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tiff's testimony in the *Winkler* case would probably have been held to constitute a judicial admission by all courts, since, as pointed out by the court of appeals,[33] the testimony of the plaintiff was not contradictory. On direct examination the plaintiff testified that she did not know of the "particular defect" which caused the sidewalk to tilt, while on cross-examination she testified that she knew that the sidewalk was in a general state of disrepair. The fact that the plaintiff testified to a subjective matter—her knowledge that the sidewalk was defective—further persuades that she should be held conclusively bound by her admission, even if it were contradicted. Therefore, despite the strong language of the *Winkler* opinion, it is not yet clear in Ohio how far the courts will go in holding that the self-injuring testimony of a party operates as a judicial admission.[34]

The determination of whether a party's adverse testimony should conclusively bind him presents difficult problems for a court. It would be unfair to penalize the party who has testified honestly but mistakenly, especially since there is the additional danger that a party may become confused and misstate his position under the pressure of a harassing cross-examination. On the other hand, there is the natural desire of courts to bar duplicitous or unfounded claims. The character of the testimony and all the attendant circumstances of the case must be weighed, and where "the circumstances are consistent with honesty and good faith,"[35] the court should not rule that a party is conclusively bound by his adverse testimony.

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Ramifications of the Ohio Motor Vehicle Certificate of Title Act

THE motor vehicle Certificate of Title Act[1] has had a significant impact on many fields of Ohio law.

[33] Winkler v. Columbus, 48 Ohio L. Abs. 161 (Ohio App. 1947).

[34] Two other Ohio Supreme Court decisions are not authority for the proposition that a party's adverse testimony always operates as a judicial admission. In *Kahn's Sons Co. v. Ellswick,* 122 Ohio St. 576, 172 N.E. 668 (1930), the party's adverse testimony was uncontradicted. In *N.Y Cent. Ry. v. Stevens,* 126 Ohio St. 395, 185 N.E. 542 (1933), the only evidence contradicting the party's adverse testimony was his own inconsistent testimony. When this discrepancy was indicated to the party, he expressly adopted the self-injurious statement. Under these circumstances, it is generally held that he is bound by his adverse testimony. For a statement of the rule, see Sullivan v. Boston Elevated Ry., 224 Mass. 405, 112 N.E. 1025 (1916).

[35] Hill v. West End St. Ry., 158 Mass. 458, 459, 33 N.E. 582 (1893).

Some form of certificate of title or registration of vehicles law has been enacted in most states.[2] One form, the registration type, has little effect on the title or encumbrance of a motor vehicle, and is used primarily to aid states in the collection of taxes and the enforcement of highway regulations.[3] Other types of certificate of title acts "allow" liens and encumbrances to be recorded thereupon, without indicating whether such recording amounts to constructive notice.[4] Some of these statutes are so construed as to give added importance to the certificate as evidence of title and ownership.[5]

The strictest type of motor vehicle certificate act (sometimes compared to the Torrens Land Registration Act[6]) utilizes the certificate of title as a recording device for all encumbrances upon the motor vehicle, with the record appearing on a single instrument. Under such a statute, the certificate of title is regarded as either prima facie or conclusive evidence of ownership depending upon the relationship of the parties and the court's interpretation of the statute.[7]

Ohio's Certificate of Title Act is an example of the most stringent type.[8] This stringency has caused a certain amount of harshness in results which in many instances has confused our lower courts.

If the basic policy underlying the strict statutes is kept in mind, a better evaluation of the Ohio cases can be made. These statutes were enacted to curtail the theft of motor vehicles and to protect subsequent, innocent third parties in their dealings with motor vehicles, which, because of their mobility and frequent change of ownership, present unique problems in the laws of personalty.[9]

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[1] OHIO REV. CODE §§ 4505.01 — 4505.99 (OHIO GEN. CODE §§ 6290-2 — 6296)

[2] See Note, WASH. U. L.Q. 539 (1951)

[3] For a listing of states having such a statute see Note, WASH. U. L.Q. 539, 552 (1951); *cf.* Gonchar v. Kelson, 114 Conn. 262, 158 Atl. 545 (1932); Bolton-Swanby Co. v. Owens, 201 Minn. 162, 275 N.W 855 (1937)

[4] See Note WASH. U. L.Q. 539, 548 (1951)

[5] Cent. Finance Co. v. Garbler, 95 N.E.2d 635 (Ind. App. 1950); Gen. Motors Acceptance Corp. v. Davis, 169 Kan. 220, 218 P.2d 181 (1950)

[6] See Note, 48 YALE L.J. 1238 (1939)

[7] See Note, WASH. U. L.Q. 539, 541 (1951)

[8] See especially, OHIO REV. CODE § 4505.04 (OHIO GEN. CODE § 6290-4)

[9] "The advent of motor vehicles early in the century created new problems and necessitated the enactment of laws not theretofore required. Aside from statutes regulating speed and other features of operation the first act of the General Assembly relating specifically to motor vehicles was passed April 2, 1906 (98 Ohio Laws 320). That act required registration of motor vehicles with the Secretary of State but the obvious purpose of the act was to collect a registration fee and not to control the method of transferring title. Many amendatory acts were passed during the succeeding years which dealt with the same subject of registration but did not deal with the method of transfer.

"On April 20, 1921 the General Assembly passed an act entitled 'To Prevent Traffic in Stolen Cars, Require Registration and Bill of Sale to be given in the event

PROCEDURE

The mechanics of the Ohio system are basically quite simple. Every motor vehicle sold or purchased in Ohio must be represented by a certificate of title.[10] This certificate is issued in triplicate by the clerk of courts of each county when a sale or other transfer is made. One copy is retained by the clerk, another is sent to the Registrar of Motor Vehicles in Columbus, and the third is given to the transferee or to the holder of the first lien. Liens and encumbrances take priority according to the order of time in which they are noted on the certificate.[11] The importance of the certificate can be readily ascertained from the language of Ohio General Code Section 6290-4,[12] which has been the cause of much litigation:

> No person acquiring a motor vehicle from the owner thereof, whether such owner be a manufacturer, importer, dealer or otherwise, hereafter shall acquire any right, title, claim, or interest in or to said motor vehicle until he shall have had issued to him a certificate of title to said motor vehicle, or delivered to him a manufacturer's or importer's certificate for said motor vehicle for a valuable consideration. No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to any motor vehicle, hereafter sold or disposed of, or mortgaged or encumbered unless evidenced by a certificate of title or manufacturer's or importer s certificate duly issued in accordance with the provisions of this chapter.[13]

Notwithstanding the broad language of this section, which if literally construed would change many established rules of law, some Ohio courts have sought to limit its application in certain areas. There has developed a certain hostility to the Act on the part of some courts which would indicate that perhaps legislative changes are necessary in order to effectuate the policy of the Act.

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of sale or change in Ownership of Motor Vehicles.' (109 Ohio Laws 330) Further amendatory acts were passed in 1923, 1925, 1931, but until the act of April 28, 1937, title to a motor vehicle was evidenced only by a bill of sale. There was no provision for certificates of title.

"Because of their mobility and frequent change of ownership it was obviously necessary to create an instrument evidencing title which would more adequately protect innocent purchasers of motor vehicles. On April 28, 1937 (117 Ohio Laws 373) the General Assembly passed an act entitled: 'To Prevent the Importation of Stolen Motor Vehicles and Thefts and Frauds in the Transfer of Title to Motor Vehicles.' " Kelley Kar Co. v. Finkler, 155 Ohio St. 541, 544, 99 N.E.2d 665, 667 (1951).

[10] OHIO REV. CODE § 4505.03 (OHIO GEN. CODE § 6290-2)

[11] OHIO REV. CODE §§ 4505.08, 4505.13 (OHIO GEN. CODE §§ 6290-6, 6290-9)

[12] OHIO REV. CODE § 4505.04 amended in 1953. The statute now allows as a substitute for proof of an interest: " admission in the pleadings or stipulation of the parties."

[13] In State *ex rel.* City Loan & Savings Co. v. Taggart, 134 Ohio St. 374, 17 N.E.2d 758 (1938), the Certificate of Title Act was held constitutional.

CONFLICTS OF LAW

Interstate automobile transactions lead to many complex problems. For example, *P,* a New York resident, sells an automobile to a buyer in New York and receives a note and a conditional sales contract, or chattel mortgage which he records according to the law of New York. The buyer, without the consent of *P,* takes the automobile to Ohio in violation of his contract and by perjury obtains a certificate of title showing no liens or other encumbrances. He then sells the vehicle in Ohio to *D,* who pays value and has no knowledge of the preceding events. *P* then sues *D* in replevin.

Prior to the present certificate Act, Ohio, on the basis of comity, followed the majority rule favoring a foreign conditional sales vendor or chattel mortgagee over the local innocent purchaser for value when the initial transaction and recording took place in the foreign jurisdiction.[14]

After the passage of the Certificate of Title Act, the courts of appeals in Ohio were split as to the effect of the Act on the majority rule. One court, following the majority rule, held for the out-of-state plaintiff in the above fact situation, on the ground that the purpose of the Act was to protect owners of automobiles against fraud. The certificate of title procured by false representations was held to be void ab initio, and therefore the title of the subsequent holder for value was no greater than that of his transferor.[15]

However, the view of most of the Ohio appellate courts was to the effect that Ohio General Code Section 6290-4 was applicable to an out-of-state owner even though he had complied fully with his respective state laws, because to favor such an out-of-state plaintiff would contravene the clear policy enunicated in the Ohio Certificate of Title Act.[16]

In *Kelley Kar Co. v Finkler,*[17] the Ohio Supreme Court resolved this split by holding that an out-of-state conditional vendor cannot succeed in replevin as against a subsequent, innocent, Ohio purchaser for value who has a certificate of title without any notation of the foreign vendor's lien, even though the initial Ohio certificate was obtained by fraud.[18] The court,

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[14] Kanaga v. Taylor, 7 Ohio St. 134 (1858); Reising v. Universal Credit Co., 50 Ohio App. 289, 198 N.E. 52 (1935)

[15] Associates Discount Corp v. Colonial Finance Co. 88 Ohio App. 205, 98 N.E.2d 848 (1950); see also Moch v. Kaffits, 75 Ohio App. 305, 62 N.E.2d 172 (1944).

[16] White Allen Chevrolet Co. v. Licher, 51 Ohio L. Abs. 394, 81 N.E.2d 232 (App. 1948); Schiefer v. Schnaufer, 71 Ohio App. 431, 50 N.E.2d 365 (1943); Union Commercial Corp. v. Schmunk Co., 30 Ohio L. Abs. 116 (App. 1939)

[17] 155 Ohio St. 541, 99 N.E.2d 665 (1951); *accord,* Royal Industrial Bank of Louisville v. Klein, 92 Ohio App. 309, 110 N.E.2d 40 (1952)

[18] The court reasoned that to maintain replevin the out-of-state conditional vendor must rely on his own title or right to possession and not on the fraud in the chain of title of the defendant, and that the statute precludes the enforcement of his interest where it is not evidenced on the certificate of title.

on the basis that Section 6290-4 declared the public policy of this state, rejected the contention that comity should be given.[19]

A recent court of appeals case[20] confined the *Kelley Kar* case to instances where the contract of sale to the defendant was made in Ohio. Thus, where the Ohio defendant purchased an automobile in Michigan and subsequently obtained an Ohio certificate of title without actual knowledge of the plaintiff's chattel mortgage which was properly recorded under the laws of Michigan, the plaintiff prevailed in an action for conversion[21] not withstanding the fact that this entailed the enforcement of an interest not evidenced on the Ohio certificate of title and hence in contravention of Ohio General Code Section 6290-4. The court reasoned that since the contract of sale to the defendant was made in Michigan, its law governed the rights of the parties, thereby invoking the comity rule previously held inapplicable in *Kelley Kar Co. v. Finkler.* It is submitted that this reasoning cannot withstand analysis. As interpreted by the supreme court, the statute effects the right to sue,[22] is operative when an interest is being enforced against an Ohio certificate of title, and is not dependent upon where the contract of the parties was entered into. Furthermore the plaintiff must rely on the enforcibility of his own interest, not on the weakness of the defendant's title. Thus, the place of the defendant's purchase cannot be determinative of the result when it is plaintiff's title or interest which is being enforced, and, since the prior cases[23] have held the lex loci contractus not controlling, compliance with the Act is a condition precedent to the recognition of a right, title or interest.

The lex loci contractus rationale was also invoked in a recent bankruptcy

[19] "By the law of comity between different states the *lex loci contractus* controls as to the validity and construction of personal contracts though not as to the remedy or rule of evidence, nor where it clashes with the rights of our own citizens, or the policy of our own laws." Kelley Kar Co. v. Finkler, 155 Ohio St. 541, 549, 99 N.E.2d 665, 669 (1951).

[20] Associates Discount Corp. v. Main Street Motors, Inc., 65 Ohio L. Abs. 216, 113 N.E.2d 734 (App. 1952).

[21] Under Michigan law the chattel mortgage need not be noted on the certificate of title but its recording in the recorder's office is constructive notice to subsequent purchasers. Defendant being a dealer failed in his attempt to invoke the floor-plan doctrine in seeking to estop the plaintiff. Thus it was held that the plaintiff prevailed because the defendant had constructive notice of its lien.

[22] Kelley Kar Co. v. Finkler, 155 Ohio St. 541, 99 N.E.2d 665 (1951); Mielke v. Leeberson, 150 Ohio St. 528, 83 N.E.2d 209 (1948).

[23] Kelley Kar Co. v. Finkler, 155 Ohio St. 541, 99 N.E.2d 665 (1951); Royal Industrial Bank of Louisville v. Klein, 92 Ohio App. 309, 110 N.E.2d 40 (1952); White Allen Chevrolet Co. v. Licher, 51 Ohio L. Abs. 394, 81 N.E.2d 232 (App. 1948); Schiefer v. Schnaufer, 71 Ohio App. 431, 50 N.E.2d 365 (1943); Union Commercial Credit Corp. v. Schmunk Co., 30 Ohio L. Abs. 116 (App. 1939); *contra,* Associates Discount Corp. v. Colonial Finance Co., 88 Ohio App. 205, 98 N.E.2d 848 (1950); Moch v. Kaffits, 75 Ohio App. 305, 62 N.E.2d 172 (1944).

proceeding.[24] The bankrupt had not procured an Ohio certificate of title on an automobile purchased outside the state. A mortgagee sought to enforce his out-of-state recorded lien. Because the statutes are permissive rather than mandatory as to the acquisition of an Ohio certificate of title on such an automobile,[25] the court held that the mortgagee was not precluded from enforcing its lien by Ohio General Code Section 6290-4. The court's analysis is correct, it is submitted, only because no interest was being enforced against an Ohio certificate of title. The statute actually had no application to the case.

Although a literal application of the statute would protect the local purchaser with a clear certificate of title procured from a thief, one court of appeals has held that the out-of-state owner will prevail.[26] This court held that the provisions of the Act did not prevent the application of the general rule that stolen property may be recovered from an innocent purchaser so long as it is identified. This seems to be a just and correct decision when it is recalled that one of the purposes of the Act is to stop the theft of automobiles.

Although in this conflicts of law area the results seem justified under a literal construction of the statute, it is submitted that by allowing a mortgagor or conditional vendee to pass good title to subsequent bona fide Ohio purchasers by perjury when procuring the Ohio title, Ohio may well become the dumping ground for encumbered motor vehicles to the detriment of out-of-state finance companies.

INTRASTATE TRANSACTIONS

I. *Passage of Title*

The provisions of the Ohio Certificate of Title Act prevent the passage of title except upon a transfer of the title certificate.[27] Thus, the contrary intentions of the parties and the presumptions of intention found in the Uniform Sales Act[28] are modified to some extent.

If the certificate of title is improperly issued by the clerk of the wrong county due to a mistake in the address of the purchaser, this fact is no defense to the enforcement of a lien noted on the improperly issued certificate, in the buyer's bankruptcy proceedings, since the buyer had sufficient title to validate the lien.[29]

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[24] *In re* Swesey, 112 F. Supp. 773 (N.D. Ohio 1953)

[25] OHIO REV. CODE § 4505.06 (OHIO GEN. CODE § 6290-5)

[26] Moch v. Kaffits, 75 Ohio App. 305, 62 N.E.2d 172 (1944)

[27] OHIO REV. CODE § 4505.04 (OHIO GEN. CODE § 6290-4) "No person acquiring a motor vehicle shall acquire any title until such person has had issued to him a certificate of title."

[28] OHIO REV. CODE § 1315.20 (OHIO GEN. CODE § 8399)

Where the description of the automobile in the certificate of title was definite enough to enable the automobile to be identified by inquiries, there was sufficient compliance with the law to pass title as against an out-of-state lien holder.[30]

It has been held, however, that where both the engine and the serial number on the certificate of title differ from those on the car purchased, the buyer may maintain an action for breach of implied warranty on the part of the seller that he had the right to sell the car.[31]

Risk of loss may be passed to a purchaser without the certificate of title if the purchaser has done all he can under the statute to obtain the certificate.[32] Thus, where there had been a sale with delivery of possession of the car in return for an installment note and chattel mortagage, the delivery of the signed application for transfer of title to the insured vendor within the statutory period[33] passed actual ownership with possession and control to the purchaser. Therefore, the insured vendor could not collect for damages sustained to the vehicle the day following the above transaction. The court did not decide whether the bare legal title had passed, but said that since the purchaser was entitled to the certificate upon completion of the statutory procedure, he was to be considered an "owner" so as to disallow the vendor's claim of an insurable interest.

In another risk of loss case[34] the supreme court held that the insured vendor was still the "owner" within the terms of the policy where possession of the vehicle was transferred but there was no assignment or delivery of the certificate of title to the purchaser and no application for transfer of title. The court, commenting on the prior case, said,

> Where endorsement and delivery of a certificate of title for an auto are made, title passes even though there is a failure on the part of the recipient to secure the issuance of a new certificate in his name. It follows that where an owner fails to comply with the certificate of title act by not assigning and delivering his certificate of title to the purchaser title does not pass.[35]

However, an application for an original certificate of title has been held

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[30] *In re* Mitchell, 104 F. Supp. 969 (N.D. Ohio 1952), *aff'd.* 67 Ohio L. Abs. 105, 202 F.2d 426 (6th cir. 1953) *contra:* 1940 OPS. ATT'Y GEN. [Ohio] No. 1867

[31] Royal Industrial Bank of Louisville v. Klein, 92 Ohio App. 309, 110 N.E.2d 40 (1952) (Year and model number omitted and serial number contained a letter wholly foreign to the make of the automobile).

[32] Martin v. Coffman, 87 Ohio App. 398, 95 N.E.2d 286 (1949).

[33] Workman & Sayles v. The Republic Mutual Ins. Co., 144 Ohio St. 37, 56 N.E.2d 190 (1944).

[34] OHIO REV. CODE § 4505.06 (OHIO GEN. CODE § 6290-5) (three days).

[35] Garlick v. McFarland, 159 Ohio St. 539, 113 N.E.2d 92 (1953); *accord,* Standard Materials, Inc. v. Mass. Fire Ins. Co., 58 Ohio L. Abs. 393, 94 N.E.2d 809 (Franklin Com. Pleas 1948).

[35] Garlick v. McFarland, 159 Ohio St. 539, 549, 113 N.E.2d 92, 97 (1953).

insufficient to protect a bona fide purchaser as against a mortgagee of the vendor holding the manufacturer's certificate of title.[36] And evidence of application for transfer of the certificate of title made by a third party is not admissible to prove lack of ownership in the defendant when sued as owner of a vehicle which injured the plaintiff.[37]

II. *Rights of the Certificate of Title Holder*

A literal construction of the statute would preclude the enforcement of all interests legal or equitable unless evidenced by the certificate.[38] Such a far-reaching result, even if it were the legislature's intention, is certainly not reflected in the court decisions.

Thus, a holder of the certificate is not protected from the enforcement of an unnoted lien when there is a theft[39] or forgery[40] in his chain of title or interest or when he himself is the defrauder or one closely associated with him.[41] The possessor of the certificate is not protected when he has failed to give valuable consideration for the purchase.[42]

A vendor who sold the vehicle but failed to assign or deliver the certificate of title could not rely on the certificate in a replevin action against a bona fide purchaser from the vendee.[43] Mere possession of the certificate is of no legal significance without proper assignment and transfers no right, title or interest.[44]

As between the original parties to a transaction, it can be fairly stated that the courts will recognize certain equitable rights even where there is no certificate of title.[45] For example, in *Martin v. Ridge Motor Sales*,[46] *P* wanted to exchange his car for one owned by *D*. *P* delivered his automobile and assigned his certificate of title to *D*. *D* told *P* that if the car he was giving *P* was not satisfactory it could be returned. *P* returned the vehicle and demanded the return of his own vehicle, but *D* refused. Thereafter

[36] Crawford Finance Co. v. Derby, 63 Ohio App. 50, 25 N.E.2d 306 (1939)

[37] Fredericks v. Birkett L. Williams Co., 68 Ohio App. 217, 40 N.E.2d 162 (1940)

[38] OHIO REV. CODE § 4505.04 (OHIO GEN. CODE § 6290-4) " nor shall any waiver or estoppel operate. No court in any case at law or in equity [shall recognize an interest unless evidenced by a certificate of title.]"

[39] Moch v. Kaffits, 75 Ohio App. 305, 62 N.E.2d 172 (1944)

[40] Erie County United Bank v. Bogart, 75 Ohio App. 250, 61 N.E.2d 811 (1945); Erie County United Bank v. Fowl, 71 Ohio App. 220, 49 N.E.2d 71 (1942) Lazerick v. Associate Inv. Co., 30 Ohio L. Abs. 112 (1939)

[41] Automobile Finance Co. v. Munday, 137 Ohio St. 504, 30 N.E.2d 1002 (1940).

[42] OHIO REV. CODE § 4505.04 (OHIO GEN. CODE § 6290-4); Automobile Finance Co. v. Munday, 137 Ohio St. 504, 30 N.E.2d 1002 (1940)

[43] Yarwood v. De Lage, 56 Ohio L. Abs. 205, 91 N.E.2d 272 (1949).

[44] Pierce v. Aid Invest. & Discount Co., 88 Ohio App. 193, 98 N.E.2d 316 (1950).

[45] Kattwinkel v. Kattwinkel, 80 Ohio App. 397, 74 N.E.2d 418 (1947) (Dictum).

[46] 78 Ohio App. 116, 69 N.E.2d 93 (1946).

replevin was brought by *P*, who did not have a certificate of title, having given it to the defendant. The court held that *P* had the title and right to immediate possession as against *D*

The problem of the effect of Section 6290-4 on the common-law artisan's lien was recently before a lower court.[47] Replevin was brought by the owner of the vehicle, and the defendant asserted his artisan's lien and introduced the plaintiff's certificate of title, having induced the plaintiff to part with it. The lien was not recorded on the back of the certificate because the clerk of courts believed himself to be without power under the statute so to record it. The court, holding for defendant, reasoned that the defendant's mere possession of the certificate without assignment was not determinative of the issue, but that the statute did not apply to artisan's liens because they are not encumbrances within the meaning of the statute. Although the rationale is questionable, this result is not surprising in view of the recognition in other cases of interests apparently prohibited by a literal construction of the statute. The court argued that if the statute was intended to abrogate the common law lien, clearer language would be necessary. The problem is one of administration rather than interpretation. The difficulties involved in a mechanic's obtaining possession of the certificate of title in order to have his lien noted thereon, even assuming the clerk of courts has the statutory power to record it, point to the weakness of the statute and justify the result in the instant case.[48]

In many instances, however, the statute has been construed literally so as to make the certificate of title conclusive evidence of ownership.[49] Thus equitable interests are cut off by assignment of the certificate of title to innocent third parties.[50]

Where a son brought replevin against his father's creditor who had seized the automobile on execution, the introduction of the certificate of title into evidence by the son constituted a "prima facie" case even though the certificate of title had been assigned to the son only three days prior to the issuance of execution.[51]

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[47] Justice v. Bussard, 114 N.E.2d 305 (Dayton Mun. Ct. 1953).

[48] The court analogized to an undecided contract question and doubted whether the statute would change the common law result.

"If a drive-it-yourself company rented a motor vehicle for thirty days, the transaction would not constitute either a sale or disposal of the car. Under these circumstances and in the absence of default, could the company successfully replevin before the expiration of the contract period?"

[49] See Mielke v. Leeberson, 150 Ohio St. 528, 83 N.E.2d 209 (1948).

[50] In *Kattwinkel v. Kattwinkel*, 80 Ohio App. 397, 74 N.E.2d 418 (1947), Plantiff assigned his interest to his wife for the period of his army service. The wife assigned it to her sister while a divorce decree was pending. Held: for defendant.

[51] Diebel v. Weller, 41 N.E.2d 904 (Ohio App. 1940) (no question of fraud was raised).

One case construed the statute literally even as between the parties.[52] The plaintiff's agent sold a new automobile to the defendant in return for cash and a trade-in. Later the plaintiff, being dissatisfied with the trade-in, brought replevin, relying on the certificate of title which he had not as yet assigned to the defendant. The court ignored the apparent authority of the agent to accept trade-ins and held for the plaintiff, basing its decision on Section 6290-4.

In a purchase money resulting trust the certificate of title would be in a legal stranger to the person who paid the consideration; and the holder of the certificate would be bound ordinarily to turn over the certificate to the person rightfully entitled to it. But under Ohio's strict certificate of title law can the true equitable owner prevail as against the legal stranger who has possession of the certificate of title and the vehicle? An appellate court held[53] that the equitable owner could prevail since the Ohio General Assembly did not intend to remove motor vehicles from the law of trusts.

Recently, however, the supreme court reached a contrary result and held[54] that by reason of the provisions of Section 6290-4 a resulting trust with respect to a motor vehicle can not be created in Ohio. Although expressing dissatisfaction with the statute[55] the court felt that no other holding was possible under a literal construction.[56] The practical result, which is to require all motor vehicles to be registered in the names of the real owners, works no real hardship upon anyone. The effect of the decision, however, points up the fact that the statute because of its far-reaching language changes many established rules of law beyond the apparent purpose of the legislature.

In another case,[57] an automobile purchaser sued to recover the purchase price on the ground of his minority. He introduced the certificate of title in evidence. An objection was sustained by the trial court to the admission of evidence of the defendant that, although the certificate was made out to the minor, the minor's father in fact purchased the vehicle with his money.

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[52] Kelley Motors v. Adams, 91 Ohio App. 68, 107 N.E.2d 363 (1951)

[53] Douglas v. Hubbard, 91 Ohio App. 200, 107 N.E.2d 884 (1951) App. dis'm 157 Ohio St. 94, 104 N.E.2d 182 (1952)

[54] *In re* Estate of Case, 161 Ohio St. 288, 118 N.E.2d 836 (1954)

[55] "The drastic character of this statute and its far-reaching effect become more apparent with the passing of time. This court shares the reluctance of trial and appellate courts to adopt all the changes in long settled law, which the literal construction of this statute requires." 161 Ohio St. at 291-292, 118 N.E.2d at 838.

[56] "In view of this statute, how can a court entertain evidence to contradict the certificate of title? How can a court find that the *equitable* title is in someone other than the holder of the certificate of title? All courts are forbidden, either in law or equity, to *recognize* any right, claim or interest as well as any title, unless evidenced by certificate of title." 161 Ohio St. at 292, 118 N.E.2d at 839.

[57] Davis v. Clelland, 59 Ohio L. Abs. 17, 92 N.E.2d 827 (App. 1950)

In affirming the lower court, the court of appeals said that the source of the purchase money was not material to the defendant's rights and that to permit the defendant to show who paid the money would require that the minor's title to the automobile be challenged in contravention of Section 6290-4.

A vendee must take certain steps to rescind the sale of a motor vehicle. Because a person cannot have a right, title, claim or interest in a motor vehicle without a certificate, the Ohio vendor has the right to receive not only possession of the vehicle, but the certificate of title as well. Thus, when a rescission is based on the vendee's minority, a tender of the certificate to the vendor is essential to determine the date to which depreciation allowance will be made.[58]

Hiple v. Skolmutch[59] dealt with the problem of making a gift of a car. It was there held as a matter of law that a gift inter vivos of an automobile cannot be established where the deceased donor did not assign the certificate of title to the donee. The court recognized that there may be cases where property rights in an automobile may be established in law or in equity without strict compliance with the certificate of title act; however, it held that the Ohio rule on gifts, requiring, in part, the irrevocable delivery of a chattel to the extent practicable and possible under the circumstances, prevented the completion of a gift of an automobile without a transfer of its certificate of title.

Prior to the present Act with its requirement that all liens must be noted on the certificate of title, Ohio followed the general rule that chattel mortgages on automobiles were filed in the recorder's office as in the case of all other chattels. Yet notwithstanding the constructive notice given to subsequent purchasers by a proper recording of the mortgage, the floor-plan doctrine had been held to preclude the enforcement of the mortgage against bona fide purchasers.[60] Thus, even though the mortgage was properly recorded, if the mortgagee allowed a dealer to display the automobile upon the salesroom floor, authority to sell was implied, and the mortgagee was estopped to assert his lien against an innocent purchaser for value in the usual course of business.[61]

However, after the Act became effective, two cases held for the mortgagee in possession of the manufacturer's certificate as against the buyer

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[58] Rush v. Grevey, 90 Ohio App. 536, 107 N.E.2d 560 (1951).

[59] 88 Ohio App. 529, 100 N.E.2d 642 (1950).

[60] See Note, 5 OHIO ST. L.J. 422 (1939).

[61] Nat. Guarantee & Finance Co. v. Pfaff Motor Car Co., 124 Ohio St. 34, 176 N.E. 678 (1931); Edwards v. Automobile Finance Co., 63 Ohio App. 193, 25 N.E.2d 851 (1939); Colonial Finance Co. v. McCrate, 60 Ohio App. 68, 19 N.E.2d 527 (1938); Davis v. First Cent. Trust Co., 15 Ohio L. Abs. 3 (App. 1933); Nat. Guarantee & Finance Co. v. Commercial Credit Co., 10 Ohio L. Abs. 658 (App. 1931).

who had no certificate of title.[62] In one case [63] the innocent purchaser had done all he could under the Act to obtain his certificate of title, having made application therefor prior to obtaining possession of the automobile. Even though the court admitted that the mortgagee knew that by allowing the dealer to place the automobile in his showroom it would be sold, it applied the statute literally and allowed no waiver or estoppel to operate in favor of the innocent purchaser.

It is submitted that for the protection of the buying public the statute should not have been so literally construed. The same policy factors which originally evolved the floor-plan doctrine and extended it to preclude the enforcement of properly recorded mortgages are still present today. Certainly this problem should receive consideration either by legislative change or judicial construction.

It is also submitted that even under the present Act floor-plan estoppel can be invoked against such mortgagees. If Section 6290-4 is considered only a general statute, then special statutes would control. Ohio Revised Code Section 4505 (Ohio General Code Section 6290-9), a statute summarizing the priority of liens, provides:

> Exposure for sale of any motor vehicle by the owner thereof, with the knowledge and consent of the holder of any lien, mortgage or encumbrance shall not render the same void or ineffective as against the creditors of such owner or holders of subsequent liens, mortgages or encumbrances upon such motor vehicle.

The omission of any reference to subsequent purchasers in this obvious codification of the prior law as to the floor plan doctrine[64] indicates that floor-plan estoppel can be invoked against mortgagees in a proper case.[65]

Evidentiary and Pleading Matters

When the Ohio courts have had to make evidentiary rulings involving the certificate of title, the literalness of their interpretation of this Act becomes readily apparent. In *Mielke v. Leeberson*,[66] the plaintiff sued to recover for damage to his motor vehicle. The ownership of the automobile was put in issue by the defendant's general denial. Although there was abundant evidence of the plaintiff's ownership, he failed to introduce the certificate of title in evidence. The supreme court held that the certificate of title was the only acceptable mode of proof of ownership, stating:

> Under the plain and unambiguous language of section 6290-4, a court cannot recognize the right, title, claim or interest of any person in or to any motor vehicle, without the production of a certificate of title. duly issued in accordance with the Certificate of Title Law, and any other evidence of ownership is not of sufficient weight to sustain a verdict or judgment where title must be proved as a condition precedent for the validity of such verdict or judgment.[67]

In answer to the contention that the legislature had in mind the protection

of the real owner of an automobile from disposition of it to an innocent purchaser by a thief and did not intend that Section 6290-4 should be used in this type of case, the court said, "However, the language of Section 6290-4 General Code is not only sweeping but it is unrestricted and unlimited."[68]

It is submitted that, despite the "unrestricted and unlimited" language of the statute, the legislature did not intend it to apply to the facts of the *Mielke* case. The statute itself expressly states that a court is prohibited from recognizing, unless evidenced by a certificate of title, a right, title, claim or interest " to any motor vehicle, *hereafter sold or disposed of or mortgaged or encumbered.*" (Emphasis supplied.) A suit for damages to a motor vehicle is certainly not a sale, a mortgage, an encumbrance or a disposition of the vehicle.

A similar analysis of the statute was made in *Pettsmeyer v. Omar Co.*[69] The court of appeals held that the common law right of a bailee to sue for damages to the bailor's motor vehicle did not depend on the bailee's holding a certificate of title to the automobile. The court argued that the statute's reference to "right, title, claim or interest" did not include a bailee's right to bring suit because the bailee was not required to establish title to the auto in himself. Title was proved only as the basis of establishing the relation of bailor and bailee. The interest of the bailee was merely a possessory one. Furthermore, the court stated that even if the right of the plaintiff was held to be an interest in the automobile within the meaning of the Act, it did not relate to any transaction included within the clause "hereafter sold or disposed of or mortgaged or encumbered."

A few appellate courts since the *Mielke* case have dealt with the use of waiver to prevent the defendant's raising of the issue of ownership on appeal. Waiver has been based upon the defendant's conduct at the trial, stipulations of the fact of ownership by the attorneys, or pleadings which do not contravene the plaintiff's allegations of ownership.[70] While waiver is recognized, the results are in conflict because of the strictness or liberality of the courts in construing a stipulation or conduct as an admission of the

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[62] Associates Invest. Co. v. Le Boutillier, 69 Ohio App. 62, 42 N.E.2d 1011 (1941); Crawford Finance Co. v. Derby, 63 Ohio App. 50, 25 N.E.2d 306 (1939)

[63] Crawford Finance Co. v. Derby, 63 Ohio App. 50, 25 N.E.2d 306 (1939).

[64] It had been held prior to the act that subsequent mortgagees could not invoke floor-plan estoppel. See note 61, *supra.*

[65] One author has indicated that one reason for the passage of the Act was to abolish floor-plan estoppel. Note, 5 OHIO ST. L.J. 422, 430 (1939). However, clearer language should be necessary to accomplish this purpose.

[66] 150 Ohio St. 528, 83 N.E.2d 209 (1948).

[67] *Id.*, Syllabus No. 1.

[68] *Id.* at 534, 83 N.E.2d at 213.

[69] 95 Ohio App. 37, 117 N.E.2d 184 (1952).

[70] See Beyer v. Miller, 90 Ohio App. 66, 103 N.E.2d 588 (1951); Clampitt v. Cleve-

plaintiff's ownership. Thus, in the case of *Harmon v. Liberty Cabs*,[71] the defendant admitted in the pleadings that a collision occurred when the auto of the plaintiff struck the defendant's auto, that the plaintiff was operating his auto, and that the plaintiff's auto was struck by the defendant's auto; and agreed to stipulate that the plaintiff's car was damaged in the amount alleged by the plaintiff. The court said that the *Mielke* case was not controlling under these facts and that the plaintiff need not present a certificate of title because the pleadings and stipulation admitted the ownership of the vehicle by the plaintiff. However, in *Beyer v. Miller*[72] another court of appeals has indicated that the stipulation must recognize in express terms the existence of the certificate of title and purport to dispense with its production at the trial.

In 1953 Section 6290-4 was amended to permit, as a substitute for the certificate of title, the proving of an interest in the motor vehicle: "(B) By admission in the pleadings or stipulation of the parties."[73] This amendment leaves undecided, because of the *Beyer* case, whether the stipulation must refer to the certificate of title as such as distinguished from mere ownership.

CONCLUSION

The Ohio Certificate of Title Act is basically a sensible solution to the difficult problem of ownership of and interests in motor vehicles. It is evident that the courts of this state will construe the statute literally in any case where the rights of innocent third parties have intervened. This is true even though a hardship may result to an out-of-state lien-holder who has had no opportunity to comply with the Act.

When the immediate parties to a transaction are involved, the Ohio courts apparently will continue to allow equitable interests to prevail even though the unambiguous language of the statute would seem to call for a different ruling.

The extent to which equitable and legal interests have been recognized notwithstanding the language of the statute points to its weakness. The relation of the certificate to contract rights, interests of bailees, mechanic's liens and the floor-plan doctrine are only a few of the problems which await legislative clarification.

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land, 54 Ohio L. Abs. 61, 86 N.E.2d 506 (App. 1949); Harmon v. Liberty Cabs, 58 Ohio L. Abs. 286, 96 N.E.2d 304 (App. 1949); Wells v. Baltimore & O. R.R., 58 Ohio L. Abs. 225, 97 N.E.2d 75 (App. 1949); Fredericks v. Birkett L. Williams Co., 68 Ohio App. 217, 40 N.E.2d 162 (1940).

[71] 58 Ohio L. Abs. 286, 96 N.E.2d 304 (App. 1949).

[72] 90 Ohio App. 66, 103 N.E.2d 588 (1951)

[73] OHIO REV. CODE § 4505.04.