Comment

THE CALIFORNIA USED CAR DEALER AND THE FOREIGN LIEN—A STUDY IN THE CONFLICT OF LAWS

In 1958, the California Department of Motor Vehicles processed more than 273,000 applications for the registration of vehicles previously registered in other jurisdictions. Accompanying this immense influx are serious legal and practical problems for those Californians who acquire interests in these vehicles. Used car dealers, who purchase most of the out-of-State automobiles offered for sale in this State, are especially affected. To illustrate, assume that an automobile bearing Massachusetts license plates is offered for sale to a California used car dealer. As evidence of title the vendor presents a bill of sale and a Massachusetts registration certificate, both of which appear to establish his clear title to the vehicle. The dealer desiring to add this vehicle to his stock is faced with the possibility that the automobile is subject to an encumbrance legally created in Massachusetts. In this regard his problem is twofold. First, the dealer must know what steps are to be taken to determine the existence of a possible lien. Second, assuming a lien exists, the dealer should be concerned with determining its effect upon the interest he acquires. The purpose of this Comment is to point up and suggest solutions to the problems raised by both these aspects of the used car dealer's plight.

Regarding the steps to be taken in determining the existence of a possible foreign lien, it will be shown: (i) that the California automobile registration and certificate of title statute is of no assistance to one about to purchase an automobile registered in another State; (ii) that the registration documents issued under the registration statutes of the other States provide information of varying degrees of reliability, depending on the jurisdiction involved; (iii) that the California Department of Motor Vehicles provides valuable but incomplete assistance.

Regarding the effect of an existent foreign lien, it will be shown: (i) that the Conflict of Laws rule espoused by most courts and adopted in California denies relief to the purchaser-dealer in most cases; (ii) that the ultimate disposition of a given case will depend not so much on a rigid rule of law, but on the presence or absence of certain operative equitable factors.

I

DETECTION OF THE FOREIGN LIEN

Before purchasing an automobile brought from another State, the California used car dealer should make all possible efforts to detect the existence of any liens perfected in that State. The need to undertake an investigation arises in two situations. One is where the dealer is offered an automobile not yet registered in Cali-

1 State of California Department of Motor Vehicles, Statement of Transactions and Total Fees Collected (1958).
2 While designed primarily for the benefit of California used car dealers, the discussion in this Comment applies equally to the individual purchaser, unless otherwise specified.
3 Unless otherwise indicated, the parties involved are designated as follows: "lienor" refers to the foreign secured creditor; "dealer" refers to the California used car dealer; "vendor" refers to the mortgagor or conditional vendee who offers the out-of-State automobile for sale to the California used car dealer. When the facts indicate that such is the case, "defrauder" is used interchangeably with "vendor."
fornia. Here, the dealer is aware of the foreign origin of the vehicle and the particular State from which it was removed, and, as a starting point, the detection of possible liens can be based upon the registration documents and other muniments of title held by the vendor. But even here it is necessary for the dealer to determine first the extent to which he can rely upon the registration certificates and, in the event reliance is unwarranted, then the other steps he can take to ascertain possible liens. To determine the extent to which he can rely upon the registration documents held by the vendor, it is essential that the dealer be familiar with the various types of automobile registration statutes.

The other situation is where the automobile offered to the dealer has already been registered with the California Department of Motor Vehicles and the vendor has obtained California registration documents. Here, the dealer will be made aware of the vehicle’s foreign origin only if the vendor so informs him or if he receives notice from some other source. If he does become aware of the foreign origin, the dealer is then concerned with determining the extent to which he can rely upon the documents issued by the California Department of Motor Vehicles as to the existence of liens and, if he cannot fully rely thereupon, the procedures which he can employ to determine possible liens. A knowledge of the California registration statute, its administration by the Department of Motor Vehicles, and any defects in either of these is essential to this inquiry.

A. The California Registration and Certificate of Title Statute

1. Where the Automobile Is Unregistered in California

The used car dealer will find that the California registration statute will not aid him in discovering procedures by which possible foreign liens can be detected, since there is no provision in the statute dealing with measures which can be taken to ascertain liens on an automobile not registered under it.

Further, the California registration statute is not the sole and exclusive means whereby a lien on an automobile can be perfected in this State. While Vehicle Code sections 195 through 198 make the California statute the sole and exclusive means whereby chattel mortgages on any vehicle registered thereunder can be perfected, neither the California Civil Code nor Vehicle Code require for validity the recordation of the interest of a conditional vendor. As a practical matter, however, such recordation must in most cases be effected. For a transfer to be valid, a conditional seller must endorse the pink slip and deliver it to the vendee [CAL. VEH. CODE §§ 5753, 5600(a)], or mail it to the department [§ 5600(b)]. In the latter case the department will reissue the pink listing the vendor as legal owner, thereby giving him the same protection accorded the chattel mortgagee. If the former course is taken, the lienor will vest his vendee with indicia of title sufficient to transfer the vehicle on the estoppel theory to a subsequent innocent purchaser. See Comment, 42 CALIF. L. REV. 315, 319 (1954).
these sections, by their very language,\textsuperscript{9} limit the applicability of the statute to those vehicles registered under it, thus excluding by implication vehicles registered in other jurisdictions. In addition, the California Supreme Court has held that the registration statute of this State has no effect on the validity of liens acquired in other States. In \textit{Atha v. Bockius},\textsuperscript{10} the most recent case on point, the court in a dictum said that a chattel mortgage on an automobile executed and recorded in Texas in accordance with the law of that State is entitled, under the doctrine of comity,\textsuperscript{11} to recognition and enforcement in California. This rule has also been adopted by States with registration statutes similar to that of California.\textsuperscript{12}

2. \textit{Where the Automobile Has Been Registered in California}

If the automobile has already been registered in California, the used car dealer will have reason to be concerned with possible foreign liens only if he discovers the vehicle's foreign origin.\textsuperscript{13} Assuming that this discovery is made, the next problem is: can the dealer be confident that no liens exist if the California documents state that there are none outstanding? That the answer to this question is, in many cases, no, will appear from the subsequent discussion of the automobile registration and certificate of title statutes of the several States, of the fraudulent practices arising thereunder, and of the relevant practices and procedures of the California Department of Motor Vehicles.\textsuperscript{14} Suggestions will be made as to steps to be taken where it appears the dealer cannot safely rely on the California certificate of title.

\section*{B. The Automobile Registration and Certificate of Title Statutes of Other States\textsuperscript{15}}

Three basic types of automobile registration statutes have evolved out of the need of the States for a detailed record of each vehicle owned by a resident, of the name of that owner, and of subsequent changes of ownership.\textsuperscript{16} Recognizing that local recording systems are inadequate as a means of perfecting security interests

\textsuperscript{9} \textit{E.g.}, \textsc{Cal. Veh. Code} § 6303, which provides in part: "The method provided in this part for giving constructive notice of a chattel mortgage on a vehicle registered under this code is exclusive . . . ." Thus, the plain import of the statute is that it is to be limited to vehicles registered in California.

\textsuperscript{10} 39 Cal. 2d 635, 639, 248 P.2d 745, 747 (1952).

\textsuperscript{11} Many courts, including the California Supreme Court, speak of comity when applying the law of other States. \textit{E.g.}, Ragner v. General Motor Acceptance Corp., 66 Ariz. 157, 185 P.2d 525 (1947); Mercantile Acceptance Co. v. Frank, 203 Cal. 483, 265 Pac. 190 (1928); Lillard v. Yellow Mfg. Acceptance Corp., 195 Tenn. 686, 263 S.W.2d 520 (1953). The conception of application of laws of another State by reason of courtesy has been criticized. \textsc{Goodrich, Conflict of Laws} § 7 (3d ed. 1949). Professor Ehrenzweig states that the comity theory "has never been adequate for interstate relations within the American Union." \textsc{Ehrenzweig, Conflict of Laws} 6 (1959).


\textsuperscript{13} If he purchases an automobile without notice of its foreign origin, the dealer is not put on his guard as to possible foreign liens. If he is to prevail against a foreign lienor who subsequently sues him for conversion, he must stand upon an argument that the lienor did not take all reasonable steps to prevent loss to purchasers in other States. See text at notes 92–177 infra.

\textsuperscript{14} See, as to the latter, text at notes 50–70 infra.

\textsuperscript{15} See Appendices A through C for a detailed analysis of the registration statutes of the various states. Appendix D contains pertinent information regarding local recordation requirements of the non full-title States for chattel mortgages and conditional sale contracts.

\textsuperscript{16} See, \textit{e.g.}, Townsend, \textit{The Case of the Mysterious Accessory}, 16 Law & Contemp. Prob. 197 (1951); \textsc{Comment, 48 Yale L.J.} 1238 (1939).
in the uniquely transient chattel that is the automobile, the legislatures of many
States have made their statewide automobile registration systems the sole means
for the perfection of legal interests in the title to a given vehicle. While these
States have adopted comprehensive registration and certificate of title statutes,
other States continue to rely for lien perfection on local recording requirements
and limit their registration systems to purposes of revenue production and law
enforcement.

1. Full-Title Statutes

Twenty-nine States, including California, permit and often require all lien
interests in a motor vehicle to be cleared through their motor vehicles department
and noted upon a certificate of title which is separate from the registration cer-
tificate carried in the vehicle. These are known as "full-title" States. Upon the
certificate of title, commonly referred to in California as the "pink slip," are
named the "registered owner" and "legal owner" of the vehicle. In order for
the lienor to take priority over a purchaser without actual knowledge of the lien,
the lienor must be registered as legal owner.

A common characteristic of these certificate of title statutes is provision for
a central recording file, where all liens required by statute to be filed are deposited
with the vehicles department. Such filing is generally held to furnish constructive
notice to creditors and subsequent purchasers.

As to automobiles coming from one of these States, the California used car
dealer is faced with no difficulty in detecting the existence of a possible lien if his
vendor delivers a clear title certificate. Because these so-called "full-title"
statutes purport to provide the sole and exclusive means whereby a legal interest
in the title to any motor vehicle can be validly perfected, any lienor who has
failed to have his interest noted on the certificate of title will be held to have no
valid interest as against bona fide purchasers or, inasmuch as he has invested the
defrauder with possession and indicia of ownership, will be held estopped to assert
his interest. By the same token, any lienor or secured creditor who has had his

\[\text{Notes:}\]

17 A typical early statute is the Uniform Motor Vehicle Anti-Theft Act, 11 Uniform
Laws Ann. 142-56 (1942). This act was declared obsolete by the Commissioners in 1943.
Id. at 10 (Supp. 1949).

18 Typical of these simple non-title registration statutes is that of New York. N.Y. VEHICLE
& TRAFFIC LAW § 11.

19 See App. C for an enumeration of these States.

20 The dual title and registration certificate system is the outstanding feature of the cer-
tificate of title statutes. See Cal. VEH. CODE §§ 4451, 4453 for statutory provisions regarding the
existence and form of the certificate of title and registration card.

21 "Registered owner" is defined as the person having all the incidents of ownership, including
the legal title to a vehicle; the person entitled to the possession of a vehicle as the pur-
chaser under a conditional sale contract; or the mortgagor of the vehicle. Cal. VEH. CODE § 370.

22 "Legal owner" is defined as the person holding the legal title to a vehicle under a con-
ditional sales contract, or the mortgagee of a vehicle. Cal. VEH. CODE § 370.

23 See App. C, col. 3.


25 Subject always to the possibility of a forgery, counterfeit, or the working of the duplicate
"pink slip" fraud. See text at notes 40-49 infra.

26 See App. C, cols. 5-7.

27 See, e.g., In re Wiegand, 27 F. Supp. 725 (S.D. Cal. 1939); Washington Lumber & Mill-
work Co. v. McGuire, 213 Cal. 13, 1 P.2d 437 (1931).

28 See, e.g., General Motors Acceptance Corp. v. Davis, 169 Kan. 220, 218 P.2d 181 (1950);
136-52 infra, for a discussion of the estoppel doctrine as it is applied under the certificate of

\[\text{Vol. 47:543}\]
interest noted on the "pink slip" will be held superior to one who purchases the vehicle. The purchaser, having received actual notice from the registration documents the transfer of which is mandatory, can in no sense be considered a bona fide purchaser.29

2. Incomplete-Title Statutes

Nine States which are often classed as "title States"30 have in actuality title statutes which are incomplete. These statutes provide for the dual form of registration slip and certificate of title, as well as for central recordation, and allow lien interests to be noted upon the certificate of title. But recordation and notation can be made only when possession of the automobile is transferred.31 Thus, the system is defective in that it does not allow a lien acquired between transfers from one possessor to another to be noted upon the certificate of title. In this situation, lienors must utilize local recording systems to perfect their security interests,32 possibly obtaining possession of the certificate of title to avoid an estoppel.33

The California used car dealer, then, cannot rely on the registration documents issued under these incomplete-title statutes to the extent that the certificate of title purports to be free of security interests acquired since the last transfer of possession. To determine whether a valid lien has attached during this period, the dealer must look elsewhere.34

3. Non-Title Statutes

Twelve States35 have what are commonly referred to as "non-title" statutes. Automobiles from these States present to the California purchaser the gravest danger and the most complicated problems. These jurisdictions issue only a registration certificate, commonly known in California as the "white slip." There is no provision for a separate certificate of title such as is found in the full- and incomplete-title statutes. These non-title statutes are intended only for revenue production and law enforcement purposes. The registration certificate is not intended to serve as a muniment of title and has little or no value in apprising a potential purchaser of any liens presently attaching to the vehicle36 since the automobile is registered in the name of the person entitled to use and possession of the vehicle only.37

29 See, e.g., In re Berlin, 147 F.2d 491 (3rd Cir. 1945); Van Syckle v. Keats, 125 N.J.L. 319, 15 A.2d 321 (Sup. Ct. 1940).
30 See App. B for an enumeration of these States.
31 See App. B, col. 2.
32 The case law of these jurisdictions verifies this conclusion. See, e.g., Carolina Discount Corp. v. Landis Motor Co., 190 N.C. 157, 129 S.E. 414 (1925) (priority denied to a conditional seller whose lien was duly perfected upon the certificate of title, but not upon the local records); Commercial Credit Corp. v. Schneider, 265 Wis. 264, 61 N.W.2d 499 (1953) (lien of properly recorded conditional vendor superior to rights of subsequent purchaser of auto notwithstanding fact that certificate of title failed to show the lien).
33 See App. D as to provisions for recordation of chattel mortgages and conditional sale contracts in these States.
34 See text at notes 151-53 infra.
35 See text at note 74 infra.
36 See App. A for an enumeration of these States.
38 See App. A, col. 1. In Georgia, liens must be shown on the application for registration. Ga. Code Ann. § 68-101 (1933). There are, however, no further provisions for noting the lien
The registration certificate is generally required to be carried in the vehicle, thus negating the possibility of a lienor retaining possession of the certificate as a means of notice to purchasers that the possessor does not have clear title. Therefore, in these States, the lienor's only means of protection are local chattel security recording requirements, and the California dealer cannot rely upon the registration certificate but must turn to the local records of the foreign State for protection.

4. Fraudulent Practices Arising Under Automobile Registration Statutes

A constant danger in respect of the muniments of title tendered by the vendor of an out-of-State vehicle is the possibility that the papers were forged, or obtained by fraud or stealth. This problem is closely akin to that of the stolen vehicle, where, as here, the original owner usually prevails over an innocent purchaser. Fortunately the reported instances of a sale based on forged or fraudulent muniments of title are relatively few in number. The following are some of the more commonly employed methods of fraud.

(a) The "Duplicates Racket." The use of a duplicate certificate of title is an easily utilized means of fraud. The defrauder buys a vehicle for cash and receives an unencumbered "pink slip." Claiming to have lost the slip, he applies to the vehicles department for a duplicate, and, using one certificate, he mortgages the automobile and, with the other, sells to a third party.

(b) Failure of Non-Title States to Require Surrender of Prior Registration Documents on Application for Registration. Closely akin to the duplicates racket is the fraudulent practice that takes advantage of the lax application requirements for registration in many of the non-title States. In Maine, Massachusetts, New Hampshire, Rhode Island and Vermont it is possible to obtain a registration certificate without producing evidence of title. Alabama, Georgia, and Mississippi require presentation of title-evidencing documents but allow the applicant to retain them

39 It should be noted that two of these States, Massachusetts and Rhode Island, have no recording requirement for conditional sale contracts.
40 See PROSSER, TORTS 70-71 (2d ed. 1955).
41 Information regarding the problem of stolen automobiles may be obtained from the National Automobile Theft Bureau, 526 Washington St., San Francisco, California. Insurance against such a loss can be obtained from Lloyd's of London. Premiums are, however, prohibitive.
42 For more extensive discussion see Leary, Horse and Buggy Lien Law and Migratory Automobiles, 96 U. PA. L. REV. 455, 476 (1948); Comment, 42 CALIF. L. REV. 315, 318-19 (1954).
43 The issuance of duplicate certificates of title on request is a standard practice in all full-and incomplete-title States and is overwhelmingly justified by the fact that the public convenience derived as a result far outweighs the harm caused by the relatively few instances of their use as instruments of fraud. Issuance of duplicate certificates of title in California is authorized by CAL. VEH. CODE § 4459.
44 No reasonable solution to this problem has been advanced. Marking the duplicate pink slip "Duplicate," does not eliminate the possibility of fraud. The defrauder can use the duplicate in the first transaction where a title search would reveal no liens and make the subsequent sale on the basis of the original pink slip, giving the purchaser no reason to suspect a duplicate fraud. Even a cautious purchaser who checks with the central office of the Department of Motor Vehicles can be trapped, as the mortgagor may offer the automobile for sale before the mortgagee has had time to send to the vehicles department the duplicate pink slip with himself named as legal owner.
after the registration certificate is issued.\textsuperscript{46} It thus becomes possible for a defrauder to use the two sets of documents in the same way that he would use an original and duplicate certificate of title.\textsuperscript{47} This practice contributed substantially to the controversy that arose in the California case of \textit{Atha v. Bockius}\textsuperscript{48} where the defrauder was able to obtain a Louisiana registration while retaining his California documents and plates.\textsuperscript{49} Having mortgaged the vehicle in Texas on the strength of the Louisiana registration, he was able to sell to an innocent purchaser in California on the strength of the retained California license plates and certificate of title.

The risk of fraud from duplicates, forgeries and fakes is much greater with automobiles coming from non-title States than with those coming from full- or incomplete-title jurisdictions. This is due to the relatively greater ease with which bills of sale, as compared with official "pink slips," can be manipulated. In addition, the statutory and administrative safeguards devised by the full- and incomplete-title States tend to force the more wary defrauders to center their operations in the non-title States. A long step toward the reduction of fraudulent practices to a negligible level would be taken if the non-title States were to enact certificate of title statutes similar to those adopted in the full-title States.

\textbf{C. Practices of the California Department of Motor Vehicles}

The California Department of Motor Vehicles, through its many statewide branch offices, can be of invaluable assistance to the California used car dealer who engages in the purchase of automobiles brought from other States.\textsuperscript{50} Trained personnel of the department, armed with source books and facsimiles of the vehicle registration documents of all the States, Territories, and neighboring countries, are in the best position to ascertain whether a nonresident vendor has furnished the evidence necessary to establish his title to the automobile. It is not surprising, therefore, that the practices of the department figure prominently in the dealer's efforts to detect foreign liens on an automobile he desires to purchase.\textsuperscript{51} It should be emphasized, however, that neither the advice nor registration documents issued by the department carry a warranty.\textsuperscript{52} The extent to which the true state of the vendor's title is revealed is in direct proportion to the degree of reliability normally to be expected from the muniments of title the department requires of nonresident applicants.

\textsuperscript{46} \textit{Id.} at 16, 102, 229.
\textsuperscript{47} Note that if the place of defrauder's actual residence—presumably where a lien on his vehicle is recorded—is not entered on the new registration certificate issued by one of these States, a purchaser to whom the new slip is presented will have no way of ascertaining where he must inquire as to the existence of possible liens. \textit{Cf.} notes 76, 77 \textit{infra}.
\textsuperscript{48} 39 Cal.2d 635, 248 P.2d 745 (1952). \textit{Atha v. Bockius} is discussed more fully in text at notes 120-27 \textit{infra}.
\textsuperscript{49} Louisiana has since become a full-title State and no longer permits retention of title documents upon registration. \textit{AUTOMOBILE CLUB OF SO. CAL., SUMMARY OF MOTOR VEHICLE ACTS} 180 (1958).
\textsuperscript{50} Information as to practices of the California Department of Motor Vehicles was obtained from interviews with department personnel in Oakland and Berkeley, California, and at the central office in Sacramento, California. Of course, all opinions expressed are ultimately the responsibility of the authors. It is regretted that a more comprehensive field inquiry could not have been made.
\textsuperscript{51} This conclusion is based upon a survey of automobile dealers in the Berkeley-Oakland, California, area.
\textsuperscript{52} \textit{CAL. VEH. CODE} § 4305.
1. Nonresident Registration

Vehicle Code sections 4300–03 prescribe the general requirements for nonresident registration. Pursuant to these provisions and through the Administrative Code, the Department of Motor Vehicles has established a dual standard governing the required evidence of title. All States are classified as: (i) "title issuing," under which are grouped the full- and incomplete-title States, or (ii) "non-title-issuing," under which are included the non-title States.

Upon ascertaining the State in which the automobile was previously registered, department personnel refer to a standard source book containing the registration requirements of that State and facsimiles of the title and registration documents it issues. This reference indicates the documents that should be in the possession of the applicant. If the State is "title-issuing," a registration certificate and a certificate of title are required. If a lien is shown on the certificate of title, it is duly entered upon the newly issued California certificate. However, a clear certificate of title is issued if the applicant can produce adequate proof of the satisfaction of such lien.

If the State is "non-title-issuing," a notarized bill of sale to the applicant and the registration certificate are required to be surrendered. The department, in the absence of extraordinary circumstances, does not make an investigation of the

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55 Alabama, Connecticut, Georgia, Kentucky, Maine, Massachusetts, Minnesota, Mississippi, New Hampshire, New York, Rhode Island, Vermont. Ibid.
56 STEPHENS-PECK, INC., PECK'S TITLE BOOK (looseleaf—generally available at motor vehicle department offices).
57 This is required as evidence of current nonresident registration. CAL. STATE PRINTING OFFICE, FACTS FOR VISITORS, Reg. 35 (Rev. 7-56) (1956), available at local offices of California Department of Motor Vehicles. An acceptable alternative is a verification of registration of the vehicle by letter or wire from the motor vehicle authority of the State that last registered it. If evidence of current nonresident registration cannot be furnished, fees must be submitted from date of entry of vehicle into California. Ibid.
58 If an applicant brings the vehicle to California before transferring it to his name in his home State, he must present a certificate of title properly endorsed by registered and legal owners and signed by himself as purchaser, or a certificate of title with bill of sale from the registered owner. Ibid.
59 Ibid.
60 CAL. VEH. CODE § 4306.
61 Adequate proof includes: notarized lien-satisfied statement signed by lien holder, certificate of title marked paid (must be signed by lien holder and countersigned with signature or initials of person making that notation), or original or certified copy of conditional sale contract or chattel mortgage showing name of purchaser and of lien holder marked paid and countersigned. CAL. STATE PRINTING OFFICE, FACTS FOR VISITORS, Reg. 35 (Rev. 7-56) (1956).
62 The bill of sale should describe the vehicle and state that it was free and clear of all liens and encumbrances when sold to the registered owner. If the bill of sale shows a lien, it should be marked paid or should be accompanied by a lien-satisfied statement. An acceptable alternative to a bill of sale is an invoice from a nonresident dealer marked paid and countersigned. Ibid.
63 See note 58 supra.
records of a non-title State. Rather, it accepts the bill of sale supported by the applicant's sworn statement as being tantamount to the certificate of title from a full- or incomplete-title State.

2. Statutory and Administrative Policy

Under Vehicle Code section 4304, the Department of Motor Vehicles is required to give "full faith and credit" to a currently valid certificate of title from another jurisdiction. Implementing this statutory mandate, the department gives prima facie validity to a certificate of title issued under the registration statutes of both the full- and incomplete-title States. This application of section 4304 to certificates of title issued under incomplete-title statutes seems questionable. As shown above, there is a possibility of the existence of undisclosed liens on automobiles from incomplete-title States, and, in view of the terms of section 4304, making that section applicable only to certificates of title disclosing "any and all" liens, the department's treatment of titles from incomplete-title States would seem unsupported in law.

Vehicle Code section 4307 provides that if the Department of Motor Vehicles "is not satisfied as to the ownership of the vehicle or the existence of foreign liens thereon . . .," a distinctive non-transferrable registration certificate—dubbed a "goldenrod" by the department—may be issued, pending satisfactory proof of title. Considering this section in relation to section 4304, it would not be illogical to suppose that, because vehicles from non-title States are generally regarded as "bad risks" and have no certificate of title to which can be given "full faith and credit," the "goldenrod" procedure was intended to be applicable to all

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64 Professor Leary has suggested a titling procedure designed to give more effective protection to purchasers and encumbrancers. In brief, he suggests that the State enact a statute prohibiting the department of motor vehicles from issuing a certificate of title to an applicant from another State without first obtaining from the proper officials of the other State a statement of all liens existing upon the vehicle. Furthermore, under the proposed statute, anyone acquiring any interest in a motor vehicle registered in another State would be subject to any encumbrances validly created there unless he made application for and received a clear certificate of title in his own State; any purchaser dealing with an automobile as to which a certificate of title had been issued by his own State would be subject only to such liens as might be recorded in the State capital; losses caused by slip-ups in the process of obtaining information from other States or failure to note on the certificate of title liens duly filed would be paid by the State. Leary, Horse and Buggy Lien Law and Migratory Automobiles, 96 U. Pa. L. Rev. 455, 476-83 (1948). This solution is not, however, recommended by the authors for all situations. It would be expensive and burdensome to operate. It would not give absolute protection, and it is not considered to be worth its cost. Virtually 99% of the nonresident applicants are honest people. They generally are awed by the official forms which they must fill out and readily make full disclosure of all liens upon their automobiles. (Information obtained from California Department of Motor Vehicles personnel.) Requiring a statement from the State of origin would add to the expense of the registration and cause delay and poor public relations. Furthermore, the artful criminal still could find a way to work fraud upon innocent purchasers. The procedure is, however, recommended for applications from non-title States, where the risk of outstanding liens is greatest. See note 70 infra.

65 "Full faith and credit," a phrase as yet undefined in this context, must be given provided "the laws of such state provide for the notation upon the certificate of title of any and all liens and encumbrances other than those dependent upon possession." Cal. Veh. Code § 4304.

66 See note 65 supra.

applications for registration of automobiles coming from these States. This, however, is not the case, or, at least, not the interpretation of the department. Rather, the "goldenrod" is utilized only when the Department of Motor Vehicles is convinced that there is something drastically wrong with the nonresident applicant's title or when he has failed to submit the documents the department has specified are necessary for a California registration. The primary usefulness of the "goldenrod" is not so much in fraud prevention as in the field of public relations; that is, an honest nonresident, unfamiliar with the requirements of the California Vehicle Code, who has delayed until the last moment to apply for the California registration, is able to escape late-filing penalties by obtaining a "goldenrod" pending his acquisition of the necessary documents.

3. The California Used Car Dealer and the Department of Motor Vehicles

Many California used car dealers put complete faith in the Department of Motor Vehicles with respect to out-of-State vehicle transactions. The immediately preceding discussion has shown that this reliance may not, in all cases, be completely justified and indicates that additional measures on the part of the dealer often would be prudent.

(a) Automobiles From Full-Title States. When dealing with an automobile from one of the full-title States, the used car dealer can, in all cases, safely rely upon the foreign certificate of title as evidence of any existing liens. If none appear, the dealer can safely assume that none exist, or that any incurred are unenforceable against purchasers without actual notice. The risks involved in purchasing an

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68 Or, for that matter, the incomplete-title States.

It is difficult to grasp what was intended in this context by the words "full faith and credit." However, it seems reasonable to suppose that the statute embodies the same policy as that of the Colorado statute which provides that no mortgage on a motor vehicle filed for record in any State other than Colorado shall be enforceable against subsequent purchasers without actual notice, unless the certificate of title for the vehicle bears thereon a notation adequate to apprise a purchaser of the existence of the mortgage. Colo. Rev. Stat. Ann. §§ 13-6-32 (1953).

69 Under former section 154 of the Vehicle Code, the department was required to issue a distinctive certificate of title for all vehicles previously registered in another State. By this procedure, any California purchaser was informed of the vehicle's foreign origin. This statute was repealed in 1949. South Carolina law requires registration documents issued on vehicles previously registered in non-title States to be stamped: "This vehicle may be subject to an undisclosed lien." S.C. Code § 46-139.40 (1952). It is recommended that this procedure be adopted in California as to vehicles coming from non-title and incomplete-title States.

70 While there is much to be said for the preservation of good public relations with visitors and new Californians, the department should also keep in mind the intent of the California Legislature embodied in section 4304. That section is apparently designed to give a preferred status to automobiles from full-title States, and for the department to allow an applicant from a non-title State to make out clear title on the same basis as an applicant from a full-title State, makes for equal treatment of automobiles from both types of States. It is submitted that the Department of Motor Vehicles should adopt stricter standards for the registration of automobiles from non-title States. One suggestion is that it should require an applicant from one of these States to supply the department with a verified affidavit, signed by the responsible officials of the county from which it was removed, to the effect that there are no outstanding liens of record on the automobile. Until this is obtained, the department could issue a "goldenrod."

71 A survey of automobile dealers in the Oakland-Berkeley, California, area gave rise to this conclusion.

72 There is, of course, the ever-present possibility of forged or otherwise fraudulently obtained registration documents. See text at notes 41-47 supra.
automobile from one of these States are no greater than those in purchasing a local automobile.

(b) Automobiles From Incomplete-Title States. As to automobiles from one of the incomplete-title States, a somewhat more perilous situation exists. Owing to the inherent defect of incomplete-title statutes, it is possible that there may exist a lien incurred since the last transfer of possession which cannot be noted upon the certificate of title. Despite this possibility, the California Department of Motor Vehicles affords "full faith and credit" to a certificate of title from one of these States. It is not advisable for an individual purchaser to do the same. To lessen the risk, a California used car dealer can and should seek information in the county from which the automobile was removed as to liens acquired since the last transfer of possession and recorded therein.

(c) Automobiles From Non-Title States. As a matter of business practice, some dealers make it a point never to purchase an automobile from a non-title State. There is strong justification for this practice. The danger of an undisclosed lien is greatest in respect of automobiles coming from these States. If he decides to purchase an automobile from a non-title State, the California used car dealer, in addition to obtaining the muniments of title required by the Department of Motor Vehicles, should make an investigation in the records of the county from which the automobile was removed. Such an investigation is neither difficult nor expensive, requiring only a phone call or a telegram to the proper party. Although in a few cases the process may not disclose all valid liens, it will considerably reduce the risks involved.

In summary, the ultimate choice of action will depend on the facts of each case. The used car dealer must, in his own mind, weigh the particular risk of a possible lien against the inconvenience involved in determining if one exists. This discussion has attempted no more than to outline the various degrees of risk and the steps a dealer can take to reduce them to the lowest possible level. The discussion which follows presupposes that a California used car dealer has purchased an out-of-State vehicle subject to an undisclosed lien that is valid in the State from which the automobile was removed. Under what circumstances can the foreign lienor maintain in the California courts his superior position with respect to the dealer and any other parties having subsequent dealings with the vehicle?

II  

effect of the foreign lien

The problem of the enforcement in California of the foreign lien and its effect on the title of the California purchaser is not readily solved by reference to horn-
book law. As is so often true where there is presented a problem soluble only by a balancing of nearly equally compelling interests and policies, rules must be tied carefully to the precise facts of each case. After considering the impact of Conflict of Laws analysis, this discussion will examine separately the equitable factors which may weigh in favor of each party, and then the relative weight of each of these factors when they are brought into competition in a given case.  

A. The Law of Conflict of Laws

In a dispute between a foreign lienor and a resident purchaser, the determination of the effect of the foreign lien presents basically a problem in the Conflict of Laws. It is the accepted choice-of-law rule that the law of the State in which a movable is located at the time of a transfer of interest determines the validity and effect of the transfer. However, this rule—the doctrine of the *lex situs*—does not solve the problem presented. Our problem involves two separate transfers of interests in a single movable, each transfer presumably governed by a different *lex situs*. The California court is confronted with a lien valid in one State and a purchase valid under the law of the forum. It can hold categorically that the interest of the lienor is not divested by any dealings with the chattel in California, or that, because the lien was not perfected under the law of California, the purchaser takes free of the lien. The choice is, in essence, one between two conflicting policy considerations. On one side there is the policy of protecting the security of the lien interest in order to encourage and stabilize credit operations. On the other side is the policy of securing protection for the retail world by protecting the innocent purchaser who reasonably relies upon the apparent title of 

78 This discussion is not limited to the law of California, as the California cases on point are insufficient to provide a comprehensive treatment of the problem. The California cases which have considered this problem are: Atha v. Bockius, 39 Cal.2d 635, 248 P.2d 745 (1952) (California purchaser prevailed over foreign lienor due to lack of diligence of the lienor in reclaiming the automobile after learning of its removal to California); Mercantile Acceptance Co. v. Frank, 203 Cal. 483, 265 Pac. 190 (1928) (judgment for California purchaser reversed); Mercantile Acceptance Corp. v. Liles Bros. Motor Co., 167 A.C.A. 879, 334 P.2d 983 (1959) (California subsequent lienor prevailed over foreign prior lienor); Motor Acceptance Co. v. Finn, 124 Cal. App. 766, 13 P.2d 761 (1932) (in conversion action brought by foreign lienor, judgment for defendant-sheriff who sold car at execution sale reversed; sheriff had no actual knowledge of the lien when he attached but was informed of it before the sale); Deposit Guar. State Bank v. Hessel Motor Car Co., 90 Cal. App. 428, 265 Pac. 954 (1928) (foreign lienor prevailed over California used car dealer); Bice v. Harold L. Arnold, Inc., 75 Cal. App. 629, 243 Pac. 468 (1925) (foreign lienor prevailed over California used car dealer); Motor Inv. Co. v. Breslauer, 64 Cal. App. 230, 221 Pac. 700 (1923) (foreign lienor prevailed over California purchaser).

79 Green v. Van Buskirk, 74 U.S. (7 Wall.) 139 (1868); *In re* Industrial Sapphire Mfg. Co., 182 F.2d 589 (3d Cir. 1950); C.I.T. Corp. v. Guy, 170 Va. 16, 195 S.E. 659 (1938); Goodrich, *Conflict of Laws* § 153 (3d ed. 1949); *Lalive, The Transfer of Chattels in the Conflict of Laws* 59 (1955); *Zaphiriou, Transfer of Chattels in Private International Law* 48 (1956). Cf. CAL. CIV. CODE § 946. But see: "[T]he judicial decisions reveal an overwhelming disposition on the part of the courts to deal with the problem of the proper law to control the legal relations between the immediate parties to chattel security transactions as though they were involving the application of principals of conflict of laws which ordinarily govern with respect to contracts." Stumberg, *Chattel Security Transactions and the Conflict of Laws*, 27 Iowa L. Rev. 528 (1942). (Emphasis added.)


the seller. The choice of either of these policies is often harsh and will lead in many cases to injustice to innocent parties.

The American courts purport to take a middle ground and to follow a rule, propounded by the Restatement, that makes consent or nonconsent on the part of the lienor to removal of the chattel from the State in which the lien was created the determinative factor. Under this rule, the foreign lienor will prevail unless he consents to the removal. If he does consent, the purchaser without actual knowledge prevails.

It is submitted that the Restatement's formalistic approach to “consent to removal” is not an adequate solution, in that it takes account of only one of the factors involved and fails to explain most of the cases. Though a noble effort, it is at best a compromise. As will appear, it only misleads to thrust the issues here involved into a verbal strait jacket.

There is a tendency to sympathize with the local purchaser, and the courts employ various means to protect him, especially where he is entirely innocent and the lienor has not been cautious in preventing fraud. Sometimes, the courts, in a thinly masked effort to find for the innocent purchaser, contrary to their general rule of protection of titles, have held against the owner of the security interest on formalistic grounds. This reasoning has taken the form of narrowly interpreting the law under which the security interest was created, requiring rigid fulfillment of its provisions, and imposing onerous burdens of proof. This is illustrated by the North Carolina case of General Finance & Thrift Corp. v. Guthrie. There, Y, a North Carolina dealer, purchased an automobile which had been removed from Georgia by a conditional buyer. Y took the Georgia registration slip as full evidence of title, did not investigate the records of Georgia, and apparently did not even ask for a bill of sale. Furthermore, it appeared he knew his seller was of a notorious character. Y obtained a North Carolina certificate of title in his name and sold to D who had no reason to suspect a Georgia lien. P, who had retained title in Georgia, sued D for recovery. The North Carolina Supreme Court held that a directed verdict for P had been improperly granted. The ground for the decision was that P had not sustained the burden of proving that the car had been located in Georgia at the instant he recorded his interest there, although he was unaware of the removal at that time.

82 Restatement, Conflict of Laws §§ 265-78 (1934).
84 See text at notes 104-18 infra for a full discussion of the factor of “consent to removal.”
85 See Lalive, The Transfer of Chattels in the Conflict of Laws 175-84 (1955) for theoretical criticism of the “consent” rule which is said to be rejected in most countries outside the United States as entirely irrelevant in the Conflict of Laws. Id. at 83. See text at notes 104-06 infra.
86 E.g., G.F.C. Corp. v. Rollins, 221 La. 166, 59 So. 2d 108 (1952) (burden of proving nonconsent placed on the lienor); Associates Discount Corp. v. McKinney, 230 N.C. 727, 55 S.E.2d 513 (1949) (mortgage not shown to be filed in county of residence of mortgagor though filed in county stated by mortgagor to be his residence); Mosko v. Smith, 63 Wyo. 239, 179 P.2d 781 (1947) (mortgage invalid because not recorded until after automobile removed from State).
88 A non-title State.
89 This case indicates the length to which a court will go to protect an innocent individual purchaser. If Y, the dealer who traded the automobile and whose conduct was less than innocent, had been the defendant, the court would doubtless not have taken such a strict view of Georgia's requirements for the perfection of liens.
Other courts, including those of California, have found "estoppel" to arise as a result of conduct on the part of the lienor and have rendered judgment for the local purchaser where consent to removal was not present. 90

This Comment will attempt to suggest a more practical approach to the problem, yet one which is consistent with the results actually reached by the courts. A synthesis of the cases will show the factors which do and, properly, should influence the courts in deciding this type of case.

Where both parties are entirely innocent of the loss, the decision will depend on the court's choice of one of the two conflicting policies discussed above. 91 But if one or both of the parties have failed to take all available steps to protect against fraud, the court should weigh the various equitable factors present in the case against one another.

B. Equitable Factors Against the Foreign Lienor

It is generally held that, under certain circumstances, one who holds a non-possessory security interest in a vehicle, owes a duty of protection to those who may have subsequent dealings with the party in possession. 92 Full protection of the foreign lien on an automobile removed to California is assured only where the lienor has been entirely innocent of conduct which a court may hold amounts to a violation of that duty. This section will analyze those specific examples of less-than-innocent conduct which may tend to defeat or completely defeat the foreign lienor's interest. 93

Apart from the effect of the conduct of the lienor, there are three general considerations which seem to militate against the policy of enforcing the foreign lien. First is the desire to protect the validity of retail transactions. 94 All courts wish to aid the bona fide purchaser when to do so would not be too disruptive of established rules of law. 95 Second, the bona fide purchaser in these cases is often a private individual while the lienor is a foreign finance company. A finance company should know the intricacies and vagaries of its business, and is better

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93 Most courts apparently do not feel bound in these "skip-state" cases to follow the domestic law of the foreign state regarding the annulment of a validity created foreign lien. See Atha v. Bockius, 39 Cal. 2d 635, 642, 248 P.2d 745, 748 (1952); Nichols v. Bogda Motors, Inc., supra note 92. But see North American Acceptance Corp. v. Meeks, 146 Neb. 546, 20 N.W.2d 504, 507 (1945). It seems the logical approach is to ascertain whether, under the law of the foreign State, the lienor's interest would be voidable on the facts presented, and to follow that law if it does not seriously conflict with a well defined policy of the forum. See LALIVE, THE TRANSFER OF CHATTELS IN THE CONFLICT OF LAWS 184-86 (1955).
94 As opposed to the "sanctity of titles," protected by most U.S. courts. See Franklin, Security of Acquisition and of Transaction, 6 Tul. L. Rev. 589 (1932). See text at note 81 supra.
95 "Bona fide purchasers are favorites of the law ...." Dudley v. Lovins, 310 Ky. 491, 220 S.W.2d 978, 980 (1949).
able to absorb and spread the loss from "skip-state" swindles. Third, as between various subsequent victims of a defrauder, the courts probably treat the private party more favorably than the individual or institutional dealer or financier. Whether this last distinction does or should, as a matter of law, cause a different result in some cases will be considered later.

Several legal arguments are advanced by the courts to cut off the interest of the foreign lienor. The first is couched in the Maxim: "Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer." This Maxim, though helpful as a general policy statement, is not functional in itself. It is self-contradictory in that, if one of the two parties is negligent, both of them cannot be innocent. Moreover, the term "negligence" must be used guardedly; as a word of art in this context, it is extremely malleable.

The courts also apply the doctrine of "equitable estoppel," which is closely allied with and often indistinguishable from the above mentioned Maxim. By this rule, the lienor, as a result of some blameworthy conduct, is said to be estopped from asserting his title, even though the defrauder, in fact, has no title to pass. Equitable estoppel is said to require the presence of four elements: (i) the lienor must be apprised of the facts; (ii) he must actually, impliedly or apparently intend that his conduct be acted upon; (iii) the innocent purchaser must be ignorant of the true state of facts; (iv) he must justifiably rely on the lienor's conduct to his injury. Estoppel is a more useful test than the Maxim, but one soon discovers that its elements are often either stretched to fit the facts or not discussed at all.

A third approach of the courts is to deny protection to the party who had, and failed to exercise, the greater opportunity to protect himself and the other party.

The most effective defenses against the foreign lienor are: (i) lienor's consent to or contemplation of removal of the car from the state; (ii) lienor's lack of diligence after knowledge of removal; (iii) lienor's having clothed the defrauder with indicia of title; and (iv) lienor's negligence in extending credit to the defrauder.

1. Lienor's Consent To or Contemplation of Removal

The lienor's consent to removal of the automobile to another State plays a peculiar role in the resolution of the problem. As indicated above, the Restatement of Conflicts utilizes this element to determine a "choice of law." Such an...
analysis, unknown elsewhere in Private International Law, has been criticized. While the Restatement rule may solve, or explain, some of the cases, it seems that a foreign lienor's consent to removal is immaterial to a court's basic policy choice. Rather, it seems the better view is that "consent" should be regarded as only one of the many factors to be considered in the balance of equities between the parties, bearing in mind that the courts (aside from special statutory pronouncements) have made the basic policy decision to protect the foreign lienor.

Where a foreign lienor's interest is perfected under a full-title system and is noted on a certificate of title, his consent to removal to California would seem inapposite to the issue of validity of the lien. The defrauder's purchaser, who, to protect himself, must require the exhibition of indicia of title, would presumably have actual notice or be charged with "constructive notice" of the lien.

The situation differs, however, where the lien is created in a non-title or incomplete-title State and is not noted on title-evidencing documents. In these cases, a consenting lienor should know that the car may be offered for sale in the State of removal and that a purchaser there may be reasonably misled into believing the possessor has a clear title. To avoid this situation, the lienor, if he consents to removal, should be required on pain of divestment to perfect his interest under California law. This is not because he has waived his own State's laws, but because, in view of the risks involved, he is less deserving of protection for having failed to take advantage of an available opportunity to protect subsequent purchasers. Compliance by financial interests with such a requirement has been branded by some as too onerous by others as practically impossible. Neither complaint appears justified. When the lienor consents to a permanent removal, he can easily utilize the following procedure: Having obtained the surrender of all muniments of title prior to consenting to removal, he can require the one in possession to report to a designated agent in California. The agent, upon receipt of the necessary documents from the lienor, will then, with the possessor, apply for California registration and pink slips, upon which he will cause the lienor's name to appear as legal owner. If the lienor does this and the possessor still manages to defraud someone by means of duplicate or forged documents, the lienor's consent to removal should not then be a factor against him, since he has done all that could be reasonably required of him. To the financier operating on a small scale, without the benefit of nationwide branch offices, this burden may be heavy. The rebuttal is that he must take the risk of divestment by a victimized innocent purchaser, or not consent to removal.

104 Lalive, op. cit. supra note 93, at 175.
105 Id. at 183–84; Goodrich, Conflict of Laws §§ 155–58 (3d ed. 1949); Note, 47 Colum. L. Rev. 767, 783 (1947).
106 For refinements of the notion that the purchaser must examine muniments of title in order to assert estoppel, see text at notes 187–90 infra.
107 This is true since bills of sale or other unofficial and easily fabricated documents generally are the only evidence of title to which a subsequent purchaser can look. See text at note 156 infra.
110 In order to prevent causing complete disaster to secured credit operations, "consent to removal" should be a legally operative factor only where removal is for more than a temporary period such as a business or pleasure trip. See In re Bankruptcy of Duncan, 264 F.2d 460, 466 (9th Cir. 1959).
111 Inquiries of California Department of Motor Vehicles personnel reveal that the department will accept title indicia mailed directly to it by foreign lienors, and will retain the papers
A somewhat different situation is presented where the automobile is removed to California, the lienor having consented to its removal to some third State. Here it would seem absurd to say that the lienor consented to having the validity of his lien governed by California law, or even to require him to take steps to perfect his lien thereunder. A dealer victimized by the defrauder in this situation can make only the weak argument that the lienor, by having consented to removal to some State, somehow caused the ultimate swindle. In actuality, this situation is not different from one in which the lienor has not consented to removal, since one could find some causation for the swindle in the mere fact of the lienor's having at the outset given possession to his debtor.

Many courts have discussed "consent to removal" by way of dictum, but few have rested a holding upon it, either as an equity against the lienor or as the sole determining factor pursuant to the Restatement rule. The following cases are representative of its flexible nature.

In the Missouri case of Seward v. Evrard, "consent to removal" seems to have been treated as an equitable factor. There, P, a Missouri dealer, delivered on a conditional sale an automobile to the defrauder, whom he knew to be an Arkansas dealer. P retained the certificate of title. The car was taken by the defrauder to Arkansas, then a non-title State, where it was registered and sold, through mesne conveyances, to D, who had no actual notice of P's reservation of title. The court relied on several grounds in denying P's claim to the auto, but it emphasized that P must have contemplated, or impliedly consented to, the removal of the car to Arkansas. Knowing of the lax registration requirements of that State, P must have been aware of the ease with which his conditional buyer could defraud a subsequent purchaser.

The Restatement of Conflicts "consent" approach was adopted in the Kentucky case of Spencer v. General Motors Acceptance Corp. The defrauder, a resident of Kentucky, a non-title State, purchased a car in Ohio, a full-title State, under a conditional sale contract. P, a finance company with offices in Kentucky and Ohio, purchased the contract and received the registration slip, upon which was entered both P's security interest and the defrauder's Kentucky address. After several mesne transfers, the vehicle was purchased in Kentucky by D without actual notice of the lien or of the Ohio origin of the car. The court in holding for D stated that P, to whom could be imputed knowledge of the defrauder's foreign residence, contemplated removal and therefore submitted to having Kentucky recordation laws govern the validity of his security interest.

If the debtor fails to arrive within the established time, it seems the lienor has just cause for obtaining a judicial restraining order or law enforcement agency request to block California D.M.V. action on a possible fraudulent transfer. See Cal. Veh. Code § 6051.

The result might have been different had the Ohio license plates been attached when D purchased. In that event D could not have claimed bona fide status until he had demanded the exhibition of an Ohio "pink slip." Had he failed in this, the question would have been one of balancing the equities. See text at notes 178-83 infra.
The better rule would seem to be that the purchaser has the burden of proof regarding the issue of the lienor’s consent to removal of the vehicle, but a few courts, swayed by a desire to protect the purchaser, have shifted the burden to the lienor.\textsuperscript{117} The presence or absence of a clause in the mortgage or conditional sale contract prohibiting removal may be determinative of a shift of the burden of proof. At least one court, however, put the burden on the purchaser even in the absence of such a clause.\textsuperscript{118}

It appears then, that where “consent to removal” is present in a case, the victimized California used car dealer has several paths open to him: he may either rely on the formalistic Restatement rule, assert “consent” as a grounds for “estoppel,” or both. Where “consent” is not present, one of the factors next to be considered may tip the balance of equities in the purchaser-dealer’s favor.

2. Lienor’s Lack of Diligence After Knowledge of Removal

The foreign lienor who learns of the removal from the State of the vehicle in which he has an interest, may be denied protection in the State of removal on the ground that he did not thereafter act with due diligence to protect himself and those who might have subsequent dealings with the absconder.\textsuperscript{119} Lack of due diligence is related to “consent to removal” in that the latter may be implied from an aggravated case of the former. However, it seems that of the two, the due diligence factor should bear more heavily against the lienor, for one who consents to removal is not aware of the fact that his mortgagor is a knave. If he were suspicious of his character, he probably would not consent.

In the landmark California case of \textit{Atha v. Bockius},\textsuperscript{120} this factor was persuasive. X was the registered owner of a vehicle for which had been issued California white and pink slips which revealed a California mortgagee, \textit{M}, to be the legal owner. X took the vehicle to Texas where he apparently established a residence. X then obtained registration papers and plates from Louisiana without having to surrender his California papers or license plates.\textsuperscript{121} X then executed a chattel mortgage to \textit{P}, a Texas finance company. Returning to California without \textit{P}’s consent, \textit{X} sold to his sister, \textit{D}, on the basis of the retained California registration documents and plates. \textit{D} obtained a California pink slip in her own name by satisfying \textit{M}’s lien. \textit{P} thereafter repossessed, and \textit{D} sued for conversion. The trial court found that \textit{X} and \textit{D} had not been in collusion, and that the latter had been without actual, constructive or inquiry notice of \textit{P}’s Texas lien.\textsuperscript{122} \textit{D} succeeded in proving that \textit{X} and \textit{D} had not been in collusion, and that the latter had been without actual, constructive or inquiry notice of \textit{P}’s Texas lien.

\textsuperscript{117} G.F.C. Corp. v. Rollins, 221 La. 166, 59 So. 2d 108 (1952) put the burden on the lienor. The soundness of this ruling is questionable. The burden of proving the nonoccurrence of such an event is one that is nearly impossible to carry. Cf. the California rule obviating the necessity of proving nonconsent unless it is an essential element of the statement of the right upon which the action is based. Dirks v. California Safe Deposit & Trust Co., 136 Cal. 84, 68 Pac. 487 (1902); \textit{Cal. Code Civ. Proc.} § 1869.

\textsuperscript{118} Universal C.I.T. Credit Corp. v. Victor Motor Co., 33 So. 2d 703 (La. App. 1948).


\textsuperscript{120} Cal. 2d 635, 248 P.2d 745 (1952).


\textsuperscript{122} The majority did not question this finding. In Kattwinkel v. Kattwinkel, 80 Ohio App. 397, 74 N.E.2d 418 (1947), where the wife of a soldier sold his car to her sister, the court held, against a strong argument for collusion, that the mere suggestion arising from the family relationship did not reach the dignity of a reasonable inference.
fully circumvented the general rule followed in California favoring foreign lienors, and obtained judgment by showing that: (i) it had taken \( P \) two months to discover that \( X \) had "skipped" Texas to California, after which there elapsed four months before \( D \)'s purchase and an additional two months before the repossession by \( P \)'s agents; (ii) during the two weeks immediately preceding repossession, \( P \) had known of \( X \)'s exact location; (iii) \( P \) did not show that it had promptly searched the records of the California Department of Motor Vehicles for a possible registration of the automobile. These facts, coupled with a conjecture as to what \( P \) could have done by way of locating \( X \) and preventing the occurrence of fraud, were held sufficient to bring the case within the Maxim of California Civil Code section 3543 and the rule of equitable estoppel.

The implications of the \( Atka \) case may be far-reaching. The court's analysis of estoppel is rather vague and highly favorable to the innocent purchaser. The dissent points out that the result seems to have been reached by shifting the burden of proof regarding diligence from the purchaser to the lienor. Though the dissent is concerned mainly with a procedural point, it calls for a stricter adherence to the classic elements of equitable estoppel and points out that in this case: (i) there was no showing of reliance on the purchaser's part; (ii) the lienor's lack of diligence was not shown to have been a substantial factor in causing the purchaser to be defrauded (though from the facts this seems arguable); (iii) the purchaser did not show affirmatively that special facts existed which would have aided the lienor in more rapidly locating the defrauder; (iv) the purchaser did not specifically refute the lienor's assertion that it had at all times been trying to locate the defrauder; (v) there was little or no evidence to support the purchaser's claim of bona fides; (vi) in view of all this, the rule should apply that estoppel must be so established as to leave nothing to supposition or questionable inference.

It is doubtful whether the majority meant to imply that a mere lapse of time in pursuing the defrauder may, in itself, be so conclusive as to divest an otherwise valid foreign lien. Nor does it appear that the court wanted to reverse its basic policy decision to adhere to the so-called "comity" rule favoring foreign lienors. The case does indicate, however, that the policy of protecting the sanctity of purchase-and-sale transactions has a powerful countervailing influence on the California court. The strong inference is that the court is quite willing to divest the foreign lienor when, in the balance of the equities, it feels he is less deserving of protection than the innocent purchaser. In the process, "estoppel" as a test has perhaps given way to a less rigid policy pursuant to which the loss is borne by the party who had, and failed to exercise, the greater opportunity of protecting himself and other persons.

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123 This appears to be a crucial, though perhaps not conclusive, factor. See 39 Cal. 2d at 646, 248 P.2d at 751. It may in future cases be an essential element of proof for all lienors. It would be an onerous burden for the purchaser to prove noncompliance. See text at note 117 supra.

124 39 Cal. 2d at 650, 248 P.2d at 753. On the whole, the complaint of the dissent on this point seems justified. The majority, however, purported to proceed upon the ground that the purchaser had the burden of proof on estoppel. See \( \text{id.} \) at 645, 248 P.2d at 751.

125 General Motors Acceptance Corp. v. Gandy, 200 Cal. 284, 297, 253 Pac. 137, 142 (1927).

126 See notes 82-83 supra.

127 Other factors favoring the purchaser in \( Atka \) undoubtedly influenced the majority; she was not put on inquiry notice of the foreign lien; had she been, she would have discovered nothing; she was a private party facing a finance company; she had shown her good faith by satisfying the known existing lien on the car; and the lienor's representatives had testified to their awareness of the risk involved in extending credit under such circumstances. The last point
In the Oklahoma case of *West v. Associates Discount Corp.*, the lienor took a year to trace an automobile from Tennessee to Oklahoma, but still prevailed against an innocent purchaser. That case is distinguishable from *Atha* in several respects. First, the delay involved, though greatly exceeding that in *Atha*, preceded the lienor's actual discovery of the particular State to which the vehicle was removed. Second, it appears the automobile was purchased by the ultimate defendant within a short time after its removal to Oklahoma, thus destroying the nexus between the alleged lack of diligence and the purchaser's injury. On these facts, the *West* case seems right, and the California court doubtless would reach the same conclusion.

In the California case of *Bice v. Harold L. Arnold, Inc.*, the plaintiff-lienor, *P*, had delayed six weeks before taking steps to protect his interest. The court held that he was not estopped to assert his title against one who meanwhile had purchased the car in California without actual knowledge of the lienor's interest. The buyer, *D*, however, had reason to know that the car was from out-of-state inasmuch as the defrauder had given him a nonresident California registration slip. Contrary to the then prevailing practice, the space on the registration slip for the name of "legal owner" was left blank. In addition, *D* did not ask for other indicia of title such as a bill of sale to prove the defrauder's asserted unencumbered title. Had *D* taken reasonable steps to protect himself, the court might have taken a stricter view of *P*'s delay.

One writer has suggested that when an automobile is removed from the State on more than a temporary basis, the lienor should be cut off after a reasonable length of time, irrespective of whether or not he has consented to or has knowledge of the removal. In some States this limitation on the enforcement of foreign liens has been adopted by statute. These statutes usually provide a grace period with an arbitrary cut-off date after entry beyond which the enforcement of a lien will not depend upon its validity in the foreign State. This rule imposes upon finance companies a much stricter duty of surveillance of their interests than that required by the *Atha* doctrine. The court in *Atha* considered only the time lapse following the lienor's discovery of the State of removal. The difficulty with imposing on lienors the stricter duty of care is readily apparent from the inherently transient nature of the automobile, and it doubtless would meet with no little opposition from financial quarters. On the other hand, some degree of control over their property ought to be exacted from secured creditors as a legal requisite to granting extraterritorial effect to their liens. It should be noted, however, that no cases, aside from those concerned with statutes, have been found where a long delay in discovering the absence or new location of the vehicle has been controlling against a foreign lienor.

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130 A distinctive document issued under a pre-1935 statute which was the origin of Cal. Veh. Code § 154 (repealed in 1949).
131 The lienor corresponded with the swindler during this five-week period. Finally realizing the latter's bona fides were doubtful he thereafter acted with diligence to apprehend him.

Since installment payments generally are due monthly, the finance company should soon learn that its debtor has absconded. Locating the automobile is difficult, but large finance com-
3. Clothing Defrauder with Indicia of Title

Where the foreign lienor invests the absconding defrauder with apparent title to the vehicle, in reasonable and good faith reliance upon which a party in the State of removal is defrauded, the accepted rule is that the lienor will be estopped to assert his title. Such apparent title may exist: (i) where the lienor has allowed the defrauder to retain in his possession muniments of title upon which the security interest is not entered; and (ii) where the lienor has delivered the car to one whom he knew or had reason to know to be a dealer in automobiles, with or without a transfer of title muniments.

(a) Allowing Defrauder to Possess Muniments of Title—Where Lien is Created in a Title State. It is common knowledge that most persons put great reliance on an unencumbered certificate of title in the possession of one from whom they are about to purchase an automobile. Accordingly, it is generally held that a lienor in a title State may be estopped to assert his interest as to an innocent purchaser by his delivery to the defrauder of what in California is commonly referred to as a “pink slip” upon which he has failed to have his interest noted.

The element of justifiable reliance upon documents in a defrauder's possession on the part of the purchaser is important in this situation, since no State has made the pink slip conclusive evidence of title. For the purchaser to prevail, he must, in fact, rely on the pink slip. He may safely rely only on his vendor's companies have offices in several States which may assist. The report of the West case, note 128 supra, indicates that little assistance may be expected from some motor vehicle departments in answer to a letter inquiry. However, the lienor may often discover the location of the vehicle by inquiring of the officials of his own State. The motor vehicle departments of six States automatically return old title documents to the State of origin when an out-of-State automobile is registered. These include Arizona, Connecticut, Indiana, Texas, Washington and West Virginia. AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, SUMMARY OF MOTOR VEHICLE ACTS (1958). The motor vehicle departments of nine States and the District of Columbia notify the State of origin: California, Iowa, Maryland, Michigan, Missouri, Nebraska, Ohio, South Dakota and Virginia. Only if the absconder first registers in the removal State will the lienor, by this practice, have an opportunity to impede his machinations.


Discussion, unless otherwise specified, will apply to both full- and incomplete-title States.


140 In Universal C.I.T. Credit Corp. v. Wagner, 72 Nev. 337, 305 P.2d 363 (1956), the purchaser was offered a clear pink slip. A cautious man, he wired the officials of the State of last registration and immediately learned of the lienor's interest. The purchaser's circumspection was for naught, however, for meanwhile he inexplicably had advanced $1200 to the defrauder. The lienor prevailed. See also Kelly v. Cliff Pettit Motors, Inc., 191 Tenn. 390, 234 S.W.2d 822 (1950).
possession of both the vehicle and the pink slip,\textsuperscript{141} and he may not rely on a pink slip that is defective on its face.\textsuperscript{142}

To be divested of title, the lienor must have been aware that the defrauder had possession of the pink slip.\textsuperscript{143} Theft,\textsuperscript{144} forgery\textsuperscript{145} or the obtaining of a duplicate pink slip\textsuperscript{146} will usually be treated as tantamount to the stolen car situation.\textsuperscript{147}

In this regard, the cases diverge on the issue of estoppel where the lienor transferred both the car and the pink slip in reliance on a bad or forged check or misrepresentation, most of them holding that a "voidable title" passes to the defrauder in the first two cases.\textsuperscript{148}

In a full-title State, a lienor would rarely be justified in failing to have his interest recorded on the certificate of title, for all full-title statutes provide for, if not require,\textsuperscript{149} the entry.\textsuperscript{150} However, the so-called incomplete-title States in some cases do not have any procedure for such entry.\textsuperscript{151} Where this is the case, it would seem that when not prohibited by statute, the lienor could and should take up and retain the certificate of title in order to prevent its fraudulent use by the mortgagor in possession.\textsuperscript{152} Estoppel should follow from his failure so to act.\textsuperscript{153}

Same—Where Lien is Created in a Non-Title State. The vehicle registration cards, referred to in California as "white slips," issued by the several non-title States are not designed for the purpose of reflecting security interests other than those


\textsuperscript{143} Adkisson v. Waitman, 202 Okla. 309, 213 P.2d 465 (1949). Knowledge that his debtor has a clear pink slip may be imputed to the lienor from the circumstances. Cf. Winakur v. Sapourn, 156 Md. 662, 145 Atl. 342 (1929) (lienor did not prevent defrauder from obtaining duplicate); Merchants Rating & Adjusting Co. v. Skaug, 4 Wash. 2d 46, 102 P.2d 227 (1940) (where only registered owner could apply for pink slip).


\textsuperscript{146} Cf. Motor Inv. Co. v. Knox City, 141 Tex. 530, 174 S.W.2d 482 (1943).

\textsuperscript{147} See McKinney v. Croan, 144 Tex. 9, 188 S.W.2d 144 (1945).

\textsuperscript{148} Most courts hold that the vendor intends a conditional sale until a check clears. Estoppel will not be denied where defrauder obtains possession of a car and clear title certificate in return for a bad check. Kelsue v. Grouskay, 70 Ariz. 317, 227 P.2d 915 (1950); White v. Pike, 246 Iowa 596, 36 N.W.2d 761 (1949). However, if the transaction is induced by false representations or is not an arm's length deal, no estoppel will arise. Dresher v. Roy Wilmeth Co., 118 Ind. App. 542, 82 N.E.2d 280 (1948) (dictum).

\textsuperscript{149} See CAL. VEH. CODE §§ 6300-03 (exclusive means for chattel mortgage recordation).

\textsuperscript{150} Nice distinctions often turn on the peculiarities of a particular statute. See App. C, cols. 2-7.

\textsuperscript{151} See text at notes 30-34 supra.


\textsuperscript{153} No estoppel for failure to take up and retain was found in Community State Bank v. Crissinger, 120 Ind. App. 25, 89 N.E.2d 78 (1949). Crissinger was followed in Central Fin. Co. v. Garber, 121 Ind. App. 27, 97 N.E.2d 503 (1951), but the dissent vigorously criticized such a narrow rule. Id. at 36, 97 N.E.2d, at 507. For pointed dictum indicating possibility of estoppel for failure to take up and retain, see Chetopa State Bank v. Manes, 221 Ark. 784, 255 S.W.2d 957, 960 (1953).
based upon possession. Therefore, in the absence of special circumstances, an estoppel will not arise with regard to reliance by the purchaser on an encumbered white slip in the defrauder's possession. Estoppel may arise, however, where the conditional vendor gives the vendee possession of the vehicle and an unencumbered bill of sale, or other type of non-official muniment of title. Similarly, the mortgagee-creditor who fails to take up and retain a bill of sale or note his interest thereon, should be precluded from denying that the debtor had good title to pass to an innocent purchaser, irrespective of whether his interest was properly recorded in accordance with the law of his own State.

(b) Where the Defrauder is an Automobile Dealer. Enforcement of a foreign lien against a subsequent innocent purchaser will be denied, on estoppel grounds, where the defrauder with whom the parties deal is known by them to be an automobile dealer. The rationale is based on the common knowledge that those who purchase from a dealer ordinarily assume that he has the authority he purports to have and do not attempt to investigate his title. Private parties justifiably rely because of their lack of knowledge of the ramifications of titling and financing practices while those in the trade, whose confidence in the dealer is perhaps less justified, so rely because of general business practice.

Estoppel based upon apparent ownership invested in a dealer by a lienor is a cognate of apparent or ostensible authority and "agency power" in the law of Agency. Indeed, it is often regarded as an agency issue. This doctrine is also...
embodied in the Uniform Trust Receipts Act,165 which provides that a "buyer in the ordinary course of trade" of floored merchandise takes free and clear of an entruster's security interest.166 Even where trust receipts are not involved, the principles of the act often carry over by analogy to other security transactions, involving dealers, which have the appearance of flooring plans.167

Of the four elements of "equitable estoppel" considered above,168 the crucial one here is the justifiable inducement on the part of the purchaser to rely on the dealer's apparent title.169 Though some courts find estoppel only where the purchaser from a defrauding dealer is an individual,170 it appears that the California courts would extend the protection of the rule to dealers and institutional purchasers and financiers.171 It would seem that any purchaser should be justified in relying on a dealer's apparent title only when he buys at the dealer's place of business as the result of a commercial transaction. He would have less reason to

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165 Uniform Trust Receipts Act, § 9(2) ; Cal. Civ. Code §§3016.5(2) (a)(i). See Mechem, op. cit. supra note 161, §§123-25; for discussion of analogous provisions in the Uniform Conditional Sales Act [§ 9], Uniform Sales Act [§ 23(1)] and various factors acts. See also Townsend, The Case of the Mysterious Accessory, 16 Law & Contemp. Prob. 197 (1951), as to estoppel with regard to the "pink slip," the dealer, and the Uniform Commercial Code.


167 "The titles retained by Liles in this case were for security purposes only and... this can be likened somewhat to the situation where trust receipts are used." Mercantile Acceptance Corp. v. Liles Bros. Motor Co., 167 A.C.A. 879, 884, 334 P.2d 983, 987 (1959).

168 See text at note 101 supra.

169 See the interesting case of Winship v. Standard Fin. Co., 40 Ariz. 382, 12 P.2d 282 (1932), where estoppel was denied on the ground the purchaser relied not on the fact his vendor was a dealer but on a stolen pink slip, the effect of which was tantamount to that of the stolen car situation.

Estoppel will not apply where both parties do not deal with the same defrauder-dealer. Ragner v. General Motors Acceptance Corp., 66 Ariz. 157, 185 P.2d 525 (1947); Commercial Credit Corp. v. Fatz, 346 Ill. App. 541, 105 N.E.2d 789 (1952); Associated Discount Corp. v. Colonial Fin. Co., 88 Ohio App. 205, 98 N.E.2d 848 (1950). But see Lee v. Bank of Georgia, 159 Fla. 481, 32 So. 2d 7 (1947), where the court protected the purchaser by interpreting the certificate of title law of that State as applying to foreign security interests. It seems likely, however, that the Florida court was influenced by the purchase-from-dealer element. General Fin. & Thrift Corp. v. Guthrie, 227 N.C. 431, 42 S.E.2d 601 (1947), where a directed verdict for the foreign liensor, in an action against the purchaser from a dealer, was reversed, can also be explained on this theory.

Professor Leary suggests that, in any case after the car has been registered locally, a purchaser thereafter should be protected, and that the loss should fall, if at all, upon the first purchaser having knowledge of the car's foreign origin. Leary, Horse and Buggy Lien Law and Migratory Automobiles, 96 U. Pa. L. Rev. 455, 472-73 (1948).


171 See Mercantile Acceptance Corp. v. Liles Bros. Motor Co., 167 A.C.A. 879, 334 P.2d 983 (1959), where a Tennessee wholesaler deposited in escrow title certificates on cars caravanned to X, a California dealer. X sold to buyers in ordinary course of trade and assigned conditional sales contracts to a finance company, the latter having failed to investigate whether its assignor possessed title evidence. Held, the finance company took free and clear of the Tennessee wholesaler's interest.
place complete confidence in a dealer where the latter merely brings the car into the State and offers it for sale in a single private transaction.\(^\text{172}\)

By the modern view, secret instructions of the lienor prescribing limitations on the dealer’s actual authority to sell will not block an otherwise operative estoppel. Language such as “did the lienor intend that title should pass,” or “was this a transaction similar to the one authorized” would seem inapposite to the issue of estoppel, if, as a practical matter, the lienor had no reason to believe that the dealer would not assimilate the vehicle into his stock in trade.\(^\text{173}\)

4. **Lienor’s Negligence in Extending Credit to the Defrauder**

Lack of care on the part of the lienor is at the root of the factors which may lead to a divestment of his title. This section discusses several miscellaneous forms of unreasonable conduct which may be encountered in the credit transaction by which the lienor’s security interest was created. These in most cases have not been conclusive but perhaps have often influenced the ultimate decision.

In *Atha v. Bockius*,\(^\text{174}\) it was urged that the Texas finance company was negligent for having extended credit on the strength of Louisiana non-title registration papers. The court, relying on other grounds, stated that this factor was not, in itself, persuasive. That the finance company’s representative admitted that Louisiana registrations were known to be dangerous risks, however, may have buttressed the court’s reasoning on the due-diligence issue, in that the lienor, in contemplation of that risk, should have been on its guard to pursue the swindler more diligently.

Lienors have been presumed to have knowledge of certain “sharp” practices prevalent in the trade. There is an affirmative duty to avoid being taken in by these well known frauds.\(^\text{175}\)

Character and credit investigations of prospective lienees should be more than cursory. In the North Carolina case of *Associates Discount Corp. v. McKinney*,\(^\text{176}\) the court held that the trial court did not err in charging the jury to the effect that a Michigan conditional seller had an affirmative duty to ascertain with a reasonable degree of certainty the validity of the representations made by his buyer. In that case the defrauder had falsely represented that he resided and worked in Detroit, so the lienor recorded his interest in Wayne County. The court inter-


\(^{174}\) 39 Cal. 2d 635, 248 P.2d 745 (1952); the case is discussed fully in text at notes 120–27 supra.

\(^{175}\) Sorensen v. Pagenkopf, 151 Kan. 913, 101 P.2d 928, 931 (1940), concerned the well-known swindle whereby an employee of an auto dealer purports to purchase a car from his employer, giving back a note and mortgage which are assigned to a finance company. The car is then sold off the floor to an innocent purchaser.

\(^{176}\) 230 N.C. 727, 55 S.E.2d 513 (1949).
interpreted the Michigan statute as requiring in all circumstances the recordation of vehicle liens in the county of actual residence and accordingly invalidated the lien at the outset. It is not clear whether the lienor would also have lost on negligence grounds had the lien been otherwise valid. It would seem that in such a case a court should so hold. The foreign lienor normally has at his command the investigative processes of credit bureaus and similar agencies. In view of the high risk of fraud, one, who with indifference places an automobile into the hands of another whom he has no grounds for believing will be reliable, has little to commend him when he sues to recover from one whom his diligence could have protected.  

D. Equitable Factors Against the California Used Car Dealer

The next aspect to be considered is that of the equities weighing against the dealer-purchaser in an action brought against him by the lienor. These equities are found in the circumstances surrounding the purchase by the dealer and include any negligence on his part in failing to do anything reasonably possible to prevent a loss from occurring. Specifically, these include (i) failure to search the records of the State from which the car was brought, where the origin is known (inquiry notice); (ii) purchase under suspicious circumstances; and (iii) failure to require delivery of proper muniments of title. In addition, the character of the purchaser, being an automobile dealer rather than a private person, may also be of significance.

1. Inquiry Notice

Where the defrauder has obtained an unencumbered California pink slip prior to the sale, the California purchaser has no reason to suspect the existence of foreign liens. Where, however, the purchaser is presented with an automobile bearing out-of-State license plates, he should know that liens may exist in the State from which the car was brought and be said to be on inquiry notice as to such liens. If the car is from a full-title State, this factor is of no significance inasmuch as any valid liens will appear on the pink slip. However, if the car is from a non-title or incomplete-title State and a valid lien exists which is not noted on the documents of title but is properly recorded, the purchaser is in a position to prevent a loss from occurring inasmuch as a search of the records will reveal the lien.

A few decisions by courts of other States have emphasized this factor in holding for the lienor. In Eline v. Commercial Credit Corporation, a Kentucky

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177 But see West v. Associates Discount Corp., 206 Okla. 44, 240 P.2d 1077 (1952), where the court, in holding for the lienor, did not discuss the fact that the defrauder was a veteran of "skip-state" and other automobile swindles, and his notoriety probably should have come to the attention of the lienor.

178 Where the dealer learns of the out-of-State origin of the automobile from some other source such as a verbal disclosure by the defrauder, an automobile sticker, or license plate frames, the same considerations should apply.

179 Professor Leary emphasized this factor and concluded that one who purchases what is known to be an out-of-State automobile without checking for recorded liens in the State of origin cannot be considered a bona fide purchaser. Leary, Horse and Buggy Lien Law and Migratory Automobiles, 96 U. Pa. L. Rev. 455, 471-72 (1948).

180 Not considering the possibility of duplicate pink, forgery, or theft.


182 307 Ky. 77, 209 S.W.2d 846 (1948).
decision, the defrauder conditionally purchased an automobile from a dealer in Indiana, and an Indiana pink slip was issued to him showing the lien held by P, the conditional vendor’s assignee. The car was removed to Kentucky where license plates were obtained. The license receipt showed that the car was last registered in Indiana. The automobile was sold to D, who had no actual notice of P’s lien. In an action for conversion, the Kentucky court held for P, reasoning that since the license receipt was required by law to be obtained by any purchaser, D was on notice of the Indiana origin and should have addressed inquiry to the Indiana vehicles department which would have informed him of P’s lien.

Many cases decided on the basis of the “comity” doctrine or the “consent” rule can easily be explained by the presence of the inquiry-notice factor. 183

2. Purchase under suspicious circumstances

Where the price of the automobile or the demeanor of the seller was such as would arouse the suspicion of fraud on the part of a reasonable dealer, another factor that should be taken into account by the court is present. In such a case it can be said that the dealer-purchaser should have prevented the loss by refusing to purchase. The Texas decision of Flatte v. Kossman184 is one case in which this factor appears to have influenced the court. P, a Mississippi dealer, sold to X, taking a check for the full amount of the purchase price. X received a dealer’s invoice and owner’s service policy. Two days later, X appeared in Texas where he sold the car to D for a price substantially less than he had paid P. X’s check having failed, P prevailed over D in a replevin action. Aside from the disparity in price, it would seem that D was totally justified in purchasing the car. All of the papers necessary to establish X’s title were in his hands. The Texas court, however, reasoned that the unsavory atmosphere of the transaction reflected by the quick turn-over and the unreasonable disparity in price of the two-day old car, put D under a duty to use diligence in determining the nature of the previous sale.185

3. Failure to Obtain Muniments of Title

The documents which the purchaser of an out-of-State vehicle should require have previously been set forth.186 If the purchaser does not require the delivery of proper documents and a lien does exist, it is obvious that the purchaser’s negligence in this regard is a significant cause of his loss. It seems that this factor should weigh heavily against the purchaser in a legal contest with the lienor.’ 187

185 The court treated this as a conditional sale; Mississippi law did not require recordation. See notes 148, 158 supra, as to cases involving estoppel where possession of the vehicle and title muniments had been given to defrauder in return for a bad check.
186 See Port Fin. Co. v. Ber, 45 So. 2d 404 (La. 1950) ($700–$400 disparity not persuasive, but bona fide status questioned). But see Pool v. George, 30 Tenn. App. 608, 209 S.W.2d 55 (1947) ($400 disparity); Dudley v. Lovins, 310 Ky. 491, 220 S.W.2d 978 (1949) ($1200–$800 disparity within 24 hours), where price disparity not persuasive.
In the Flatte case, the first price appeared on the papers presented by the defrauder to the purchaser. Where this fact is not present, the case for the lienor on the price-disparity issue would seem much weaker.
187 See notes 57–63 supra and accompanying text.
Although few cases have emphasized the point,\(^{189}\) it appears to have been present in many cases in which the foreign lienor prevailed, the court verbalizing its decision in terms of the “consent to removal” rule or the “comity” doctrine.\(^{190}\)

### 4. Purchaser is a Dealer

A used car dealer is in the business of trading in automobiles. That being so, he may reasonably be expected or, more precisely, required to know the law with respect to foreign liens and to take appropriate steps to avoid loss. Furthermore, some losses being unavoidable, he is in a position to distribute the loss to his customers. It would seem, therefore, that when a foreign lienor seeks to foreclose his lien as against a purchaser without actual knowledge, the court might look with less favor upon the purchaser if he is a used car dealer than if he is a private person. This distinction, however, does not appear from a reading of the cases. There are cases in which a dealer-purchaser has prevailed over the foreign lienor;\(^ {191}\) in those cases in which a private purchaser has prevailed the court gives no reason to suspect that the result would have been different if the purchaser had been a dealer.\(^ {192}\)

#### D. The Equitable Factors in Competition

It has been established that, aside from statute, the courts in the United States, under the policy of protection of titles, will grant extra-territorial enforcement of foreign liens, even as against local purchasers for value and without actual knowledge. This is always the case where the foreign lienor is truly “innocent”—i.e., where none of the factors above considered\(^ {193}\) is chargeable against him. In this event, the question of the effect of the purchaser’s conduct need not be reached.

Where the lienor’s conduct has been less than innocent, however, the question of the purchaser’s bona fides becomes important. If he is truly “innocent” in this situation, the courts will generally hold for him.\(^ {194}\) This leads to the question of what will be the result, assuming the purchaser has no actual knowledge of the lien,\(^ {194a}\) where neither of the parties is entirely innocent? This is a difficult question and no conclusive answer can be given. It is, however, at the heart of most cases, though courts rarely approach them in this manner. Since on each side the degrees of fault will vary both qualitatively and quantitatively, the task is not unlike balancing “seventeen pounds of sugar ... against half-past two in the afternoon.”\(^ {195}\) As a general notion it appears that modern courts tend to exaggerate

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\(^{189}\) One case which did is Bice v. Harold L. Arnold, Inc., 75 Cal. App. 629, 243 Pac. 468 (1925).

\(^{190}\) See, e.g., Denkins Motor Co. v. Humphreys, 310 Ky. 344, 220 S.W.2d 847 (1949); Fisher v. Bullington, 223 La. 368, 65 So. 2d 880 (1953); Memphis Bank & Trust Co. v. West, 260 S.W.2d 866 (Mo. App. 1953).


\(^{193}\) See text at notes 92–177 supra.


\(^{194a}\) Presumably the purchaser must lose in any case where he had actual knowledge prior to buying from the defrauder. See text at note 106 supra.

\(^{195}\) Prosser, Torts 199 (2d ed. 1955).
the sins of lienors and, where lienors have erred, blink those of local purchasers.\textsuperscript{196} More specifically, the following conclusions as to relative weights may be made.

"Consent to removal" is an important factor where the fact of the lien is not noted upon a certificate of title. Under the rule which the courts purport to follow, this factor is determinative in favor of the purchaser if he did not have actual knowledge of the lien.\textsuperscript{197} No cases have been discovered to test the theory, but it can be assumed that where the lienor consented to removal of the automobile to another state, a purchaser in that state who purchased without actual knowledge will prevail even though he did not take available steps to protect himself against the possibility of foreign liens.

Knowledge of removal and lack of diligence in reclaiming, where the fact of the lien is not noted on a certificate of title, is shown by the case of \textit{Atha v. Bockius} to be of particular significance in California. Lack of diligence is a matter of degree, but where the delay is substantial, it can be assumed that the local purchaser will prevail if his own conduct has not been too reprehensible. The California case of \textit{Bice v. Harold L. Arnold, Inc.},\textsuperscript{199} discussed \textit{supra}, involved a conflict between a foreign lienor who had not acted for six weeks after learning of removal of the automobile to California, and a purchaser who was a used car dealer and had not required the proper muniments of title. There the scales tipped in favor of the foreign lienor.

Delivery by the lienor to a dealer is, under the modern view which prevails in California, a particularly strong factor. It is believed that where this factor is present the purchaser will prevail despite the fact that he purchased without caution with respect to liens. In the recent California case of \textit{Mercantile Acceptance Corporation v. Liles Bros. Motor Co.},\textsuperscript{200} the defendant, \textit{D}, operated a wholesale used car lot in Tennessee. It sold to \textit{X}, a California used car dealer, several automobiles, which were caravaned to California and delivered. The pink slips for the cars together with bills of sales, invoices, and a sight draft were sent to a California bank with instructions that the documents be delivered upon payment of the draft. The draft was never paid and the California dealer sold the cars under conditional sale contracts and discounted the contracts with \textit{P}. \textit{P} brought suit to compel \textit{D} to endorse to it the pink slips. \textit{D} filed a cross-complaint seeking to quiet title to the automobiles. The trial court concluded that \textit{D} was estopped to assert its interest in the automobiles and the district court of appeal affirmed. Here the delivery-to-dealer aspect controlled, though it seems \textit{P} was particularly careless in discounting the conditional sale contracts without receiving the documents of title. The court pointed out, however, that that was in accordance with practice of the trade. With this case must be compared the Colorado case of \textit{First National Bank v. Chuck Lowen, Inc.},\textsuperscript{201} where the defrauder was a Nebraska automobile dealer. He purchased a new car from the manufacturer and executed a

\begin{itemize}
  \item \textsuperscript{197} \textit{Associates Discount Corp. v. Bogard}, 229 La. 389, 86 So. 2d 76 (1956); \textit{Metro Plan, Inc. v. Katcher-Turner, Inc.}, 296 Mich. 400, 296 N.W. 304 (1941).
  \item \textsuperscript{198} See \textit{Freuhauf Trailer Co. v. Neel}, supra, noted \textit{supra}.
  \item \textsuperscript{199} 39 Cal. 2d 635, 248 P.2d 745 (1952), discussed in detail notes 120-27 \textit{supra}.
  \item \textsuperscript{200} 75 Cal. App. 2d 468 (1942), discussed in detail notes 129-31 \textit{supra}.
  \item \textsuperscript{201} 167 A.C.A. 879, 334 P.2d 983 (1959).
  \item 128 Colo. 104, 261 P.2d 158 (1953).
\end{itemize}
chattel mortgage to \( P \), a Nebraska bank, surrendering at that time the manufacturer's certificate of origin. The defrauder then took the car to Colorado and sold it to \( D \), a Colorado dealer. \( P \) brought suit against \( D \) for conversion. \( D \) prevailed in the trial court, but the Colorado Supreme Court reversed, emphasizing the fact that \( D \) had not insisted upon the proper documents of title. The argument that \( P \) was estopped to assert title because of delivery to a dealer was not raised.\(^{202}\) The fact that \( D \) was also a dealer may have been influential against him.

The effect of negligence in dealing with one of unknown reputation is a matter of degree and is present to some extent in every case. A counterbalance is the fact that the purchaser, or the one through whom he claims, also dealt with the defrauder. Where the purchaser is a private person, it seems that in most cases he should be protected, but where he is a used car dealer making a "fast deal," it does not seem that he should be given special consideration.

CONCLUSION

This Comment has considered two basic problems, (i) how to determine whether a foreign lien exists upon a given automobile, and (ii) whether the foreign lienor prevails as against the purchaser without actual knowledge.

The problem facing the California used car dealer in determining the existence of a foreign lien arises only when an automobile offered to him for sale is known to be from a non-title or incomplete-title State. In such a case a valid lien may exist which does not appear upon the documents of title, and the purchaser is in a position to protect himself by a search of the records of the State from which the car was brought.

The problem of whether the foreign lien prevails may arise following the purchase of an out-of-State automobile under any circumstances. The California registration statute does not afford protection and the prevailing rule of law is that the lienor will prevail. However, if the lienor has acted unreasonably so as to increase the risk of loss to purchasers in other States, the courts tend to reach a different result, at least where the purchaser is a private person. The used car dealer may not be in as good a position and may fail to prevail if he has not exercised the utmost caution.

The law as it stands is complex and confusing. Many dealers avoid purchasing out-of-State automobiles because of the complications involved in such a transaction and because they sense the danger of a foreign lien. Until some uniformity is realized, such as nationwide acceptance of a uniform full-title statute or a federal automobile registration statute, the dealer can only try to understand the law and take the precautions which seem appropriate.

Richard Alexander Burt
Frederick K. Kunzel
David B. Lynch*
APPENDICES A–D

The following four appendices are designed to provide a State-by-State analysis of the registration and certificate of title statutes of the fifty States.

Appendices A through C provide an analysis of the registration statutes on the basis of the three broad types discussed in the text.

Appendix D provides a State-by-State analysis of the recordation requirements for the two most common forms of automobile security: the conditional sale contract and chattel mortgage. The analysis is limited to those States in which local recording requirements may be of significance, namely, the “non-title” and “incomplete-title” States.

Appendices A through C are patterned substantially after those found in Townsend, The Case of the Mysterious Accessory, 16 Law & Contemp. Prob. 197 (1951), and are used here with that author's consent. It was felt that statutory revision and adoption of new statutes by many States made the new charts necessary.
## APPENDIX A

### STATES WITH ONLY REGISTRATION ("NON-TITLE") STATUTES

<table>
<thead>
<tr>
<th></th>
<th>ALABAMA</th>
<th>CONNECTICUT</th>
<th>GEORGIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Transferor has to notify or return cert. to dept' by penal law</td>
<td>Yes. Id. tit. 51, § 706</td>
<td>Yes. Id. § 14–16</td>
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<tr>
<td>3. Transferor has to assign cert.</td>
<td>No provision</td>
<td>No provision</td>
<td>Yes. Id. § 68–207</td>
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<td>4. Provisions for liens</td>
<td>No provision</td>
<td>No provision</td>
<td>Yes. On application. Ibid.</td>
</tr>
<tr>
<td>5. Records and indexes</td>
<td>Mechanics not clear. Id. § 705</td>
<td>Yes. Id. § 14–3</td>
<td>Yes. Alphabetically by counties. Id. § 68–105</td>
</tr>
<tr>
<td>6. Cert. has to be carried on vehicle</td>
<td>No provision</td>
<td>Yes. Id. § 14–13</td>
<td>No provision</td>
</tr>
</tbody>
</table>

## MISSISSIPPI

<table>
<thead>
<tr>
<th></th>
<th>MISSISSIPPI</th>
<th>NEW HAMPSHIRE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Transferor has to notify or return cert. to dept’ by penal law</td>
<td>No provision</td>
<td>Yes. Id. § 260:19</td>
</tr>
<tr>
<td>3. Transfer has to assign cert.</td>
<td>Must execute “bill of sale.” Id. § 8065–67</td>
<td>No provision</td>
</tr>
<tr>
<td>4. Provisions for liens</td>
<td>No provision</td>
<td>No provision</td>
</tr>
<tr>
<td>5. Records and indexes</td>
<td>With cty clerk. Id. § 8066</td>
<td>Yes. Id. § 260:3</td>
</tr>
<tr>
<td>6. Cert. has to be carried on vehicle</td>
<td>Bill of sale on vehicle. Id. § 8067</td>
<td>No provision</td>
</tr>
<tr>
<td>KENTUCKY</td>
<td>MAINE</td>
<td>MASSACHUSETTS</td>
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</tr>
<tr>
<td><strong>No. Id. §§ 186.190(3), .990(4)</strong></td>
<td>No provision</td>
<td>Yes. Mass. Ann. Laws c. 90, §§ 2, 20 (Supp. 1958)</td>
</tr>
<tr>
<td>Yes. Id. § 186.190(3), (4)</td>
<td>No provision</td>
<td>No provision</td>
</tr>
<tr>
<td><strong>No provision</strong></td>
<td>No provision</td>
<td>No provision</td>
</tr>
<tr>
<td>Yes. Id. § 186.240(2)</td>
<td>Yes. Id. § 13</td>
<td>Yes. Id. § 2</td>
</tr>
<tr>
<td><strong>No provision</strong></td>
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<td>No provision</td>
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<tr>
<th>NEW YORK</th>
<th>RHODE ISLAND</th>
<th>VERMONT</th>
</tr>
</thead>
<tbody>
<tr>
<td>No provision</td>
<td>Yes. R.I. Gen. Laws §§ 31-4-1, -2 (1956)</td>
<td>Yes. Id. §§ 321, 322</td>
</tr>
<tr>
<td>No provision</td>
<td>No provision</td>
<td>No provision</td>
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<tr>
<td>No provision</td>
<td>No provision</td>
<td>No provision</td>
</tr>
<tr>
<td>Yes. Id. § 11(2)</td>
<td>Yes. Id. § 31-3-7</td>
<td>Yes. Id. § 102</td>
</tr>
<tr>
<td>Yes. Id. § 11(4)</td>
<td>Yes. Id. § 31-3-9</td>
<td>Yes. Id. § 307</td>
</tr>
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</table>
### Appendix B

**States With “Incomplete” Certificate of Title Statutes**

<table>
<thead>
<tr>
<th>Illinois</th>
<th>Indiana</th>
<th>Maryland</th>
<th>North Carolina</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lien instrument filed</td>
<td>No provision</td>
<td>No provision</td>
<td>No provision</td>
</tr>
<tr>
<td>Statute permits lienholder to have possession of cert.</td>
<td>Yes. Id. § 3-108</td>
<td>No provision</td>
<td>Yes. Id. § 20-57(f)</td>
</tr>
<tr>
<td>Dealer may reassign cert. without obtaining new one</td>
<td>Yes. Id. § 3-113</td>
<td>No clear provision, Cf. id. § 47-2503 (1952)</td>
<td>Yes. Id. §§ 47, 49, 50</td>
</tr>
<tr>
<td>Release of liens must be shown on cert., or cert. must be returned to Dep’t</td>
<td>Yes. Id. § 3-205</td>
<td>Yes. Id. § 47-2505</td>
<td>Yes. Id. § 20-58 (Supp. 1957); § 20-59 (1953)</td>
</tr>
<tr>
<td>Transactions recorded under name of owner and serial no. of vehicle.</td>
<td>Yes. Id. § 3-407</td>
<td>Yes. By DMV. Id. § 47-2502(a)</td>
<td>Yes. Id. § 20-56 (1953)</td>
</tr>
<tr>
<td>Duplicate cert. marked “duplicate”</td>
<td>No express prov. Cf. id. § 3-111</td>
<td>Yes. (previous cert. “void”). Id. § 47-2512</td>
<td>No express prov. Prior cert. void. Id. § 20-68(c)</td>
</tr>
<tr>
<td>Cert. issued to transferee under legal or involuntary transfer upon proof of right</td>
<td>Yes. Id. § 3-114</td>
<td>Yes. Id. § 47-2505(a)</td>
<td>Yes. Id. § 20-77 (Supp. 1957)</td>
</tr>
<tr>
<td>NORTH DAKOTA</td>
<td>OKLAHOMA</td>
<td>SOUTH DAKOTA</td>
<td>WEST VIRGINIA</td>
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<tr>
<td>Yes. Id. § 39-0509 (1943); § 39-0517 (Supp. 1957). No prov. for subsequent lien</td>
<td>Yes. Id. § 23.6</td>
<td>Yes. Ibid. No prov. for subsequent lien</td>
<td>Yes. Id. § 1721(122) (Supp. 1958) On application for transfer</td>
</tr>
<tr>
<td>No provision</td>
<td>No provision</td>
<td>No provision</td>
<td>No provision</td>
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<tr>
<td>Yes. Id. § 39-0505 (1943) § 39-0517 (Supp. 1957)</td>
<td>Yes. Ibid.</td>
<td>Yes. Id. § 44.0202(8)</td>
<td>Yes. Id. § 1721(144) (1955)</td>
</tr>
<tr>
<td>No provision</td>
<td>Yes. Ibid.</td>
<td>Yes. Id. § 44.0202(8)</td>
<td>Yes. Id. § 1721(147) No provision</td>
</tr>
<tr>
<td>Yes. By DMV. Id. §§ 39-0407, -0522 (1943)</td>
<td>Yes. Ibid.</td>
<td>“Filed and indexed” to trace title. Id. § 44.0202(9)</td>
<td>Record of cert. kept by DMV. § 1721(127) (Supp. 1958)</td>
</tr>
<tr>
<td>No express prov. Cf. id. § 39-0513 (Supp. 1957)</td>
<td>No express prov. Cf. id. § 23.5</td>
<td>No express prov. Cf. Ibid.</td>
<td>Yes. (prior cert. void). Id. § 1721(137) (1955)</td>
</tr>
<tr>
<td>Yes. Id. § 39-0519 (1943)</td>
<td>Yes. Id. § 23.6</td>
<td>Yes. Id. § 44.0203(2)</td>
<td>Yes. Id. § 1721(145)</td>
</tr>
<tr>
<td>Transfer &quot;void&quot; or ineffective without endorsement and delivery of certificate</td>
<td>ALASKA</td>
<td>ARIZONA</td>
<td>ARKANSAS</td>
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<tr>
<td>Lien constructive notice to creditors, subsequent purchasers and lienholders</td>
<td>Yes. Id. § 50–6–10(4)</td>
<td>Creditors or subsequent purchasers. Ibid.</td>
<td>Lienors and purchasers. Id. § 75–160(a)</td>
</tr>
<tr>
<td>Statute exclusive method for imparting constructive notice</td>
<td>Yes. Id. § 50–6–10(6)</td>
<td>Yes. Id. §§ 28–325(a), (f), (h)</td>
<td>Yes. Id. § 75–161</td>
</tr>
<tr>
<td>Types of liens covered—mortgages, cond. sale contracts, bailments, leases, etc.</td>
<td>Yes. Id. § 50–6–10</td>
<td>Yes. Pledge excepted. Id. §§ 28–325(a), (e), (f)</td>
<td>Yes. Pledge excepted. Id. §§ 75–160(a), –161(b)</td>
</tr>
<tr>
<td>Statute permits lienholder to have possession of cert.</td>
<td>Yes. Id. § 50–6–7(7)</td>
<td>No provision</td>
<td>Yes. Id. §§ 75–133(3), –139(e)</td>
</tr>
<tr>
<td>Dealer may re-assign cert. without obtaining new one</td>
<td>Yes. Id. §§ 50–6–9(5), (6)</td>
<td>Yes. Id. §§ 28–303(b), –1310(a)</td>
<td>Yes. Id. § 75–150(a)</td>
</tr>
<tr>
<td>Release of liens must be shown on cert. or cert. must be returned</td>
<td>Yes. Id. § 50–6–9(9)</td>
<td>Yes. Id. § 28–325(g)</td>
<td>Yes. Id. §§ 75–155, –156</td>
</tr>
<tr>
<td>Assignment of lienholder's interest noted on records and cert.</td>
<td>Yes. Id. § 50–6–9(8)</td>
<td>No provision</td>
<td>New cert. issued. Id. § 75–154</td>
</tr>
<tr>
<td>Transactions recorded or filed under name of owner and serial number of vehicle</td>
<td>No provision</td>
<td>Yes. By DMV. Id. § 28–325(c)</td>
<td>Yes. by DMV. §§ 75–138, –152(b), –160(f)</td>
</tr>
<tr>
<td>Duplicate cert. marked &quot;duplicate&quot;</td>
<td>Yes. Id. § 50–6–7(8)</td>
<td>No express provision. Cf. id. § 28–312</td>
<td>No express provision. Cf. id. § 75–145</td>
</tr>
<tr>
<td>Cert. issued to transferee under legal or involuntary transfer upon proof of right</td>
<td>Yes. Id. § 50–6–9(7)</td>
<td>Yes. Id. § 28–315</td>
<td>Yes. Id. § 75–151(b)</td>
</tr>
<tr>
<td>California</td>
<td>Colorado</td>
<td>Delaware</td>
<td>Dist. of Columbia</td>
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</tr>
<tr>
<td>Yes. Id. §§ 5600, 6300</td>
<td>Yes. Id. §§ 13-6-7-22</td>
<td>Yes. Id. § 2302(a) (Supp. 1958); § 2306(b) (1953)</td>
<td>Yes. Id. §§ 40-703(a)-707</td>
</tr>
<tr>
<td>No provision</td>
<td>Yes. (with cty. clerk.) Id. § 13-6-20</td>
<td>Yes. (with Veh. Comm'n). Id. § 2331 (1953)</td>
<td>Yes. (in office of Dir. of Vehicles). Id. § 40-703 (1951); § 40-713 (Supp. 1959)</td>
</tr>
<tr>
<td>Mtge—When filed. Id. §§ 6300, 6301. Cond. sales—when mailed or delivered. Id. § 5600</td>
<td>On filing. Id. § 13-6-29</td>
<td>When cert. issued. Id. § 2335</td>
<td>When presented to Dir. Id. § 40-702 (1951)</td>
</tr>
<tr>
<td>To “creditors” &amp; “subsequent purchasers.” Id. § 6301</td>
<td>Yes. Id. § 13-6-19 (Supp. 1957); § 13-6-27 (1953)</td>
<td>Yes. Ibid.</td>
<td>Without compliance invalid as to 3rd parties. Id. § 40-702</td>
</tr>
<tr>
<td>Yes. Id. § 6303</td>
<td>Yes. Id. § 13-6-19 (Supp. 1957)</td>
<td>Yes. Id. § 2336</td>
<td>Yes. Ibid.</td>
</tr>
<tr>
<td>Mtges and cond. sales (trust receipts excluded). Id. §§ 5600, 6300, 5907</td>
<td>Yes. (possessory liens excluded). Id. §§ 13-6-2(13), -30 (1953)</td>
<td>Yes. Id. § 2331</td>
<td>“Any lien or encumbrance (except possessory). Id. § 40-701</td>
</tr>
<tr>
<td>Yes. Id. §§ 370, 4452</td>
<td>Yes. Id. §§ 13-6-23(2), -24(1)</td>
<td>Yes. Id. § 2306(c)</td>
<td>Yes. Id. §§ 40-706-707</td>
</tr>
<tr>
<td>Yes. Id. § 5906</td>
<td>Yes. Id. §§ 13-6-10,-11</td>
<td>Yes. Id. § 2510(d)</td>
<td>No express provision</td>
</tr>
<tr>
<td>Yes. Cf. id. §§ 640, 5750, 5751</td>
<td>Yes. Id. §§ 13-6-24,-25</td>
<td>Yes. Id. § 2337</td>
<td>Yes. Id. § 40-710</td>
</tr>
<tr>
<td>Yes. Id. § 6300(a)</td>
<td>Yes. Id. § 13-6-20</td>
<td>No provision</td>
<td>Yes. Id. § 40-708 (Supp. 1959)</td>
</tr>
<tr>
<td>Yes. Id. § 1800</td>
<td>Yes. (by cty. clerk &amp; director of revenue) Id. §§ 13-6-20,-21,-27</td>
<td>Yes. (by Veh. Comm'n). Id. § 2304 (1953); § 2334 (Supp. 1958)</td>
<td>Yes. Id. § 40-713 (Supp. 1959); §§ 40-603(a),-705,-706 (1951)</td>
</tr>
<tr>
<td>No express provision— is practiced, however, on DMV’s own initiative</td>
<td>No express provision. Cf. id. §§ 13-6-13,-34</td>
<td>No express provision. Cf. id. § 2309 (1953)</td>
<td>No express provision</td>
</tr>
<tr>
<td>Yes. Id. § 5909</td>
<td>Yes. Id. § 13-6-12</td>
<td>Yes. Id. § 2510(e)</td>
<td>No provision</td>
</tr>
</tbody>
</table>
APPENDIX C (continued)

<table>
<thead>
<tr>
<th>FLORIDA</th>
<th>HAWAII</th>
<th>IDAHO</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Liens at time of transfer and separately incurred noted on certificate</td>
<td>Yes. Id. § 319.27</td>
<td>No provision</td>
</tr>
<tr>
<td>3. Lien instrument filed or recorded</td>
<td>Notice of lien filed. Id. § 319.27(3)</td>
<td>No provision</td>
</tr>
<tr>
<td>4. Time lien becomes effective</td>
<td>When noted on cert. by Comm'r. Ibid.</td>
<td>When cert. issued. Id. § 160-10(e)</td>
</tr>
<tr>
<td>5. Lien constructive notice to creditors, subsequent purchasers and lienholders</td>
<td>Yes. Id. § 319.27(2)</td>
<td>Yes. Id. § 196-6</td>
</tr>
<tr>
<td>6. Statute exclusive method for imparting constructive notice</td>
<td>Yes. Id. § 319.27(1)</td>
<td>Yes. Ibid.</td>
</tr>
<tr>
<td>7. Types of liens covered—mortgages, cond. sale contracts, bailments, leases, etc.</td>
<td>Yes. Id. § 319.27(2)</td>
<td>Stat. refers to &quot;mortgages.&quot; Ibid.</td>
</tr>
<tr>
<td>8. Statute permits lienholder to have possession of cert.</td>
<td>Yes. Id. §§319.24(2)–(8)</td>
<td>Yes. Id. § 160-7</td>
</tr>
<tr>
<td>9. Dealer may re-assign cert. without obtaining new one</td>
<td>Yes. Id. § 319.21, 23(5)</td>
<td>Yes. Id. § 160–11</td>
</tr>
<tr>
<td>10. Release of liens must be shown on cert. or cert. must be returned</td>
<td>Yes. Id. § 319.24(6)</td>
<td>No provision</td>
</tr>
<tr>
<td>11. Assignment of lienholder's interest noted on records and cert.</td>
<td>Yes. Id. § 319.27(3)</td>
<td>Yes. Id. § 160–10(g)</td>
</tr>
<tr>
<td>12. Transactions recorded or filed under name of owner and serial number of vehicle</td>
<td>Yes. By State Motor Veh. Comm'r. Id. §§ 319.17, 25</td>
<td>Yes. Id. § 160-5</td>
</tr>
<tr>
<td>13. Duplicate cert. marked &quot;duplicate&quot;</td>
<td>Yes. Id. §§ 319.29(1), (2)</td>
<td>No provision. Cf. id. § 160-13</td>
</tr>
<tr>
<td>14. Cert. issued to transferee under legal or involuntary transfer upon proof of right</td>
<td>Yes. Id. §§ 319.28(1), (2)</td>
<td>Yes. Id. § 160-10(f)</td>
</tr>
<tr>
<td>IOWA</td>
<td>KANSAS</td>
<td>LOUISIANA</td>
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<tr>
<td>Yes. Id. § 321.50</td>
<td>Yes. Id. § 8-135(c)</td>
<td>Yes. Id. § 32:710(c)</td>
</tr>
<tr>
<td>No provision</td>
<td>No provision</td>
<td>Yes. Id. § 32:710(d)</td>
</tr>
<tr>
<td>When noted on cert.</td>
<td>No provision</td>
<td>Yes. Id. § 32:710(b)</td>
</tr>
<tr>
<td>Id. § 321.50</td>
<td>No express provision</td>
<td>Yes (for 5 yrs). Id. §§ 32:710(a), (f)</td>
</tr>
<tr>
<td>Yes. Ibid.</td>
<td>No express provision</td>
<td>Yes. Id. § 9:5366 (1950)</td>
</tr>
<tr>
<td>Yes. Ibid.</td>
<td>All &quot;liens and encumbrances.&quot; Id. § 8-135(c) (1)</td>
<td>&quot;Chattel mortgages.&quot; Id. § 32:710(a) (Supp. 1957)</td>
</tr>
<tr>
<td>Yes. Id. §§ 321.24, .50</td>
<td>No express provision. Cert. delivered to applicant. Ibid.</td>
<td>Yes. Id. § 32:710(d)</td>
</tr>
<tr>
<td>Yes. Id. §§ 321.45, .48</td>
<td>Yes. Dealer to give bill of sale. Id. §§ 8-135(c) (2), (3)</td>
<td>Yes. Id. § 32:705</td>
</tr>
<tr>
<td>Yes. Id. § 321.50</td>
<td>No provision</td>
<td>Yes. Id. §§ 32:708(b), (c)</td>
</tr>
<tr>
<td>No provision</td>
<td>No provision</td>
<td>Yes. Id. § 32:711</td>
</tr>
<tr>
<td>Yes. By DMV. Id. § 321.31</td>
<td>With cty. treasurer &amp; dupl. filed by Veh. Comm'r. Id. § 8-135(c) (1)</td>
<td>With M.V. Comm'r. Id. § 32:707(g)</td>
</tr>
<tr>
<td>Yes. Id. § 321.42</td>
<td>No express provision. Cf. id. § 8-139</td>
<td>Yes. Id. § 32:713</td>
</tr>
<tr>
<td>Yes. Id. § 321.47</td>
<td>Yes. Id. §§ 8-135(c) (2), (7)</td>
<td>Yes. Id. § 32:712</td>
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## Appendix C (continued)

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<tr>
<th>Missouri</th>
<th>Montana</th>
<th>Nebraska</th>
</tr>
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<tbody>
<tr>
<td>2. Liens at time of transfer and separately incurred noted on certificate</td>
<td>Yes. Id. § 301.210(1)</td>
<td>Yes. Id. § 53-110(a)</td>
</tr>
<tr>
<td>3. Lien instrument filed or recorded</td>
<td>Yes. With cty recorder. Id. § 443.480</td>
<td>Yes (with Reg’r of M.V.). Id. § 53-101(6) (Supp. 1957)</td>
</tr>
<tr>
<td>4. Time lien becomes effective</td>
<td>When noted on cert. Ibid.</td>
<td>When noted on cert. Ibid.</td>
</tr>
<tr>
<td>5. Lien constructive notice to creditors, subsequent purchasers and lienholders</td>
<td>To “whole world.” Ibid.</td>
<td>Yes. Ibid.</td>
</tr>
<tr>
<td>6. Statute exclusive method for imparting constructive notice</td>
<td>Local filing required. Ibid. Yes. Id. § 53-110(b)</td>
<td>Yes. Ibid.</td>
</tr>
<tr>
<td>7. Types of liens covered—mortgages, cond. sale contracts, bailments, leases, etc.</td>
<td>“Any liens or encumbrances.” Id. § 201.210(1)</td>
<td>Yes. Id. §§ 53-110(a), -111</td>
</tr>
<tr>
<td>8. Statute permits lienholder to have possession of cert.</td>
<td>No provision</td>
<td>No (held by possessor). Id. § 53–107 (Supp. 1957); § 53–110(a) (1954)</td>
</tr>
<tr>
<td>9. Dealer may re-assign cert. without obtaining new one</td>
<td>Yes (must give bill of sale). Id. § 301.200</td>
<td>Yes. Id. § 60–106 (Supp. 1957)</td>
</tr>
<tr>
<td>10. Release of liens must be shown on cert. or cert. must be returned</td>
<td>Yes. Id. § 443–480</td>
<td>Yes (within 15 days). Id. § 53–110(e)</td>
</tr>
<tr>
<td>11. Assignment of lienholder’s interest noted on records and cert.</td>
<td>No provision</td>
<td>Yes. Id. § 53–109(e) No provision</td>
</tr>
<tr>
<td>12. Transactions recorded or filed under name of owner and serial number of vehicle</td>
<td>Yes (by Dir. of Revenue). Id. § 301.350</td>
<td>Yes (by Reg’r of M.V.). Id. § 53–101(2) (Supp. 1957)</td>
</tr>
<tr>
<td>13. Duplicate cert. marked “duplicate”</td>
<td>No express provision. Cf. id. § 301.300</td>
<td>No express provision. Cf. id. § 53–113 (1954)</td>
</tr>
<tr>
<td>14. Cert. issued to transferee under legal or involuntary transfer upon proof of right</td>
<td>No provision</td>
<td>Yes. Id. § 53–109(e) Yes. Id. § 69–111</td>
</tr>
<tr>
<td>Nevada</td>
<td>New Jersey</td>
<td>New Mexico</td>
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<tr>
<td>Yes. Id. § 482.245(1)</td>
<td>Yes. Id. § 39:10-11 (Supp. 1958)</td>
<td>Yes. Id. § 64-4-1 (Supp. 1957); § 64-4-8 (1953)</td>
</tr>
<tr>
<td>Yes. Id. § 482.455(1)</td>
<td>No express provision</td>
<td>Yes. Id. § 64-5-1(b) (Supp. 1957)</td>
</tr>
<tr>
<td>. On application for cert. Id. § 482.440</td>
<td>No express provision</td>
<td>On filing with DMV. Id. § 64-5-2 (1953)</td>
</tr>
<tr>
<td>Yes. Ibid.</td>
<td>No provision</td>
<td>Yes. Id. § 64-5-2(a)</td>
</tr>
<tr>
<td>Yes. Id. § 482.450</td>
<td>No. Local recording also. Id. § 39:10-11</td>
<td>Yes. Id. § 64-5-2(b)</td>
</tr>
<tr>
<td>&quot;Chattel mortgages.” Id. § 482.425</td>
<td>Yes. Id. § 39:10-2, :10-11</td>
<td>Yes. Id. § 64-5-1(a) (Supp. 1957)</td>
</tr>
<tr>
<td>Yes. Id. § 482.240(1)</td>
<td>Yes (dupl. to possessor). Id. § 39:10-11</td>
<td>Yes. Id. § 64-3-9(1) (e)</td>
</tr>
<tr>
<td>Yes. Id. § 482.405</td>
<td>No (must obtain new cert.). Id. § 39:10-9,-11</td>
<td>Yes. Id. § 64-4-4 (1953)</td>
</tr>
<tr>
<td>Yes. Id. § 482.455</td>
<td>Yes. Id. § 39:10-10</td>
<td>Yes. Id. § 64-4-10</td>
</tr>
<tr>
<td>Yes. Id. § 482.455(2)</td>
<td>No provision</td>
<td>Yes. Id. § 64-4-9</td>
</tr>
<tr>
<td>Yes. Id. § 482.235</td>
<td>Yes (by M.V. Comm’r). Id. § 39:10-12</td>
<td>Yes. Id. § 64-3-8</td>
</tr>
<tr>
<td>No express provision. Cf. id. § 482.285</td>
<td>No express provision</td>
<td>No express provision. Prior cert. “void.” Id. § 64-3-16(b)</td>
</tr>
<tr>
<td>Yes. Id. § 482.420</td>
<td>Yes. Id. § 39:10-15</td>
<td>Yes. Id. § 64-4-7</td>
</tr>
</tbody>
</table>
1. Transfer "void" or ineffective without endorsement and delivery of certificate
2. Liens at time of transfer and separately incurred noted on certificate
3. Lien instrument filed or recorded
4. Time lien becomes effective
5. Lien constructive notice to creditors, subsequent purchasers and lienholders
6. Statute exclusive method for imparting constructive notice
7. Types of liens covered—mortgages, cond. sale contracts, bailments, leases, etc.
8. Statute permits lienholder to have possession of cert.
9. Dealer may re-assign cert. without obtaining new one
10. Release of liens must be shown on cert. or cert. must be returned
11. Assignment of lienholder's interest noted on records and cert.
12. Transactions recorded or filed under name of owner and serial number of vehicle
13. Duplicate cert. marked "duplicate"
14. Cert. issued to transferee under legal or involuntary transfer upon proof of right.

OREGON

No. Penal sanction.
ORE. REV. STAT. § 481.405(1) (1957)

Yes. Ibid.

No provision

No express provision

No express provision

No express provision

Liens or encumbrances. Cf. id. § 481.405
Id. §§ 33(a), (b)

Yes. Id. § 33(b) (1953)

Yes. Id. § 33(b) (1953)

Yes. Id. § 33(b) (1953)

Yes. Id. §§ 33(b), 37(c)

Yes. Id. § 33(b)

No provision

No provision

No express provision.
Cf. id. § 40

Yes. Id. § 38 (Supp. 1958)

Yes. Id. §§ 46–139.54 to .56

ORE. REV. STAT.
§ 481.405(1) (1957)

Yes. Id. § 32(b) (Supp. 1958); §§ 33(a), 36 (1953)

Yes. Id. §§ 46–139.84

Yes. Id. § 46–139.87

On creation if applied for in 10 days; if not, on application.
Id. § 46–139.84

No express provision. Filing "perfects" lien. Ibid.

No. Must also be recorded locally. Id. §§ 46–139.83
(Supp. 1958); § 60–101 (1953)

“A security interest.”
Id. § 46–139.82
(Supp. 1958)

No. Cert. mailed to “owner” (possessor).
Id. §§ 46–139.47,–139(22)

Yes (must mail cert. to dept. on resale).
Id. § 46–139.55

Yes. Id. §§ 46–139.88, .89

Yes. Id. §§ 46–139.91, .92

Yes. Id. § 46–139.48

Pennsylvania

Yes. PA. STAT. ANN. tit. 75, § 31(a) (1953)

Yes. Id. § 32(b) (Supp. 1958)

No provision

When cert. issued.
Id. § 33(b) (1953); § 38 (Supp. 1958)

No provision

No express provision

No express provision

Liens or encumbrances. Id. §§ 33(a), (b)

Yes. Id. § 33(b)

Yes. Id. §§ 31(b), 37(c)

Yes. Id. § 33(b)

No provision

Yes. (by Sec’y of Revenue). Id. § 40

No express provision.
Cf. id. § 40

Yes. Id. § 38 (Supp. 1958)

No provision

Yes. Id. §§ 46–139.54 to .56

SO. CAROLINA

No. Penal sanction.
S.C. CODE § 46–139.31
(Supp. 1958)*

Yes. Id. § 46–139.84

Yes. Id. § 46–139.87

No express provision.

No. Must also be recorded locally. Id. §§ 46–139.83
(Supp. 1958); § 60–101 (1953)

“A security interest.”
Id. § 46–139.82
(Supp. 1958)

No. Cert. mailed to “owner” (possessor).
Id. §§ 46–139.47,–139(22)

Yes (must mail cert. to dept. on resale).
Id. § 46–139.55

Yes. Id. §§ 46–139.88, .89

Yes. Id. §§ 46–139.91, .92

Yes. Id. § 46–139.48

* Stat. not effective until 1/1/61. Ibid. Cf. id. § 46–139.1
<table>
<thead>
<tr>
<th>TENNESSEE</th>
<th>TEXAS</th>
<th>UTAH</th>
<th>VIRGINIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. Id. § 59-324</td>
<td>Yes. Id. §§ 24, 42</td>
<td>Yes. Id. §§ 41-1-37, -83</td>
<td>Yes. Id. §§ 46.1-69, -70</td>
</tr>
<tr>
<td>Comm'r may require proof of lien. Ibid.</td>
<td>No provision</td>
<td>Yes (with M.V. Div.). Id. § 41-1-81</td>
<td>No provision</td>
</tr>
<tr>
<td>On filing &amp; notation on cert. Id. § 59.327(a)</td>
<td>When noted on cert. Id. § 43</td>
<td>When received by division. (10-day rel.-back). Id. § 41-1-86</td>
<td>On application (10-day rel.-back). Id. § 46.1-72</td>
</tr>
<tr>
<td>Yes. Ibid.</td>
<td>To creditors and 3rd parties. Id. §§ 42, 46</td>
<td>Yes. Ibid.</td>
<td>Yes. Ibid.</td>
</tr>
<tr>
<td>Yes. Id. § 59-326</td>
<td>Yes. Id. § 41</td>
<td>Yes. Id. § 41-1-87</td>
<td>Yes. Ibid.</td>
</tr>
<tr>
<td>Yes. Id. § 59-327</td>
<td>Yes. Id. §§ 3, 41</td>
<td>Yes. Id. § 41-1-80</td>
<td>Yes. Id. §§ 46.1-69, -70</td>
</tr>
<tr>
<td>Yes. Id. § 59-314(d)</td>
<td>Yes. Id. §§ 31, 32</td>
<td>Yes. Id. § 41-1-39</td>
<td>Yes. Id. §§ 46.1-70, -74</td>
</tr>
<tr>
<td>Yes (must give bill of sale). Id. § 59-321</td>
<td>Yes. Id. §§ 27-29</td>
<td>Yes (must give bill of sale). Id. §§ 41-1-21, -65</td>
<td>Yes. Id. §§ 46.1-70, -117</td>
</tr>
<tr>
<td>Yes. Id. §§ 59-314(d), (f)</td>
<td>Yes. Id. § 47</td>
<td>Yes. Id. §§ 41-1-75, -76</td>
<td>Yes (within 10 days). Id. §§ 46.1-74 to -76</td>
</tr>
<tr>
<td>Yes. Id. § 59-325</td>
<td>No provision</td>
<td>Yes. Id. § 41-1-74</td>
<td>No provision</td>
</tr>
<tr>
<td>Yes. Id. § 59-311</td>
<td>Yes (by Highway Comm'r). TEX. REV. CIV. STAT. art. 6663(a), § 1 (1948)</td>
<td>Yes (by State Tax Comm'r). Id. §§ 41-1-71, 81</td>
<td>Yes (by Div. of M.V.). Id. § 46.1-54</td>
</tr>
<tr>
<td>No express provision. Cf. id. §§ 59-315,-316</td>
<td>Yes. TEX. PEN. CODE art. 1436-1, § 36 (1948)</td>
<td>Yes. Id. § 41-1-56</td>
<td>No express provision. Cf. id. § 46.1-92</td>
</tr>
<tr>
<td>Yes. Id. § 59-322</td>
<td>Yes. Id. § 35</td>
<td>Yes. Id. §§ 41-1-68, -70</td>
<td>Yes. Id. §§ 46.1-77, -93, -94</td>
</tr>
</tbody>
</table>
### APPENDIX C (continued)

<table>
<thead>
<tr>
<th>WASHINGTON</th>
<th>WYOMING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Transfer “void” or ineffective without endorsement and delivery of certificate</strong></td>
<td>No Penal sanction.</td>
</tr>
<tr>
<td><strong>2. Liens at time of transfer and separately incurred noted on certificate</strong></td>
<td>Yes. <em>Id.</em> §§ 46.12.040, .170 (1951)</td>
</tr>
<tr>
<td><strong>3. Lien instrument filed or recorded</strong></td>
<td>No provision</td>
</tr>
<tr>
<td><strong>4. Time lien becomes effective</strong></td>
<td>No express provision</td>
</tr>
<tr>
<td><strong>5. Lien constructive notice to creditors, subsequent purchasers and lienholders</strong></td>
<td>No express provision</td>
</tr>
<tr>
<td><strong>6. Statute exclusive method for imparting constructive notice</strong></td>
<td>No express provision</td>
</tr>
<tr>
<td><strong>7. Types of liens covered—mortgages, cond. sale contracts, bailments, leases, etc.</strong></td>
<td>“Mortgagee or legal owner.” <em>Id.</em> § 46.04.270</td>
</tr>
<tr>
<td><strong>8. Statute permits lienholder to have possession of cert.</strong></td>
<td>Yes. <em>Id.</em> § 46.12.170</td>
</tr>
<tr>
<td><strong>9. Dealer may re-assign cert. without obtaining new one</strong></td>
<td>Yes. <em>Id.</em> §§ 46.12.010, .120, .140</td>
</tr>
<tr>
<td><strong>10. Release of liens must be shown on cert. or cert. must be returned</strong></td>
<td>Yes. <em>Id.</em> § 46.12.170</td>
</tr>
<tr>
<td><strong>11. Assignment of lienholder’s interest noted on records and cert.</strong></td>
<td>No provision</td>
</tr>
<tr>
<td><strong>12. Transactions recorded or filed under name of owner and serial number of vehicle</strong></td>
<td>Yes (by Dir. of Licenses). <em>Id.</em> § 46.12.130</td>
</tr>
<tr>
<td><strong>13. Duplicate cert. marked “duplicate”</strong></td>
<td>Yes. <em>Id.</em> § 46.12.180</td>
</tr>
<tr>
<td><strong>14. Cert. issued to transferee under legal or involuntary transfer upon proof of right</strong></td>
<td>Yes. <em>Id.</em> § 46.12.130</td>
</tr>
</tbody>
</table>
# Appendix D

**Recording Requirements for Chattel Mortgages and Conditional Sale Contracts**

(a) "Non-Title" States

<table>
<thead>
<tr>
<th>State</th>
<th>Non-Title Requirements</th>
</tr>
</thead>
</table>
| Alabama ALA. CODE ANN. | a. No const. notice unless rec. with prob. judge in cty. of situs & cty. where vendee resides.  
|               | b. 3-mo. grace period on removal. Tit. 47, § 131 (Supp. 1955)                         |
| Connecticut CONN. GEN. STAT. | With "town clerk" in city where vendee resides. § 42-77 (1958) |
| Georgia GA. CODE | a. In both cty. of vendee's resid. & cty. of citus. § 67-108 (1933)  
|               | b. Void unless rec. within 30 days. § 67-1403 (1933)                                    |
| Kentucky KY. REV. STAT. | a. No express provision.  
|               | b. Are treated as chattel mtgs.  
|               | "Kelley v. Brack", 214 Ky. 9, 282 S.W. 190 (1926)                                      |
| Maine ME. REV. STAT. ANN. | Not valid as to 3rd parties unless rec. in city where vendee resides.  
|               | c. 119, § 9 (1954)                                                                    |
| Massachusetts MASS. ANN. LAWS | No provision as to vehicles |
| Minnesota MN. STAT. | a. Void as to subsequent purchasers of vendee unless filed as a chattel mtgs.  
|               | § 511.18 (1957)                                                                         
|               | b. If filed, void 6 yrs. after due date. § 511.18(3) (1957)                          |
| Mississippi MISS. CODE ANN. | a. Rec. with cty. clerk in cty. where property is located.  
|               | § 863 (1956)                                                                           
|               | b. 12 mo. grace period on removal. Ibid.                                                |
| New Hampshire N.H. REV. STAT. ANN. | a. With clerk of town or dist. where goods are kept.  
|               | § 361:6 (1955)                                                                         
|               | b. 30 day grace period on removal. § 361:15 (1955)                                      |

<table>
<thead>
<tr>
<th>State</th>
<th>conditions mortgaged requirements</th>
</tr>
</thead>
</table>
| Alabama ALA. CODE ANN. | a. Recorded in cty. where mtgr. resides & cty. where property is located.  
|               | b. 3-mo. grace period on removal. Tit. 47, § 110 (1940)                                      |
| Connecticut CONN. GEN. STAT. | a. With "town clerk" in city where mtgr. resides & in city where he does business.  
|               | b. Void unless filed within 15 days of making. § 49-96 (1958)                                 |
| Georgia GA. CODE | a. In cty. of mtgr's resid. & cty. where property is located. § 67-108 (1933)               |
| Kentucky KY. REV. STAT. | a. In cty. where mtgr. resides—  
|               | —with cty. clerk. § 382.67 (1959)                                                          |
| Maine ME. REV. STAT. ANN. | b. Void after 3 yrs. unless record renewed. § 382.720 (1959)                               |
| Massachusetts MASS. ANN. LAWS | Rec. in cty. where mtgr. lives & his place of business.  
|               | c. 235, § 1 (1956). Invalid as to 3rd parties unless recorded |
| Minnesota MN. STAT. | With clerk of city or municipality where mtgr. resides. § 511.04 (1957)                    |
| Mississippi MISS. CODE ANN. | a. Rec. in cty. where property is located. § 863 (1956)                                   
|               | b. 12 mo. grace period on removal, with consent of mtgee. Ibid.                            |
| New Hampshire N.H. REV. STAT. ANN. | a. With clerk of town or dist. in which mtgr. resides. § 360:3 (1955)                     
|               | b. Not valid as to 3rd parties unless recorded. § 360:19 (1955)                           |
APPENDIX D (Continued)

CONDITIONAL SALES

10. New York
   a. With city or town clerk where buyer resides. N.Y. PERS. PROP. LAW § 66
   b. Void after 1 yr. unless re-recorded. Id. § 71
   c. 10 day grace period on removal to another cty. Id. § 74.

11. Rhode Island
    R.I. GEN. LAWS
    No provision

12. Vermont
    VT. STAT. ANN.
    a. Not valid unless rec. within 30 days of sale in office of town clerk where vendee resides.
       Tit. 9, § 1691 (1959)
    b. May not be removed from State without vendor's consent.
       Tit. 9, § 1697 (1959)

(b) "Incomplete" Certificate of Title States

1. Illinois
   IL. REV. STAT.
   No provision

2. Indiana
   IND. ANN. STAT.
   a. No provision for recordation
   b. Property cannot be removed from cty. where goods are first used for more than 30 days without consent of vendor.
      § 58-812 (1951)

3. Maryland
   Md. ANN. CODE art. 21
   a. Void unless rec. in clerk's office of cty. where vendee resides. § 66 (1957)
   b. Lapses in 3 yrs. unless re-recorded. § 67 (1957)

4. North Carolina
   N.C. GEN. STAT.
   Rec. in cty. where vendee resides. §§ 47-20, -20.2 (Supp. 1957)

5. North Dakota
   N.D. REV. CODE
   Void unless rec. as chattel mtg. § 51-0710 (1943)

CHATTLE MORTGAGES

10. New York
    a. "Absolutely void" unless rec. in each city or town where mtgr. resides. N.Y. LIEN LAW §§ 230-32
    b. Record invalid after 1 yr. unless renewed. Id. § 235

11. Rhode Island
    R.I. GEN. LAWS
    Rec. in town or city where mtgr. resides or not valid as to 3rd parties. § 34-24-1 (1956)

12. Vermont
    VT. STAT. ANN.
    a. Not valid as to 3rd persons unless rec. with cty. clerk in cty. where mtgr. resides. Tit. 9, § 1754 (1959)
    b. May not be removed from State without mtgee's consent. Tit. 9, § 1762 (1959)

CHATTEL MORTGAGES

Not valid unless rec. in cty. where mtgr. resides or in cty. where property is situated. c. 95, §§ 1, 4 (1957) (20-day period in which to record)

a. Not valid as to 3rd parties unless recorded in cty. where mtgr. resides. § 51-504 (Supp. 1957) ; § 51-509 (1951)

b. Removal from cty. does not affect validity of mtg.—no recordation necessary on removal. § 51-518 (1951)

a. Must be recorded with cty. clerk or cty. where property located. § 58 (1957)

b. Invalid after 5 yrs. unless renewed. § 59 (1957)

c. Validity not affected by removal from cty. § 62 (1957)

Invalid unless recorded in cty. where mtgr. resides. §§ 47-20, -20.2 (Supp. 1957)

a. Void unless filed with cty. recorder of cty. where property is situated. § 35-0406 (Supp. 1957)

b. Lapses in 3 yrs. unless renewed. § 35-0410 (Supp. 1957)
### Conditional Sales

<table>
<thead>
<tr>
<th>State</th>
<th>Law Code</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oklahoma</td>
<td><strong>OKLA. STAT. ANN.</strong></td>
<td>Void unless rec. in cty. where property situated. Subject to chattel mtg. law. Tit. 60, § 319 (1941)</td>
</tr>
</tbody>
</table>
| South Dakota   | **S.D. CODE**                   | a. Void unless rec. in cty. where goods first used. §§ 54.0205, .0206 (1939)  
|                |                                 | b. Lapses in 6 yrs. unless refiled. § 54.0211 (1939)  
|                |                                 | c. On removal, 10-day grace period in which to refile. § 54.0214 (1939)  
|                |                                 | d. No removal from cty. or State without consent of vendor. If removed without consent, seller can reposess from vendee or his purchaser. § 54.0213 (1939) |
| West Virginia  | **W. VA. CODE ANN.**            | a. In cty. where goods first used. § 4012 (1955)  
|                |                                 | b. No removal without notice. § 4019 (1955)  
|                |                                 | c. 10-day grace period on removal. § 4020 (1955)  
|                |                                 | d. Lapses in 5 yrs. unless renewed. § 4017 (1955) |
| Wisconsin      | **WIS. STAT. ANN.**             | a. Void as to 3rd parties unless rec. in cty. where first used or kept. §§ 122.05, .06 (1957)  
|                |                                 | b. No removal without notice. 10 days in which to re-record on receiving notice  
|                |                                 | c. Lapses in 3 yrs. unless renewed. § 122.11 (1957) |

### Chattel Mortgages

<table>
<thead>
<tr>
<th>State</th>
<th>Law Code</th>
<th>Details</th>
</tr>
</thead>
</table>
|                 |                                 | a. Void unless filed with cty. clerk of cty. where property situated. Tit. 46, § 57 (1951)  
|                 |                                 | b. 120-day grace period on removal to another cty. Tit. 46, § 58 (1951)  
|                 |                                 | c. Lapses in 3 yrs. unless renewed. Tit. 46, § 61 (Supp. 1958) |
|                 |                                 | a. Must be rec. in cty. where prop. located. § 3993 (1953)  
|                 |                                 | b. Void with respect to 3rd parties in all cty. in which not recorded. § 3994 (1955)  
|                 |                                 | c. No removal without notice. After notice & removal, intgee. has 10 days in which to re-record. § 3995 (1955) |
|                 |                                 | a. Void as to 3rd parties unless filed with register of deeds in cty. where prop. situated. §§ 241.08, .10 (1957)  
|                 |                                 | b. Void after 3 yrs. unless renewed. § 241.11 (1957) |