Company to hold possession until this right had been realized, though this right would not include the right to operate the car on public roads. The Southwestern Company was a holder in due course and had the right to enforce the note, but the chattel mortgage was another matter. The sub-vendee abandoned possession of the car to his vendor, Bailey Company, which in turn delivered it to its assignee, Southwestern Company.

A significant illustration of the right of a non-complying purchaser to possession is found in Manning v. Miller. A dealer bought a second-hand automobile and paid the full purchase price without securing an assignment of the certificate of title. The court held the dealer to be entitled to possession even though he did not comply with the Certificate of Title Act. When the owner took the automobile without the dealer's knowledge or consent, it became a stolen car. The court said:

52 Id. at 943.
33 206 S. W. 2d 165 (Tex. Civ. App. 1947) er. ref. n.r.e.
The fact that Miller stole his own automobile does not prevent this automobile from being stolen. Art. 1416, Subd. 4, Vernon's P. C., provides that one may be guilty of stealing his own property where the person so deprived of possession is, at the time of taking, lawfully entitled to possession as against the true owner.\(^{34}\)

The construction of Section 53 made in the Elder Chevrolet case, supra, was well expressed in a later case, Hicksbaugh Lumber Co. v. Fidelity & Casualty Co. of New York:\(^{35}\)

"Section 53 of the Act provides that all sales made in violation of the Act shall be void and that no title (emphasis ours) shall pass until the provisions of the Act have been complied with. The Act does not provide that no interest (emphasis ours) in the motor vehicle shall pass until the provisions of the Act have been complied with."\(^{36}\)

The rule, then, seems to be that where a purchaser in a "subsequent sale" transaction does not procure an assignment and transfer of the certificate of title, he does not get legal title, but he has a right to possession and a right to have the seller obtain title and transfer it to him. The purchaser acquires an equitable interest in the vehicle, and the seller is no longer the sole owner.

There is a limitation on this rule which requires that no fraud be connected with the transaction. This limitation was demonstrated in the case of Fulcher v. Hall,\(^{37}\) where there was another series of purported sales involving a second-hand automobile. No certificate of title was issued, and legal title remained in the original seller. One purchaser had no funds in the bank at the time he gave a check for the purchase price, and his check was dishonored. The court held that since he obtained possession of the car by fraud, he was never lawfully entitled to it. He never acquired any title, either legal or equitable; and the seller had a right to rescind the contract. Apparently the purchaser was unable in this case to pass any title to subsequent parties.

\(^{34}\) Id. at 167.
\(^{35}\) 177 S. W. 2d 802 (Tex. Civ. App. 1944).
\(^{36}\) Id. at 803.
The case of *Reeb v. Danley*\(^{38}\) is to be distinguished. Here plaintiff purchased a pick-up truck without procuring an assignment and transfer of the certificate of title. Plaintiff's mortgagee, a third party, promised that he would take care of the transfer of title, but plaintiff's vendor neglected to apply for a certificate of title. The purchase price of the truck was $600. Plaintiff used it for over ten months and caused such wear and tear that its value at the time of trial had depreciated to $40. When he discovered he could not get license plates, he decided to repudiate the contract. He filed suit to set aside the contract and to recover the purchase price. The court refused relief and said:

"When appellee purchased this automobile and in effect paid $600 cash for it without either a certificate of title or a receipt from the local designated agent (County Tax Collector) he entered into not only a void contract but also an illegal contract. If we should here permit him to maintain this suit and set aside this illegal contract, and after adjusting equities, to recover the purchase price paid by him, we would be giving effect to an illegal contract. This we cannot do, but on the contrary, this court will leave the parties in the position in which they have placed themselves.

"We are well aware of the rule that the courts will in some instances give relief under an illegal contract where it is executory, and the parties are not in pari delicto. Here we think the contract is executed and the parties are in pari delicto."\(^{39}\)

The court said the seller violated Sections 33 and 51, and the purchaser violated Section 52; and both were *in pari delicto*. The seller did not have in his possession at the time of sale a proper certificate of title covering the truck, as required in Section 51; he did not transfer a certificate of title, together with an affidavit to the effect that he was owner of the vehicle and that there were no liens against it, as provided in Section 33. The purchaser did not demand of the seller a certificate of title or receipt covering the vehicle and have it transferred to him upon the form pro-

\(^{38}\) 221 S. W. 2d 579 (Tex. Civ. App. 1949).

\(^{39}\) Id. at 582
vided by the Department, as required in Section 52. The court pointed out that the violations are misdemeanors and punishable by fine.

The court cited *Fulcher v. Hall*, *supra*, and intimated that if the purchaser had acted promptly, he might have had the right to disaffirm the contract and recover the money paid by him. But here the period during which he delayed asserting his rights was unreasonable.

**Gifts**

In *Hoskins v. Carpenter*40 it was held that a gift of an automobile is a "subsequent sale," as defined in the Certificate of Title Act. In this case a decedent had delivered the keys to an automobile to plaintiff and had transferred the certificate of title. The certificate was signed by decedent, but there was no affidavit, as required by the statute. In holding that no title passed, the court said:

"The attempted transfer of this automobile was a 'subsequent sale' of the automobile in question, within the meaning of Section 8, Certificate of Title Act, Vernon's Annotated Penal Code, Art. 1436-1. Section 33 of the above-cited article of the Penal Code provides in substance that no title passes unless the certificate is transferred before a Notary Public. This transfer was not before a Notary Public, hence it is thought elementary that title to the automobile did not pass. Mrs. Hoardley being under no legal obligation to transfer the title, appellant acquired no rights in the vehicle. It was an unexecuted gift. This is true even though by the delivery of the keys and certificate Mrs. Hoardley had intended to convey the title to appellant. The verdict, however, was that she did not so intend."41

The case of *Wise v. Cain*42 involved another purported gift. Here a donor of an automobile did not personally appear before a notary public to execute the affidavit of transfer of the certificate of title, but he gave it to the donee and instructed her to

40 201 S. W. 2d 606 (Tex. Civ. App. 1947) *ex. rel. n.r.e.*
41 *Id.* at 608.
42 212 S. W. 2d 880 (Tex. Civ. App. 1948) *ex. rel. n.r.e.*
have it notarized. In a suit brought by the donor to cancel the certificate of title, the question for litigation was whether the false certificate of the notary rendered the gift executory. The court distinguished Hoskins v. Carpenter, supra, where the certificate of title was not notarized at all. In the principal case the donor was estopped to question the proper execution and validity of the certificate and was held to have made a completed gift. The court said:

"It is of course true that to constitute a notarial certificate to an affidavit valid, the affiant must appear personally before the notary; absent which the certificate is false, and its execution a criminal offense, not only on the part of the notary, but on that of those participating in the commission of the crime. Certainly Wise was as much particeps criminis to the false certificate as was Mrs. Cain. We do not condone in any sense her action or that of the notary. We merely hold that Wise was not in position to question the validity of the certificate. He could not take advantage of his own wrong, nor invoke equitable or legal aid to cancel the certificate." 43

**ESTOPPEL**

It is a well established rule of personal property that where one clothes another with indicia of ownership, he may be estopped to assert title to the property as against a purchaser from one having such indicia of title. In Erwin v. Southwestern Investment Co. 44 the supreme court held that possession of an incomplete certificate of title without possession of the automobile did not constitute such a clothing with indicia of title. In this case a second-hand automobile dealer agreed to sell a car owned by the plaintiff. Plaintiff signed his name to the blank transfer on back of the certificate of title, without filling in the name of the transferee, and delivered it to the dealer. He refused to comply with the dealer's request to have it notarized, stating that when the sale was made, he would then make the necessary affidavit. The

43 Id. at 882.
44 147 Tex. 260, 215 S. W. 2d 330 (1948), aff'g 213 S. W. 2d 81 (Tex. Civ. App. 1948).
dealer later applied to defendant for a loan on the car, though he did not yet have possession of it. He exhibited the incomplete certificate of title, falsely representing that he owned the car and had purchased it from the plaintiff. Defendant granted the loan and instructed a stenographer to fill in the name and address of the dealer as the transferee and to sign the notary’s certificate showing that plaintiff appeared before her and made the affidavit. Although plaintiff was known to the defendant, he was not consulted. The stenographer signed the certificate in her official capacity as notary public, but did not impress her seal. When the dealer subsequently defaulted and disappeared, defendant took possession of the car and obtained a new certificate of title from the State Highway Department. In an action brought for conversion of the automobile, the court of civil appeals rendered a judgment upon the ground that plaintiff had invested the dealer with apparent title by delivering to him the certificate of title signed in blank and was estopped to deny that the mortgagee had acquired good title. The supreme court reversed this judgment, saying:

“All persons dealing with Dunn were legally put on notice of the defect in his title, even assuming that the facts represented falsely by him were true. Section 51 expressly made it unlawful for Dunn to offer the automobile as security for any obligation without having the properly executed certificate, and persons dealing with him were charged with notice of the illegality of his conduct in so doing, although under Section 52 it was not necessary for a person acquiring a lien to secure a transfer of title. We do not think it can properly be said that Erwin had invested Dunn with all the indicia of title; on the contrary, a legally essential indicium of title, to wit, a properly executed transfer of title certificate, had both actually and apparently been withheld from Dunn by Erwin.

“A person dealing with the holder of an incomplete transfer of a certificate of title is ordinarily in no position to plead estoppel against the true owner.”45

45 215 S. W. 2d at 332.
The essential requirements for estoppel were held to be lacking. The court said:

"The fact that the notary's seal was not impressed on the document is immaterial here. The point is that respondent's agent did not rely on any appearance of title or authority which Dunn had through possession of the certificate of title with the incomplete transfer; he realized its insufficiency and undertook to supply its deficiencies by making out a false certificate. The respondent therefore showed neither good faith reliance on anything done by Erwin nor the equitable conduct on its own part which are both essential before estoppel can be successfully raised."46

The case of Wise v. Cain, supra, was mentioned, and the court pointed out that the holding in the principal case does not mean that estoppel can never arise against a claim that a transfer of a title certificate has not been properly executed.

**Notation of Liens on Certificate of Title**

It has already been shown that registration in the county clerk's office of chattel mortgages on motor vehicles is no longer constructive notice to innocent purchasers and subsequent lienors.47 Liens noted on a certificate of title are constructive notice to the world. Failure to recite a lien on a certificate of title does not destroy the lien between the parties and those having actual notice of its existence.48 It is the lienor's duty to see that there is compliance with these provisions, and a non-complying lienor will not be protected.49 The lienor's duty was expressed in Higgins v. Robertson50 as follows:

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46 Id. at 333.
47 See cases cited supra note 22.
48 See cases cited supra notes 22 and 23.
49 In a federal case a dealer in second-hand automobiles made an arrangement to borrow purchase money, and the cars were to be subject to liens for such advancements. The certificates of title were turned over to the lender, but she recorded no lien of any sort. When a car was sold, the proceeds, so far as applicable, were to be turned over to her. The dealer issued affidavits of loss of certificates to purchasers, and sought to have the Highway Department issue certificates of title to them. The dealer filed a voluntary petition in bankruptcy, and the referee enjoined the Department from issuing the certificates. The court overruled the referee and said the duty of the Department

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“A reasonable interpretation of the Act and common prudence make it the duty of a lien holder to see that the mortgagor has complied with the State Certificate of Title law in order to protect his lien as well as to protect innocent purchasers. If the lien holder is derelict in his duty, he suffers the consequences as a result of his own negligence.”

The lienor’s duty is merely to see that the lien is noted on the certificate or application. If there is a subsequent forgery, the lienor will be protected. This principle was invoked in *Dublin National Bank v. Chastain.* In this case plaintiff bank made certain that its lien was properly recited in the owner’s application for certificate of title; it required the owner “to sign and swear to an application for a certificate of title in which it was shown that the Dublin National Bank held a lien against said automobile.” The owner subsequently altered the application so that it failed to show plaintiff’s lien. He also altered the manufacturer’s certificate by erasing his name and writing a fictitious name. He then sold the automobile to defendant. The court held plaintiff’s lien to be enforceable, though unregistered. The court said:

“The provision of Section 44 is: ‘No lien on any motor vehicle to which a receipt or certificate of title has been issued shall be valid as against third parties without actual knowledge thereof, or enforceable against the motor vehicle of any such third parties unless the notation of said lien shall have been caused to be made on receipts and certificates of title on said motor vehicle, as provided in this Act.’ (Italics ours.)

“Under the first clause above italicized if Chastain otherwise had title to the automobile but had actual knowledge of the bank’s lien before

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under the Act is largely ministerial rather than discretionary, though there is a provision in the statute which states that if it should later appear that a certificate is not lost, the duplicate may be cancelled. The fact that compliance by the Department would result in loss to the lender was held not to be sufficient reason to command the Department not to comply with the statute. The lender was a non-complying lienor; she did not protect herself by registration of her lien. Her remedy was to pursue the car and proceed against the person who caused her loss. *In re Banks,* 69 F. Supp. 227 (N. D. Tex. 1947).

50 210 S. W. 2d 250 (Tex. Civ. App. 1948) er. ref. n.r.e.
51 Id. at 253.
52 167 S. W. 2d 795 (Tex. Civ. App. 1942) er. ref.
53 Id. at 796.
he became the owner, he would have no defense against the bank's lien. His situation would have been the familiar one of the purchaser of property upon which a registered lien exists, the want of registration being rendered immaterial by his actual knowledge of the lien. In order to deprive the bank of its lien, even though unregistered, something is required besides a mere absence of knowledge of the lien. The same act which requires the registration of the lien requires the registration of title to the car. Registration acts do not protect a purchaser holding under a registered title if a link in said title be a forgery. Proof of the forgery of a link of title is tantamount to proof that the claimant of such title has none, or in other words, that he is not the owner of the property.\footnote{5a}

A similar swindle occurred in \textit{Commercial Credit Co. v. American Manufacturing Co.}\footnote{5b} Plaintiff owned a purchase-money note and chattel mortgage lien on the automobile involved. The lien was properly recited on a Texas certificate of title. The owner of the automobile took the car out of the state of Texas and fraudulently obtained a Michigan certificate of title showing no liens. He also put a Michigan license plate on the car. He brought the car back to Texas and applied for another Texas certificate, falsely representing that no lien existed against the car. He sold it to a dealer in second-hand automobiles, who secured a Texas certificate of title in his own name and a Texas license plate. The dealer sold the automobile to an innocent purchaser, transferring his certificate of title. The dealer and his vendee were defendants in the suit. Neither had any knowledge of the first Texas certificate, nor of the false representations made in obtaining the Michigan certificate by plaintiff's mortgagor. They had no constructive notice of plaintiff's lien except as would be imputed to them by recitation in the first certificate.

Judgment was rendered in favor of the plaintiff. The court said plaintiff did all the law contemplated he should do. He satisfied himself that his lien was recited in the first certificate of title, and this was notice to the public. The lien continued valid

\footnote{5a} \textit{Id.} at 797.
\footnote{5b} 155 S. W. 2d 834 (Tex. Civ. App. 1941) \textit{ex. rel.}
until the records of the Highway Department showed it satisfied and a new certificate issued upon authority of that Department. Defendants could procure no better title than plaintiff's mortgagor could convey.

MANUFACTURERS AND DEALERS

In *Motor Investment Co. v. Knox City* 66 a dealer sold an automobile and transferred the manufacturer's certificate to Hedrick, who purchased it for the purpose of converting it into a fire truck and reselling it to a consumer. Hedrick executed a note and chattel mortgage lien securing his indebtedness for the purchase price. The chattel mortgage was registered in the county clerk's office, but it was never recited in the manufacturer's certificate. After converting the automobile into a fire truck, Hedrick sold and delivered it to Knox City. He exhibited the manufacturer's certificate showing no liens, but did not transfer it. Hedrick subsequently secured a loan from plaintiff and paid his debt to his seller. To secure this loan he assigned the manufacturer's certificate, and the lien was noted in the margin of the certificate. Plaintiff filed suit to foreclose this lien. The controlling question was whether title to the truck passed to the city. The court answered the question in the affirmative, and further held the city to be a bona fide purchaser for value without notice.

The court said Hedrick's vendor was a "dealer" as defined in Section 19, and Hedrick was either a "manufacturer" as defined in Section 16 or a "dealer" as defined in Section 19. They therefore did not come within the definition of an "owner" claiming title to a vehicle after first sale, and they were not required under Sections 27 and 33 to procure a certificate of title before selling the vehicle. In holding that the transfer of a manufacturer's certificate is not essential to the validity of a "first sale," the court construed the pertinent sections as follows:

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"The transfer of the vehicle from Hedrick to the city was not endorsed on the manufacturer's certificate, nor was the certificate delivered by Hedrick to the city at the time the city acquired the vehicle, but we find nothing in the Act which prescribes these steps as necessary prerequisites to the validity of such a sale.

"Sections 22 and 28 of the Act do require the presentment of a manufacturer's certificate properly filled out, showing each previous transfer of the vehicle as a condition precedent to the right to receive a certificate of title from the State Highway Department, but there is no provision to the effect that a 'first sale' shall be invalid unless the manufacturer's certificate is transferred and delivered therewith. It is conceivable that one might buy such a vehicle from a dealer without any intention of ever putting it in operation upon a public highway, and so long as he did not so use it upon the public highway for purposes other than mere demonstration, there would be no necessity for the securing of a certificate of title, and therefore no necessity of presenting to the Highway Department the manufacturer's certificate properly filled out, as provided for in Section 22."57

The facts of *Motor Investment Co. v. City of Hamlin*68 were similar to those in the *Knox City* case, and some of the same parties were involved. In this case Hedrick's mortgagee properly noted his lien on the manufacturer's certificate. Hedrick subsequently converted and sold the vehicle to the City of Hamlin, falsely representing that the truck was free of liens and that he would deliver the manufacturer's certificate later. The city had no actual knowledge of the lien at the time it purchased the truck. The question for decision was whether notation of the lien on the manufacturer's certificate was the proper means of constructive notice to the city. This question arose from the argument that Hedrick was required to procure a certificate of title under Section 37(b) in order to fix a lien on the truck in such a way as to be constructive notice to innocent purchasers.

Section 37(a) pertains to vehicles which have been demolished

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57 Id. at 537, 174 S. W. 2d at 486.
68 142 Tex. 486, 179 S. W. 2d 278 (1944), rev'd 177 S. W. 2d 101 (Tex. Civ. App. 1943).

and junked.\textsuperscript{59} Section 37(b) requires any person who rebuilds or assembles a motor vehicle to procure a certificate of title before operating or selling it; and such person must furnish an affidavit setting forth where, when and how, and from whom he procured the various parts used in rebuilding and assembling the vehicle. It is apparent that if Hedrick's business of converting automobiles into fire trucks came within Section 37(b), he was required to procure a certificate of title, and the proper means of constructive notice would be by notation on the certificate of title.

The court held that Section 37(b) applies to one who rebuilds or assembles motor vehicles by use of parts obtained from previously \textit{used} vehicles, and Section 16 applies to one who assembles \textit{new} vehicles. Hedrick was in the business of manufacturing and assembling \textit{new} vehicles, and the court held that he was a "manufacturer" within Section 16. Therefore he was not required to procure a certificate of title. His sale to the city was a "first sale," and the manufacturer's certificate was the proper document on which to note the lien in order to furnish constructive notice. The lien was enforced against the city.

\textbf{Security Interests in Imported Vehicles}

In recent litigation concerning security liens on motor vehicles brought into the state from other jurisdictions, the supreme court declared a change in the public policy of this state. In \textit{Bank of Atlanta v. Fretz}\textsuperscript{60} an owner in Atlanta, Georgia, executed a bill of sale and chattel mortgage securing an indebtedness on an auto-

\textsuperscript{59} Section 37(a) states: "When any motor vehicle registered or licensed in Texas to which a certificate of title has been issued is junked, dismantled, destroyed, or its motor number changed or the motor vehicle changed in such manner that it loses its character as a motor vehicle, or in such manner that it is not the motor vehicle described in such certificate of title, the owner named last in the certificate of title shall surrender the certificate of title to the Department together with the written consent of the holders of all unreleased liens noted thereon, and the certificate shall be cancelled on the records of the Department."

mobile. Georgia does not have a certificate of title law, but the bill of sale and chattel mortgage were duly filed in accordance with the laws of that state. The automobile was transported to Texas without the mortgagor's knowledge or consent, and the mortgagor applied for a Texas certificate of title on false representations that no lien existed against the car. He sold the car to a Texas innocent purchaser and assigned his application for a Texas certificate of title. The Texas vendee obtained a certificate of title, reciting no liens, in his own name; and he sold the car to a Texas sub-purchaser, who was also an innocent purchaser for value. The question for litigation was whether a duly recorded chattel mortgage lien, acquired in Georgia, was enforceable against a Texas innocent purchaser for value, to whom a certificate of title had been issued reciting no liens. The court answered the question in the affirmative, and enforced the lien against the Texas purchaser. The court held that a lien acquired and properly recorded in another state is notice to a Texas purchaser and subsequent lienor.

In the instant case the supreme court expressly overruled the doctrine of Consolidated Garage v. Chambers and Farmer v. Evans, that where mortgaged property is brought to Texas from another state and acquired by an innocent purchaser, the rights of the innocent purchaser are superior to the out-of-state lienor, although the lien has been duly filed for record and is valid in the other state. The court pointed out that the rule established by these two early decisions has been described in textbooks as the "Texas doctrine," and is contrary to the almost universal rule.

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63 The court quoted the majority rule from 14 C. J. S., Chattel Mortgages, § 15, p. 607, as follows: "The weight of authority is to the effect that a mortgage, properly executed and recorded according to the law of the state where the mortgage is executed and the property is located, will, if valid there, be held valid even as against creditors and purchasers in good faith in another state to which the property is removed by the mortgagor, unless the transaction contravenes the statute or settled law or policy of the forum." It was noted that to sustain the foregoing rule, decisions of 23 jurisdictions were cited in the footnote; in support of the Texas rule only two jurisdictions, Louisiana and Pennsylvania, were cited (Louisiana has now adopted the majority rule). The court
In a lengthy opinion the court considered other factors, including the radical changes in conditions relating to the use of automobiles within recent years, and the enactment of the Certificate of Title Act. The court said:

"The spirit and purpose of this law is to prevent fraud; not to encourage it. It was not the intention of the Legislature by this Act to invalidate liens validly acquired in States which do not have a similar law, and this is especially true in the event a vehicle covered by a lien is wrongfully, without the knowledge or consent of the lien holder, removed from the State where the lien was acquired and brought to this State, and the owner by false and fraudulent representations obtains a certificate of title showing that no lien exists against the vehicle, so that he is thereby enabled to transfer for value without notice of the lien. If the Legislature had intended this, it could have stated that all liens acquired in other States not having certificate of title laws would be forfeited when the vehicle reaches the hands of an innocent purchaser for value in this State.

"If the State of Georgia had a certificate of title law, it would have been the duty of petitioner to see that its lien was endorsed on the certificate of title issued in that State. Because the State of Georgia does not have such a law, valid liens acquired in that State should not be destroyed by dishonest methods, such as that practiced by Harris in this instance to obtain a certificate of title in Texas.

"The principles of fairness and commercial expediency support the rule that protects a mortgagee who holds a valid lien, which was acquired in another State, on a vehicle wrongfully removed from that State where the lien was acquired and brought into this State without the consent or knowledge of the mortgagee."  

The court recognized the duty of a lienor to see that his lien is endorsed on a certificate of title; but Georgia does not have a certificate of title law, and a lienor in that state must preserve his lien in accordance with the laws of that state.  

also pointed out that in some jurisdictions the enforcement of a chattel mortgage lien rests upon the rule of comity or reciprocity.

64 148 Tex. at 560, 561, 226 S. W. 2d at 849.

65 Ball Bros. Trucking Co. v. Sorenson, 191 S. W. 2d 908 (Tex. Civ. App. 1945), is in accord with the principal case, but it was litigated 5 years before the decision in the instant case overruled Consolidated Garage v. Chambers and Farmer v. Evans. In this case an importer of an automobile executed an importer’s certificate and applied for
The court also held that issuance of a Texas certificate of title, reciting no encumbrances, does not destroy the lien acquired and duly recorded in another state. Reference was made to Section 38, which gives the Highway Department authority to suspend or revoke a certificate of title containing false or fraudulent statements.

In *Clanton v. Thigpen* a Tennessee conditional vendor sued to recover an automobile which his vendee removed to Texas without his knowledge or consent. The vendee had applied for a Texas certificate of title by presenting fictitious evidence of ownership, and had sold the car to an innocent purchaser. Tennessee does not have a certificate of title law; the customary method of conveying title is by bill of sale. A conditional sales contract in Tennessee is not construed as a mortgage, but it is a valid retention of title in the vendor. Under Tennessee law it is not required that such a contract be registered as a chattel mortgage.

The Texas purchaser contended that he was an innocent purchaser for value and had no notice of a lien, but the court rendered judgment in favor of the Tennessee conditional vendor. The court said this case came "squarely" under the rule announced in *Bank of Atlanta v. Fretz*, supra, and to support its decision the court quoted the excerpt set out above in connection with that case.

In the light of *Bank of Atlanta v. Fretz* and *Clanton v. Thigpen*, it is apparent that Texas has finally adopted the rule of the overwhelming majority. Where a chattel mortgage on a motor vehicle is recorded in compliance with the laws of the state in which the lien was acquired, and the vehicle is subsequently removed to Texas without the mortgagee's knowledge or consent, the mortgagee's lien will be preserved against a Texas innocent purchaser. The recording provisions in the Texas Certificate of Title Act are inapplicable to the preservation of the out-of-state lien. Also where a conditional sale contract takes place in a state which does

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a Texas certificate of title, falsely representing that the vehicle was free of liens. The court imposed a duty on the purchaser or lender on an imported vehicle to see to it that the importer had complied with the Texas Certificate of Title law.

not require recording, the conditional vendor's title will be recognized as superior to that of a Texas innocent purchaser. This is in line with the common law rule that, in absence of recording statutes, a conditional vendor's title will be protected, although the conditional vendee has transferred the property to an innocent purchaser for value without notice.

**Conclusion**

The cases involving the Certificate of Title Act indicate on the whole a sympathetic attitude on the part of the courts in construing the statute, in order to protect complying parties and in order to effectuate the purpose of the Act. Dicta in many cases show a recognition by the courts that this statute was enacted for the benefit of the public, and courts have sometimes refused to give literal effect to language used in the statute in order to effectuate the purpose for which it was enacted.
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