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William E. Taylor

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TITLES TO USED AUTOMOBILES IN MISSOURI
Section 301.210, RSMo 1959

COMPLETE ENDORSEMENT, BLANK ENDORSEMENT, AND NO ENDORSEMENT AS EFFECTING VALIDITY OF TRANSACTION

I. Introduction

By the express provisions of section 301.210, RSMo 1959, no title passes to the purchaser of a used1 automobile in Missouri2 unless the seller's certificate of title, properly endorsed and acknowledged before a notary public, is transferred to the purchaser at the time of delivery of the vehicle.3 The statute further declares the sale of a used motor vehicle without assignment of the certificate to be unlawful,4 fraudulent and void.

This statute represents Missouri's attempt to curb a problem which has become increasingly serious in this highly mobile day and age: the theft and fraudulent sale of used automobiles. Most states have adopted a similar approach to the problem, abrogating the common law as to transfer to chattels5 by requiring assignment of the "title certificate" as part of the purchase and sale of a used automobile.

As a general matter, statutes requiring the assignment of a title certificate may be divided into two classes. The first, typified by the Oklahoma statute,6

2. § 301.210 applies only to motor vehicles registered and operated in this state. See Counts v. Metzger, 228 S.W.2d 395 (St. L. Ct. App. 1950).
3. § 301.210 (4) reads:
   It shall be unlawful for any person to buy or sell in this state any motor vehicle or trailer registered under the laws of this state, unless at the time of delivery thereof, there shall pass between the parties such certificate of ownership with an assignment thereof, as herein provided, and the sale of any motor vehicle or trailer registered under the laws of this state, without the assignment of such certificate of ownership, shall be fraudulent and void.
4. § 301.440, RSMo 1959, provides criminal penalties for failure to comply with the requirements of § 301.210. See State v. Clemmons, 283 S.W.2d 919 (St. L. Ct. App. 1955). See also State v. Townsend, 327 S.W.2d 886 (Mo 1959); State v. Griffin, 228 S.W. 800 (Mo. 1921).
simply imposes a monetary penalty for failure to comply with its provisions. Title problems here are kept to a minimum, for title passes under the common law rules regardless of the statute and the essential validity of the transaction is not affected.\(^7\) The second type, however, invalidates the transaction itself unless the statutory requirements are met. The Missouri statute is representative of this latter class.

As one might expect, statutes of the Missouri type have engendered several difficult problems of both legal and practical significance. Thus, because the transaction is declared void, a purchaser who fails to comply with the statutory requirements will find himself without the right to retain the automobile or to sell it to another. He may find, furthermore, that he lacked an insurable interest in the vehicle and that payment for injury to it must come from his own pocket. Additional problems involving the relative rights of prior and subsequent purchasers and mortgagees are also presented.

The Missouri statute had its birth in 1921,\(^8\) and has been continued in substantially the same form down to the present day. Cases arising under it have been relatively numerous, though not always completely enlightening. It is the purpose of this comment to collect and review these cases, and thereby to present an outline of Missouri law upon the subject. In an attempt to clarify the area, the material will be subdivided with reference to the rights of the various parties in situations where the provisions of the statute have been fully met, where the statutory provisions have been partially met, and where the statutory provisions have not been complied with at all.

II. Title Certificate Completely Endorsed, Acknowledged and Delivered

The situation where the certificate of title is properly endorsed to the purchaser of a used automobile by the seller, acknowledged by the seller before a qualified notary and delivered to the purchaser at the time of delivery of the automobile presents few, if any, problems with regard to the statutory provisions, since they have been fully met. The suits here usually arise over whether the certificate was actually delivered by the seller to the buyer at the time of the sale in a manner sufficient to complete the transaction.\(^9\) Nevertheless, an investigation of the parties' rights is valuable, in order to furnish a background against which further problems may be set. Moreover, even where the statutory provisions have been met, problems of importance occasionally arise.

\(^7\) E.g., Parrott v. Gulick, 145 Okla. 129, 292 Pac. 48 (1930).


\(^9\) See, e.g., State ex rel. Isaacson v. Trimble, 335 Mo. 213, 72 S.W.2d 111 (1934), reversing in part the opinion in Isaacson v. Van Grundy, 48 S.W.2d 208 (K.C. Ct. App. 1930).
A. Rights Between Purchaser and Seller

When the seller properly completes the assignment of his certificate to the purchaser and delivers the certificate to the purchaser along with physical possession of the used automobile, the transaction is completed as far as the statutory provisions are concerned. The seller has conveyed all his interest to the purchaser (unless he has retained some security interest to secure unpaid purchase money). The purchaser, for his part, has received the complete legal title to the automobile (subject only to the possible security interest retained by the seller).

One point, which is of importance in all transfers, relates to the term "qualified" notary. Acknowledgment has been held a necessary part of the transfer of title, and under the holding in Pearl v. Interstate Sec. Co., a notary is disqualified to take an acknowledgment in any situation where he has a beneficial interest in the transaction. Therefore, a notary cannot validly take an acknowledgment when he is the purchaser, or when the seller is his partner, or when the notary is the seller under a tradename. This point is often a potential trap for unwary finance companies, who may find they have accepted chattel mortgages when in fact title has not passed to the mortgagor because the acknowledgment was before an unqualified notary.

B. Rights Between Seller and Third Party Purchaser or Mortgagee of Original Purchaser

When the seller has complied with the statutory provisions and delivered a properly assigned title to the purchaser, he normally ceases to have any interest in the ownership of the automobile. Likewise, a subsequent bona fide purchaser would receive title to the automobile if the original purchaser fully complies with the statutory provisions in assigning the certificate in his name to the new purchaser.

In the event of a failure of consideration in his transaction with the seller, the original purchaser is considered as having a voidable title to the automobile. This title can be perfected in an innocent purchaser or mortgagee, provided the original purchaser has a certificate in his name which he properly assigns to his purchaser or mortgagee at the time of sale in compliance with section 301.210.

The foregoing propositions are aptly illustrated by Robinson v. Poole, involving a sale by Robinson to Nelson, with the properly executed certificate given

10. Pearl v. Interstate Sec. Co., 357 Mo. 160, 164, 206 S.W.2d 975, 978 (1947). See also State ex rel. Payne v. Wilson, 207 S.W.2d 785 (St. L. Ct. App. 1948), upholding the validity of the requirement that assignment of a title certificate be acknowledged before a notary public.
11. Supra note 10.
12. See, e.g., Fitzgibbon Discount Corp. v. Roberts, 283 S.W.2d 906 (St. L. Ct. App. 1955). For a related problem involving a real estate mortgage see Woolridge v. La Crosse Lumber Co., 291 Mo. 239, 236 S.W. 294 (1921), based upon § 442.150, RSMo 1959.
13. See Inland Discount Corp. v. St. Louis Auto Auction Barn, 303 S.W.2d 185 (St. L. Ct. App. 1957), where defendant auction barn was agent for seller.
for a check drawn on a fictitious account. Nelson "sold" the car the next day to defendant Poole, giving him a bill of sale and the certificate as assigned by Robinson, but without his own assignment. Robinson was allowed to recover his automobile because Poole had failed to comply with the statute, which required him to receive a duly assigned certificate of title from Nelson.

If Nelson had obtained a certificate of title in his name and had properly assigned it to Poole, Robinson would not have been able to recover the automobile since Poole would have obtained a good title through compliance with the statutory provisions. This case clearly points up the danger in purchasing an automobile where the seller has purchased the vehicle so recently that he does not have a certificate in his name to assign to his purchaser. 15

C. Rights of a Secured Creditor of the Seller

By way of a general proposition, where the seller has given a chattel mortgage to secure all or part of his purchase price, the seller's mortgagee is protected if: (a) the seller had title to the automobile at the time he executed the mortgage, 16 and (b) the chattel mortgage is recorded or filed in the recorder's office in the county where the seller resides. 17 As with any general proposition, however, problems of application have occasionally arisen.

World Inv. Co. v. Kolburt 18 presented a situation wherein Kolburt purchased an automobile on Saturday, when the dealer's main office was closed. When he took possession of the car he signed a purchase order and chattel mortgage combined in the same form. On Tuesday the title was assigned, the application papers for a new title made out to show a purchase money lien, and the purchase money chattel mortgage assigned to World. The next day the chattel mortgage was properly recorded and in due time Kolburt received a title in his name. Between the time the application papers left the dealer's office and were received by the state, however, someone eradicated the lien notations, and the certificate of title issued in Kolburt's name showed no liens. Two months later Kolburt assigned the title to a dealer and a week later the car was sold to a second dealer. On default in payments, World brought replevin.

The second dealer urged that the chattel mortgage was void as to him since it was executed prior to the assignment of title to Kolburt, relying upon the rule that a chattel mortgage on after acquired property is void as to third parties, unless the mortgagee takes actual possession before the rights of third parties accrue. 19 The court of appeals rejected this contention, stating:

18. Supra note 16.
19. In Personal Fin. Co. v. Lewis Inv. Co., 138 S.W.2d 655, 656 (1940), the St. Louis Court of Appeals stated:
A mortgage of after acquired property is void in law because it has noth-
The test is not whether the two instruments were executed at the same precise instant, or at the same sitting, or even on the same day. The true test is whether they were executed as integral acts in a series of acts which, taken together, constitute one continuous transaction, and were so intended, so that in order to carry out the intention of the parties the two instruments should be given contemporaneous operation and effect.\(^{20}\)

In Ashby \textit{v. Nat'l Bond Fin. Co.},\(^{21}\) the Kansas City Court of Appeals borrowed the above quoted language from \textit{World Investment Co.} to reach the conclusion that delivery of the title certificate "about a week; or approximately two weeks"\(^{22}\) after execution of a purchase money note and chattel mortgage was not so long that it made the transaction void under the statutory provisions. Thus, at least insofar as a secured creditor's rights are concerned, it appears that Missouri courts will not require strict compliance with the statute. Exactly how long a time lapse might be allowed is unknown.

A different type of problem was presented in \textit{Howard Nat'l Bank \& Trust Co. v. Jones}.\(^{23}\) Here plaintiff bank recovered damages for conversion by defendant, a Missouri dealer, of an automobile he had purchased from one Valiquette. Valiquette had purchased the car in Vermont under a conditional sales contract which had been assigned to plaintiff. He brought the car to Missouri where he obtained a Missouri certificate on the strength of a memorandum marked "paid" and signed by the Vermont dealer. He assigned this certificate to defendant and defendant in turn reassigned it to his purchaser. The court held that the rights of the true owner could not be affected by acts of the conditional sales purchaser, even though the requirements of section 301.210 had been complied with in the transaction between Valiquette and defendant.\(^{24}\)


\(^{21}\) 343 S.W.2d 218 (1960).

\(^{22}\) Id. at 221.

\(^{23}\) 238 S.W.2d 905 (St. L. Ct. App. 1951), \textit{aff'd}, 243 S.W.2d 305 (Mo. 1952). The opinions fail to mention whether the contract was ever recorded.

\(^{24}\) \textit{Accord,} Pruitt Truck & Implement Co. \textit{v. Ferguson}, 216 Ark. 848, 227 S.W.2d 944 (1950) (applying Missouri law); \textit{Associates Inv. Co. v. Froelich}, 34 S.W.2d 987 (St. L. Ct. App. 1931) (under similar facts, assignee of a conditional sales contract was permitted to replevy the car); Garrison \textit{v. J. L. Quer- ner Truck Lines, Inc.}, 308 S.W.2d 315 (Spr. Ct. App. 1957). See also Kansas City Auto. Auction Co. \textit{v. Overall}, 238 S.W.2d 446 (K.C. Ct. App. 1951), where the defendant, lessee of a truck owned by plaintiff, was held for converting the truck by an execution sale for a debt owed defendant by the former owner of the truck. Plaintiff had received the Texas certificate properly assigned by the registered owner.

\textit{But see} Hollipeter, Shonyo \& Co. \textit{v. Maxwell}, 205 Mo. App. 357, 224 S.W. 113 (Spr. Ct. App. 1920), where the court held that the plaintiff mortgagee could not recover after the rights of third parties intervened. The plaintiff-mortgagee knew that the mortgaged car had been removed from Arkansas but took no steps to follow the property and file or record the lien in Missouri.
If a mortgage on a used car is not executed to secure purchase money, the requirements of section 443.480\(^{28}\) become applicable, unless the mortgage is made by a dealer to secure a floor plan loan on his stock of automobiles.\(^ {29}\) Thus, in addition to recording or filing a record of the mortgage as required by section 443.460,\(^ {27}\) the mortgagor is also required to have the recorder stamp a record of the mortgage on the face of the title certificate. If the mortgagor has not complied with these statutory requirements, he is not protected in the event of a sale to a subsequent bona fide purchaser or the execution of a second mortgage by the purchaser-mortgagor, unless he takes possession of the automobile before the rights of the third parties arise.

D. Rights Between Purchaser and His Insurance Company

Missouri courts have consistently held, beginning with State ex rel. Connecticut Fire Ins. Co. v. Cow in 1924,\(^ {28}\) that a purchaser does not acquire an insurable interest until the parties to the sale have complied with section 301.210. This result follows from the language of the statute, which characterizes a transaction without delivery of an assigned certificate as unlawful, fraudulent and void. This provision excludes recognition of even an equitable interest in the purchaser sufficient to give him an insurable interest.

On the other hand, if the statutory requirements for assignment are satisfied, title passes at this point and the purchaser acquires an insurable interest. Thus, in Crawford v. General Exch. Ins. Corp.,\(^ {29}\) the St. Louis Court of Appeals held that the purchaser acquired an insurable interest where the certificate, properly assigned as required, was delivered to him by the seller at the time of delivery of the automobile. The fact that the purchaser neglected to present the assigned certificate to the director of revenue for issuance of a new certificate\(^ {30}\) until after the loss had occurred was held not to affect the issue of insurable interest.\(^ {31}\)

25. § 443.480, RSMo 1959.
26. See Butler County Fin. Co. v. Prince, supra note 17, 16 Mo. L. Rev. 156 (1951).
27. § 443.460, RSMo 1959.
29. 119 S.W.2d 458 (St. L. Ct. App. 1958).
30. As required by § 301.210 (2), RSMo 1959. See Benanti v. Sec. Ins. Co., 224 Mo. App. 410, 27 S.W.2d 69 (K.C. Ct. App. 1930), where the court held that acceptance by the state of the assigned certificate and issuance of a new certificate to the named purchaser was sufficient to give the purchaser an insurable interest. See also Finn v. Indem. Co. of America, 8 S.W.2d 1078 (Spr. Ct. App. 1928).
31. See also Melugin v. Imperial Cas. & Indem. Co., 344 S.W.2d 144 (K.C. Ct. App. 1961), where plaintiff owner’s failure to comply with the requirements of § 301.370 and obtain a new title certificate after changing the engine in the insured truck was held not to affect the plaintiff’s insurable interest in the truck. Cf. Mistele v. Ogle, 293 S.W.2d 330 (Mo. 1956), for some of the problems in determining the coverage of newly acquired automobiles under existing policies.
Where the policy in question is one covering liability to others, however, section 301.210 is inapplicable.32

Questions involving section 301.210 may sometimes arise with regard to specific provisions of an insurance policy. In Kelso v. Kelso,33 plaintiff, defendant's brother, furnished part of the purchase price for the automobile. The certificate of title was properly assigned and delivered to defendant, naming him as the purchaser. In an appeal from garnishment proceedings against defendant's liability insurer, the insurance company contended that defendant was not the "sole, unconditional owner" of the automobile as required by the policy terms. The Missouri Supreme Court rejected this attempt to avoid liability, stating that in view of the statutory requirement that the seller of a used automobile give the purchaser a certificate of title with proper assignment thereon, and the fact that such a certificate was given only to defendant, the latter was the full owner of the automobile.34

III. CERTIFICATE ENDORSED IN BLANK WITH NO ACKNOWLEDGMENT AND DELIVERED TO PURCHASER

The situation where the seller endorses his certificate, but leaves the space for the assignee's name blank and does not acknowledge his signature before a notary prior to delivery to the purchaser, is an all too common one, particularly where the purchaser is a dealer and for various reasons prefers to have the title "in blank." This problem has given rise to much of the litigation over automobile titles in Missouri, because of the express statutory requirement that the certificate be properly assigned and acknowledged before delivery in order for title to pass to the purchaser. The position of the Missouri Supreme Court is that there is no such thing as "substantial compliance" with this title law—either the provisions are complied with or they are not.35

32. Hall v. Weston, 323 S.W.2d 673 (Mo. 1959). The Supreme Court held that proof of an insurable interest through compliance with the title statute is not necessary where the suit is on a liability policy and not on a policy covering damage to the automobile. (Collision and comprehensive coverage.)
33. 306 S.W.2d 534 (Mo. 1957).
A. Rights Between Purchaser and Seller

Where a seller delivered the certificate at the time of delivery of the automobile, endorsed but not acknowledged and with the assignee space blank, the Missouri Supreme Court, in *Pearl v. Interstate Sec. Co.*, held that title to the automobile did not pass to the purchaser since the assignment was incomplete when the certificate was delivered. But, said the court, if the purchaser has paid for the car, he has implied authority from the seller to fill in his name in the proper space in the assignment form on the back side of the certificate. The court concluded that the purchaser could effect transfer of title by filling in his name as purchaser and obtaining the seller’s acknowledgment before a qualified notary. The court reasoned that the statutory provision that a certificate with a complete assignment thereon should pass “at the time” of delivery of the vehicle should not be strictly construed, since a qualified notary might not always be immediately available. A reasonable time should be allowed for the parties to complete the transaction in compliance with the statute by having a notary take the seller’s acknowledgment.

B. Rights Between Seller and Purchaser or Mortgagee of Purchaser

This area presents a constant problem, particularly for finance companies. The seller delivers possession of the automobile and the certificate, endorsed in blank, to the purchaser. The purchaser, in turn, without obtaining the seller’s acknowledgment or filling in the assignee blank, executes a mortgage or makes a purported sale to a third party.

A keystone in Missouri case law on the general subject of titles to used automobiles, and of particular importance to the question under discussion here, is, again, *Pearl v. Interstate Sec. Co.* Pearl, a used car dealer, purchased two automobiles, accepting certificates which were signed but unacknowledged and with a blank assignee space. He sold these cars to Security Motor Co., delivering the certificates to Security as he had received them and accepting a check which proved valueless. Security mortgaged the automobiles to Interstate and almost at once went into receivership.

The court decided first that Pearl had lawful possession of the automobiles and the certificates of title because the original owners intended for him to have them. This gave him the right to complete the transaction by filling in his name as assignee and obtaining the seller’s acknowledgment. The court held, however, that as Pearl did not have the certificates properly filled in and acknowledged so that he could reassign them to Security, Security never received any title to the cars, and thus that it could not validly execute a mortgage to Interstate.

Most important for purposes of this section, the court decided that Interstate could not establish itself as a bona fide purchaser of the automobiles through its

38. See note 36 *supra* and accompanying textual material.
foreclosure on default of payment by Security. The defects in Security's title were apparent on the back of the certificate held by Interstate, viz., lack of assignee and acknowledgment by seller.

These defects at least were sufficient to put defendant (Interstate) upon inquiry to ascertain the true facts, and the true facts would have shown that Security had nothing to mortgage. 39

This doctrine has been continued in later cases 40 where, in the transaction between the purchaser and the third party, a defect, such as no acknowledgment or acknowledgment by an interested notary, was apparent on the back of the certificate presented by the purchaser to the third party. Under the doctrine set out in the Pearl case, the third party is put on inquiry to determine if the original purchaser had any title to convey or mortgage in the transaction. 41

It is also necessary for the alleged owner to have title to the automobile to be able to execute a valid mortgage, 42 even though there is no statutory requirement that the certificate change hands in the case of a mortgage.

C. Rights Between Seller's Mortgagee and Purchaser

There are apparently no reported Missouri cases involving the situation where the seller delivers to the purchaser his signed blank title certificate, without an acknowledgment, while there is an outstanding recorded mortgage on the automobile. However, the basic considerations set out in part II, section C, supra, should apply here; that is, a mortgagee with a valid, 43 unsatisfied mortgage should easily prevail over a purchaser who has received no title to the automobile because of lack of compliance with the provisions of section 301.210. In such an event the purchaser who paid the consideration would be able to look only to the seller—if the seller can be found.

Furthermore, under a recent Kansas City Court of Appeals decision, such a purchaser cannot successfully establish himself as an innocent purchaser for value without notice of an existing mortgage. The court held that section 301.210 gives constructive notice to both purchaser and seller that a properly assigned certificate must be delivered at the time of the sale in order for title to pass. 44

A different aspect of the problem was presented in Universal C.I.T. Credit

39. Supra note 10, at 165, 206 S.W.2d at 979.
41. But see Quick v. Van Hoose, 205 S.W.2d 875 (Spr. Ct. App. 1947). Plaintiff seller was denied replevin of the automobile from the purchaser of the original purchaser, although according to the opinion none of the parties had complied with all of the statutory requirements.
43. See Peper v. American Exch. Nat'l Bank, 357 Mo. 652, 210 S.W.2d 41 (1948), where the supreme court held the mortgage invalid because the mortgagee had received a certificate from his seller with an incomplete assignment. The assignment had not been completed before the execution of the mortgage.
Corp. v. Griffith Motor Co.\textsuperscript{46} After examining the unacknowledged certificate, which was endorsed in blank by a third party, Universal's agent had taken a mortgage on the automobile from a dealer. Griffith purchased the automobile later the same day and received the certificate, acknowledged by the dealer as notary, with the explanation that he was selling the automobile on commission for the owner. The court held that the dealer did not have title to the automobile when the mortgage was executed and that Universal was to be held on inquiry to ascertain the true facts, because the certificate with incomplete assignment was shown to its agent when the mortgage was executed.

D. Rights Between Purchaser and His Insurance Company

If the purchaser has accepted a signed blank title certificate from the seller, insured the automobile and then suffered a loss, the insurance company would apparently be legally justified in refusing to pay the claim. As set out previously, the purchaser does not acquire an insurable interest in the automobile until he receives title to the vehicle by meeting the requirements of section 301.210.

On the other hand, it appears that such a purchaser may have a sufficient interest in the automobile to maintain an action against one who wrongfully injures it. Thus the Springfield Court of Appeals has allowed a plaintiff-purchaser who had received a signed, unacknowledged certificate from the seller to recover for damage to the car sustained in a collision with the defendant.\textsuperscript{48} The defendant unsuccessfully argued that the plaintiff had no property interest in the automobile. The court reasoned that the plaintiff had a right to possession and a property interest sufficient to permit recovery for injuries to such property rights as he did hold.

The situation where the purchaser accepts a signed certificate which bears neither a designation of the assignee nor an acknowledgment, insures the automobile, perfects the transaction by filling in his name as assignee and obtaining the seller's acknowledgment, and then suffers a loss involving the automobile, has been passed upon by both the St. Louis and Kansas City Courts of Appeals.\textsuperscript{47} In both cases the courts found that because of the failure to demand and receive a properly assigned certificate at the time of delivery of the vehicle, the purchaser received no title to the automobile. Therefore, he had no insurable interest at the time the policy was issued. The Kansas City Court of Appeals even classified the insurance policy as in the nature of a gambling contract and void ab initio.\textsuperscript{48} It should be noted, however, that the decision in a similar case today could possibly hinge upon the time interval between obtaining the insurance and the perfection of the transaction by the purchaser and seller.\textsuperscript{49}

\textsuperscript{45} 243 S.W.2d 814 (Spr. Ct. App. 1951).
\textsuperscript{46} Hadley v. Smith, 268 S.W.2d 444 (Spr. Ct. App. 1954).
\textsuperscript{49} See the textual discussion accompanying notes 19-22 \textit{supra}, on "reasonable time" to complete the transaction. This idea could possibly be extended to
Even though the purchaser is unsuccessful in making his own insurance company pay the claim, he might be able to recover from the seller's insurer under the theory set out in Allstate Ins. Co. v. Hartford Acc. & Indem. Co. In that case, Allstate successfully argued that the purchaser was the permissive user of the seller until the transaction had been completed in accordance with the requirements of section 301.210, and as such was covered by the seller's policy. Indeed, where the purchaser holds a signed certificate from his seller, the factual situation as bearing upon the question of permission to operate the automobile might well be stronger than the one presented in Allstate.

IV. TITLE CERTIFICATE NOT ENDORSED AND NOT DELIVERED

The cases in this section present the situation where the parties have not, in any respect, complied with the requirements of section 301.210: the seller has not endorsed the certificate, filled in the assignee space with the purchaser's name, acknowledged his signature, or delivered the certificate to the purchaser at the time of delivery of the automobile.

A. Rights Between Purchaser and Seller

Because section 301.210 declares "void" any transaction which does not comply with its terms, a contract capable of enforcement can not exist unless the statutory requirements are met. Thus, if the seller refuses or is unable to deliver a properly assigned and acknowledged certificate, the purchaser may neither seek to compel performance, nor recover damages for breach of contract. On the other hand, the purchaser may maintain an action in the nature of rescission or restitution; that is, he may tender back the automobile and obtain or bring suit for return of his consideration. However, he must do so within a
cover the result in the present situation, which earlier commentators have felt was particularly harsh. See 1958 Wash. U.L.Q. 304; 4 Mo. L. Rev. 212 (1939).

50. 311 S.W.2d 41 (Spr. Ct. App. 1958).

51. A more detailed discussion of this theory will be found in the textual material accompanying note 71 infra.

52. Lebcowitz v. Simms, 300 S.W.2d 827 (St. L. Ct. App. 1957). The court reversed a judgment for plaintiff purchaser in a suit for damages for breach of contract. The court held that the contract for sale, without delivery of the certificate, was void and would not support an action either for its enforcement or for its breach. The case was remanded so that the plaintiff could amend his petition and sue for the purchase price upon a rescission theory.

In Riss & Co. Inc. v. Wallace, 350 Mo. 1208, 1216, 171 S.W.2d 641, 645 (1943), the court said: "Defendant, by his counterclaim, does not state that he has tendered or will tender the vehicles back to plaintiff and, of course, he cannot retain them and also recover the purchase price." But see Winscott v. Frazier, 236 S.W.2d 382 (K.C. Ct. App. 1951). Here plaintiff was not permitted to change from a breach of contract theory to a rescission theory. The court affirmed a judgment for defendant seller. See also Craig v. Rueseler Motor Co., 139 S.W.2d 374 (St. L. Ct. App. 1942).

reasonably short period of time, for the courts enforce an implied condition that the property must be in the same condition when tendered back as when originally received.\(^{54}\) and automobiles, by their very nature, do not remain in the same physical condition over an extended period of time. Thus, in a case where the plaintiff purchaser admitted that he knew all the time of the alleged ground of repudiation but waited nine months to bring the action, the Springfield Court of Appeals denied recovery.\(^{56}\) The purchaser could not show that the automobile was in the same condition as when received because he admitted driving it several thousand miles during the nine months.

If such is the case with the purchaser, one would expect the same restitutionary philosophy as to actions brought by the seller, even though by the terms of the statute the purchaser would have no title in the vehicle. And the courts have so held. Thus, in \textit{Wilks v. Stone},\(^{58}\) the Springfield Court of Appeals held that, although a purchaser does not have title until a properly executed certificate is delivered, he does have a "special property interest" in the vehicle, sufficient to defeat a replevin action by the seller unless the seller returns what he received in the transaction. In that case, plaintiff's son had purchased a used automobile from defendant dealer and had title placed in plaintiff's name. Before the new certificate was issued by the state, the son traded back the automobile for a new one and agreed that title to the first car would be transferred back to the dealer. The mother sued to replevy the automobile, claiming that title was in her name and had not been transferred. The court held that the dealer's "special property interest" under the contract of exchange was sufficient to defeat the action unless the mother repudiated or rescinded the transaction by returning that which had been received in the second transaction.

\textit{Cantrell v. Sheppard}\(^{57}\) involved a different aspect of the problem. Here plaintiff purchased a used car, paying cash in full, but failed to get any certificate, the dealer telling plaintiff that he would have to locate it. Plaintiff then exchanged possession of the car with one Larkin, for a truck which Larkin represented as his but which in reality was stolen. The three were to meet several days later and exchange the necessary papers.

Larkin sold the car in Kansas and plaintiff, for lack of a title certificate in his name, was unsuccessful in an action to recover it. The dealer died on the day the


\(^{55}\) Hymer v. Dude Hinton Pontiac, Inc., \textit{supra} note 54.

\(^{56}\) 339 S.W.2d 590, 594 (Spr. Ct. App. 1960). See also Perkins v. Bostic, 227 Mo. App. 352, 56 S.W.2d 155 (Spr. Ct. App. 1933). \textit{But see} Weaver v. Lake, 4 S.W.2d 834 (Spr. Ct. App. 1928), where the seller had retained possession of the car and the purchaser was not allowed to replyev it, no certificate having passed between the parties at the time of the purported sale.

For a case involving the gift of an unregistered automobile brought into Missouri by the donor, see Planter v. Bourne, 275 S.W. 590 (Spr. Ct. App. 1925).

\(^{57}\) 247 S.W.2d 872 (Spr. Ct. App. 1952).
papers were to be exchanged. Plaintiff sued the dealer's widow, as personal representative, for the purchase price, alleging that in view of the above facts he was excused from restoring possession of the car to defendant, and further that he was damaged in the amount of his expenses in the Kansas action by the dealer's unlawful, fraudulent and wrongful failure to furnish him a certificate. The court disagreed and held that plaintiff's own act of surrendering possession to a third party, and not the failure of the dealer to furnish a certificate, had made it impossible for him to rescind the contract by tendering the car back in as good condition as when he received it.

As an extension of the rescission doctrine developed in these cases, if the certificate is not furnished at any time the purchaser, by surrendering actual possession of the automobile, may escape any further liability on a purchase-money mortgage and note held by the original seller. This is true even though the purchaser does not act promptly enough to obtain a return of payments already made on the note.

Where the purchase money chattel mortgage and note are assigned to a holder in due course, special problems are presented, and the Missouri courts are at variance. The Kansas City Court of Appeals has allowed recovery to the holder either on the note or in replevin for the automobile, even though there was a failure of consideration in the underlying sale by lack of compliance with the statutory provisions and the note would not be enforceable in the hands of the seller. The court reasoned that by executing the mortgage and note without receiving the certificate from the seller, the purchaser made it possible for the seller to defraud an innocent third party by negotiating a note which was good on its face. However, in Robertson v. Snider, the Springfield Court of Appeals reversed a judgment granting replevin to the holder of a purchase-money note and mortgage where the certificate assigned by the seller to the buyer-mortgagor showed an incorrect motor number. The court reasoned that because the certificate of title was

58. See Matthews v. Truxan Parts, Inc., 327 S.W.2d 28 (Spr. Ct. App. 1959). Defendant seller had delivered the title certificate to plaintiff purchaser with the wrong serial number. The trailer was replevied by the holder of the correct certificate. Plaintiff was excused from tendering back the trailer; he had tendered defense of the replevin action to defendant before bringing suit.

59. See also Jacobson v. M. B. Thomas Auto Sales, 234 S.W.2d 813 (St. L. Ct. App. 1950). Plaintiff sued in replevin in an unsuccessful attempt to recover the automobile from one who purchased from plaintiff's agent. Plaintiff's seller had furnished a certificate through the agent to defendant purchaser.

60. Pub. Fin. Corp. v. Shemwell, 345 S.W.2d 494 (K.C. Ct. App. 1961). The court dismissed as meaningless the argument that the purchaser's repudiation of the transaction was not within a reasonable time (nine months after date of sale), since the purchaser asked not for return of his payments but only to have the mortgage and note cancelled as given without lawful consideration.


63. 63 S.W.2d 508 (Spr. Ct. App. 1933).
not in proper form, the buyer had never taken title and therefore could not have made a valid mortgage. A new trial resulted in a directed verdict for the defendant, but with the condition that defendant was not entitled to the return of the vehicle or to any damages, and defendant appealed again to the Springfield Court of Appeals.\(^6\) In the interim, the Missouri Supreme Court, in Rankin v. Wyatt, had held that a replevin action depends primarily upon the right to possession and only incidentally upon title or property interest, and therefore that the mortgagee of a purchaser who had not received an assignment of the certificate of title could maintain replevin against a stranger.\(^6\) In the second Robertson appeal the Springfield court conceded that "some doubt" had "been cast upon the correctness" of its first decision by the Rankin case, but declined to consider the question again because the plaintiff had not appealed. Instead, the court again reversed the judgment and remanded it upon the question of damages, holding that the defendant was entitled, because of the directed verdict in his favor, to at least some measure of damages. The court stated that defendant was not entitled to the full value of the motor vehicle, but that the damages should approximate the value of defendant's trade-in, so that in effect the court judicially rescinded the original contract, although neither party had intended this result.

It is this writer's opinion that the decisions in the Robertson cases should not be followed. The reasoning of the Kansas City Court of Appeals seems sounder and more in line with the Missouri Supreme Court's pronouncement in Rankin.

### B. Rights Between Seller and Third Party Purchaser or Mortgagee of Original Purchaser

Where the seller does not properly assign his certificate and deliver it to the purchaser along with the automobile, the purchaser cannot validly sell the automobile to a third party or execute a valid mortgage on the vehicle, since he has acquired no title. The seller would prevail over the third party, as he still has the title certificate in his name. An example is to be found in Albright v. Uhlig,\(^6\) where the owner, Albright, placed his automobile on a dealer's lot with the understanding that the dealer could purchase the car from him. The dealer made a purported sale to Uhlig, who paid the agreed price, and the dealer issued a draft to Albright in payment for the car. The assigned title was returned to Albright with the protested draft, and when he learned of Uhlig's identity some time later he brought a replevin action. The court ordered the return of the automobile to Albright, stating that Uhlig would not have lost his money if he had followed the statute and demanded a properly assigned certificate at the time of sale.

A mortgagee's good faith in accepting a chattel mortgage from the purchaser would have no bearing on a suit by the seller to obtain replevin of the automobile. The mortgage would be totally invalid, except perhaps as to a holder in due course,

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\(^6\) Robertson v. Snider, 86 S.W.2d 966 (Spr. Ct. App. 1935).
\(^6\) 335 Mo. 628, 73 S.W.2d 764 (1934). The supreme court held that replevin depends upon the right to possession and only incidentally upon title or property interest.
\(^6\) 315 S.W.2d 471, 474 (1958).
if executed by a purchaser who had not received a duly assigned certificate before execution of the mortgage and note. 67

C. Rights Between Seller's Prior Mortgagee and Subsequent Purchaser

The problems here usually arise in cases where a dealer executes a mortgage on a used car in his stock, later selling the car to a purchaser without delivering the title certificate.

In Bordman Inv. Co. v. Peoples Bank, 68 Bordman accepted a purchase-money mortgage from Watts, a dealer. It recorded the mortgage and note and held the certificate of title. Watts "sold" the car to one Clauson, who executed a purchase-money mortgage and note which Watts assigned to Peoples Bank. Clauson did not receive a certificate at any time. Bordman was allowed recovery against Clauson and Peoples Bank for the amount of its mortgage.

The court of appeals reviewed the general rule that the constructive notice to the world ordinarily obtained by recording a chattel mortgage is not afforded to a mortgagee when he permits the chattel to remain in the hands of a dealer engaged in the sale of the same type or similar goods, with authority to display it with such goods. In such a situation the mortgagee generally is estopped to claim the benefit of the recording statute. In other jurisdictions, the court said, this rule is applied to sales of automobiles as well as to sales of other chattels. But, the court continued, in none of these other jurisdictions is there a statute similar to section 301.210, which gives constructive notice to both buyer and seller of the requirement that a proper certificate must be endorsed and delivered at the time of the sales transaction in order for title to pass.

It would seem, therefore, that the mortgagee of a dealer can protect himself from the hazard of "floorplanning" a dealer's purchase of used automobiles by securing a valid mortgage and obtaining the title certificate, thus completely preventing a valid sale to a third party until the mortgage on the automobile has been satisfied. 69

D. Rights Between Purchaser and His Insurance Company

As previously mentioned, when the purchaser does not receive a properly assigned certificate of title from the seller at the time of the sale, but does purchase an insurance policy on the automobile, he will find to his sorrow that he had no insurable interest when he purchased the policy, and any claim for damages to the vehicle will probably be denied by the insurer. Conceivably, in such a case

69. See National Bond & Inv. Co. v. Mound City Fin. Co., 161 S.W.2d 664 (St. L. Ct. App. 1942). National Bond, the dealer's mortgagee, prevailed over the subsequent purchaser, who had received no certificate at all. Defendant was precluded by the court from attacking a title defect. The dealer held a signed, acknowledged title certificate when he executed the mortgage, but the
the purchaser would be protected by the seller's collision insurance upon the
vehicle, if any existed. This problem seems not to have arisen in the reported cases.

The question has been considered, however, in cases involving liability insur-
ance. If the seller, as a dealer or an individual, has a liability policy on the auto-
mobile, the seller's insurance may protect both him and the purported purchaser
if the policy covers not only the named insured but also permissive users of the
automobile. Allstate Ins. Co. v. Hartford Acc. & Indem. Co., for example, pre-
sented a suit for indemnity by Allstate, the purchaser's insurer, against Hartford,
who carried a garage liability policy on the selling dealer. A salesman delivered
the automobile to the purchaser in the early evening. Within 15 minutes the pur-
chaser was involved in an accident. The only paper signed at the time of the de-
ivery was a blank chattel mortgage form signed by the purchaser. Allstate paid
a judgment to the occupants of the other car involved in the accident.

The court, in holding Hartford liable under the permissive user clause of
the policy, took note of the fact that dealers habitually allow a purchaser to
use an automobile pending completion of the transaction. Under the circum-
stances, the court said, delivery of the automobile carried with it implied permis-
sion to use and operate the automobile.

Another case, Haynes v. Linder, involved an informal sale by the owner
of the automobile through his employer to a fellow employee. There was no
transfer of the title certificate between any parties. The court found the "pur-
chaser" to be a permissive user of the owner for purposes of coverage under
the insurance policy held by the owner.

SOME OBSERVATIONS

From the foregoing review of cases, it appears evident that if the parties
to the transactions involved had followed the provisions of the title certificate
transfer statute, there would have been few problems to be settled by the
courts. It can not be emphasized too strongly, therefore, that to protect himself,
a party must see that the statutory requirements are fully satisfied.

Transactions involving the sale, insuring and mortgaging of used automo-
bles are so commonplace in our society that a clear statute is necessary for the
benefit and protection of the public. In recognizing this necessity, the Kansas
City Court of Appeals summed up the general position of the Missouri courts
this way:

assignee space was blank. See also G. F. C. Corp. v. Rollins, 221 La. 166, 59 So.2d
108 (1952). The Louisiana Supreme Court, following the Pearl case, supra note
67, held void a mortgage executed in Missouri by a dealer who held the seller's
signed, unacknowledged certificate at the time.

70. Robertson v. Central Manufacturers' Mut. Ins. Co., 239 Mo. App
1169, 207 S.W.2d 59 (Spr. Ct. App. 1947).
71. 311 S.W.2d 41 (Spr. Ct. App. 1958).
The provisions of the statute that the sale of any motor vehicle which has been registered under the laws of this state without the assignment of the certificate of ownership shall be fraudulent and void is absolute, mandatory and both rigidly and technically enforced.\textsuperscript{73}

Thus, a purchaser who pays for a used automobile without receiving a properly assigned title certificate from the seller does so at the risk that his seller may not be the owner and may not be able to pass a clear title under Missouri law. Transfer of the title certificate, properly assigned, as well as a transfer of physical possession of the automobile, is necessary to pass title to the vehicle. There are few recognized exceptions to this statutory rule.

\textbf{William E. Taylor}