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assault with a deadly weapon, the handcuffs not being presented in evidence and no evidence being introduced as to their size, weight, character or manner of use. Mr. Justice Clarkson dissented vigorously, basing his contention for the deadliness of the weapon largely upon the proven physical incapacity of the victim at the time of the assault, it appearing that he was then suffering acutely from heat prostration and that he died therefrom twelve hours after the assault.

The two most recent cases on the question of determination of the deadliness of a weapon are *State v. Davis*¹⁷ and *State v. Harrison*.¹⁸ In both of these cases, the former involving a hoe and the latter an ice pick, the trial judge charged the jury that the weapon was deadly *per se*, although there was no further particular description of either instrument in the indictments, and upon neither trial was the weapon presented for inspection by either judge or jury. In both cases the Supreme Court held the charge to be erroneous, and held that the question of the deadliness of the weapon should have been submitted to the jury under proper instructions. It would appear that the safest method of determining the question of deadliness, where the trial court is uncertain of whether the weapon is deadly *per se*, is to submit the question to the jury under instructions directing them to consider the matter of its use as well as other circumstances attending the assault and relevant to the question. For if the weapon is deadly *per se*, and the jury decides the question of deadliness in the affirmative, the failure to so instruct them will be cured by verdict.

Thus it can be seen that the court of last resort of North Carolina has provided clear and sensible guideposts for both the practicing lawyer and the trial judge, both of whom are faced so frequently with the question of the deadliness of a weapon in the prosecution of criminal offenses. It is an ever present possibility that some new and previously unclassified instrumentality may come before the court for classification. But when that event occurs, the likelihood of a proper determination of the question in the court below is greatly increased by its ability to resort to such a long and unwavering line of well-considered authority.

CHARLES F. COIRA, JR.

Automobiles—Recording of Liens— Certificate of Title

Expanding production of new automobiles and its stimulation of trading in used cars renews interest in the legal problems of the sale and distribution of automobiles on credit. A timely reexamination of the

¹⁷ 222 N. C. 178, 22 S. E. (2d) 274 (1942).

¹⁸ 225 N. C. 234, 34 S. E. (2d) 1 (1945).

law applicable to these credit transactions will bring to light instances in which the law has failed to keep pace with the economics of installment selling. It is the purpose of this note to review one such instance, and to suggest remedial legislation.

The chief instruments of installment selling are conditional sale contracts and chattel mortgages, both of which are devices designed to give the seller security title¹ until the purchase price is paid, and the buyer possession and use of the car while paying for it. By statute in North Carolina both chattel mortgages and conditional sale contracts must be recorded.² The purpose of recording is to publish notice of the divided ownership of the property, to protect creditors or purchasers of the mortgagor from secret liens and encumbrances;³ and to accomplish this the processes of recordation, and its corollary, investigation, must be simple, convenient and consistent with sound business prac-

¹ Or, in some states, a lien only. JONES, CHATTEL MORTGAGES & CONDITIONAL SALES (6th ed. 1933) §1.

² N. C. GEN. STAT. (1943) §47-20: "No deed of trust or mortgage for real or personal estate shall be valid at law to pass any property as against creditors or purchasers for a valuable consideration from the donor, bargainor or mortgagor, but from the registration of such deed of trust or mortgage in the county where the land lies; or in case of personal estate, where the donor, bargainor or mortgagor resides; or in case the donor, bargainor or mortgagor resides out of the state, then in the county where said personal estate, or some part of the same, is situated; or in case of choses in action, where the donee, bargainee, or mortgagee resides. For the purposes mentioned in this section the principal place of business of a domestic corporation is its residence."

N. C. GEN. STAT. (1943) §47-23: "All conditional sales of personal property in which the title is retained by the bargainor shall be reduced to writing and registered in the same manner, for the same fees and with the same legal effect as is provided for chattel mortgages, in the county where the purchaser resides, or, in case the purchaser shall reside out of the state, then in the county where the personal estate or some part thereof is situated, or in case of choses in action, where the donee, bargainee or mortgagee resides." By construction and extension of the language of §47-23 the court has developed the rule that conditional sales are in legal effect chattel mortgages in North Carolina. Hetherington & Sons, Ltd. v. Rudisill, 28 F. (2d) 713 (C.C.A. 4th, 1928); Union Trust Co. v. Southern Sawmills Co., 166 Fed. 193, 200 (C.C.A. 4th, 1908); Grier v. Weldon, 205 N. C. 575, 172 S. E. 200 (1933); State v. Stinnett, 203 N. C. 829, 167 S. E. 63 (1925); Harris v. Seaboard Air Line Ry., 190 N. C. 480, 130 S. E. 319 (1925); Observer Co. v. Little, 175 N. C. 42, 94 S. E. 526 (1918); Piano Co. v. Kennedy, 152 N. C. 196, 67 S. E. 488 (1910); Hamilton v. Highlands, 144 N. C. 279, 56 S. E. 929 (1907); Singer Mfg. Co. v. Gray, 121 N. C. 168, 28 S. E. 257 (1897); Quinnerly v. Quinnerly, 114 N. C. 145, 19 S. E. 99 (1894); Butts v. Screws, 95 N. C. 215 (1886); Note (1943) 21 N. C. L. Rev. 387, 390. Whether the full implications of this view will be realized and followed for all purposes, it is clear that in matters of registration conditional sales will be treated as chattel mortgages. Therefore, throughout this note the terms "mortgage," "mortgagee" and "mortgagor" will include respectively, "conditional sale contract," "conditional vendor" and "conditional vendee." On the distinction between chattel mortgages and conditional sales generally see JONES, *op. cit. supra* note 1, §§26-33(b), pp. 937-48; Magill, *The Legal Advantages and Disadvantages of the Various Methods of Selling Goods on Credit* (1923) 8 CORN. L. Q. 210.

³ Smith v. Fuller, 152 N. C. 7, 13, 67 S. E. 48, 51 (1910); Empire Drill Co. v. Allison, 94 N. C. 548, 553 (1886); Brem v. Lockhart, 93 N. C. 191, 192 (1885); Blevins v. Barker, 75 N. C. 436, 438 (1876); JONES, *op. cit. supra* note 1 §§190, 1004; WILLISTON, SALES (2d ed. 1924) §327.

tices. Tested by these considerations the present North Carolina recording statutes are unsatisfactory in their application to the sale or mortgage of motor vehicles.

In this jurisdiction the registration of mortgages on real and personal property has been held of prime importance,⁴ and a strict application of the necessity and effect of recording has prevailed. Although the stated purpose of registration is notice of the mortgage lien,⁵ registration acting as constructive notice, the settled and oft-quoted rule in this state is that no actual notice, however full and formal, will supply the place of registration.⁶ Nor will a reference in a mortgage to a prior unregistered lien establish the validity of that lien in law,⁷ unless the mortgage is expressly made subject to the earlier lien.⁸ Thus, though registration is not necessary to the validity of the mortgage between the parties,⁹ failure to register, or delayed or defective registration, has severe consequences. The seller loses his security interest to creditors¹⁰ or purchasers for value¹¹ from the buyer-mortgagor,

⁴ *Whitehurst v. Garrett*, 196 N. C. 154, 157, 159, 144 S. E. 835, 837, 838 (1928).

⁵ *Fleming v. Burgin*, 37 N. C. 584, 588 (1843).

⁶ *Brown v. Burlington Hotel Corp.*, 202 N. C. 82, 161 S. E. 735 (1931); *Threlkeld v. Land Co.*, 198 N. C. 186, 151 S. E. 99 (1929); *Fertilizer Co. v. Lane*, 173 N. C. 184, 91 S. E. 953 (1917); *Springs v. Cole*, 171 N. C. 418, 88 S. E. 721 (1916); *Collins v. Davis*, 132 N. C. 106, 43 S. E. 579 (1903); *Blalock v. Strain*, 122 N. C. 283, 29 S. E. 408 (1898); *Robinson v. Willoughby*, 70 N. C. 358 (1874); *Notes* (1931) 72 A. L. R. 165, (1930) 68 A. L. R. 274. However, a mortgagee who takes possession of the property to enforce his lien before any subsequent rights attach has a valid prior lien, such possession taking the place of recorded notice. *Cowan v. Dale*, 189 N. C. 684, 128 S. E. 155 (1925). *Cf. Jordan v. Wetmur*, 202 N. C. 279, 162 S. E. 566 (1932).

⁷ *Pruitt v. Parker*, 201 N. C. 696, 161 S. E. 212 (1931); *Lawson v. Key*, 199 N. C. 664, 155 S. E. 570 (1930); *Story v. Slade*, 199 N. C. 596, 155 S. E. 256 (1930); *Hardy v. Abdallah*, 192 N. C. 45, 133 S. E. 195 (1926); *Blacknall v. Hancock*, 182 N. C. 369, 109 S. E. 72 (1921); *Piano Co. v. Spruill*, 150 N. C. 168, 63 S. E. 723 (1909).

⁸ *Hardy v. Fryer*, 194 N. C. 420, 139 S. E. 833 (1927); *Avery County Bank v. Smith*, 186 N. C. 635, 120 S. E. 215 (1923); *Bank v. Vass*, 130 N. C. 590, 41 S. E. 791 (1902); *Brasfield v. Powell*, 117 N. C. 140, 23 S. E. 106 (1895); *Hinton v. Leigh*, 102 N. C. 28, 8 S. E. 890 (1889).

⁹ *General Motors Acceptance Corp. v. Mayberry*, 195 N. C. 508, 142 S. E. 767 (1928); *Dry-Kiln Co. v. Ellington*, 172 N. C. 481, 90 S. E. 564 (1916); *Kornegay v. Kornegay*, 109 N. C. 188, 13 S. E. 770 (1891); *Butts v. Screws*, 95 N. C. 215 (1886); *Deal v. Palmer*, 72 N. C. 582 (1875); *Leggett v. Bullock*, 44 N. C. 283 (1853). And the widow or personal representative of deceased mortgagor stands in his shoes. *McBrayer v. Harrill*, 152 N. C. 712, 68 S. E. 204 (1910); *Hinkle v. Greene*, 125 N. C. 489, 34 S. E. 554 (1899); *Williams v. Jones*, 95 N. C. 504 (1886). An unregistered mortgage is good against sheriff's seizure of automobile for illegal use by mortgagor without knowledge of mortgagee. *General Motors Acceptance Corp. v. United States*, 23 F. (2d) 799 (C.C.A. 4th, 1928); *South Georgia Motor Co. v. Jackson*, 184 N. C. 328, 114 S. E. 478 (1922); *Skinner v. Thomas*, 171 N. C. 98, 87 S. E. 976 (1916).

¹⁰ Creditors include those obtaining a lien by attachment, execution, or other proceeding, but not general creditors. *Elk Creek Lumber Co. v. Hamby*, 84 F. (2d) 144 (C.C.A. 4th, 1936); *In re Cunningham*, 64 F. (2d) 296 (C.C.A. 4th, 1933); *National Bank of Goldsboro v. Hill*, 226 Fed. 102 (E.D.N.C. 1915); *Moore v. Ragland*, 74 N. C. 343 (1876). Receivers in insolvency proceedings are creditors. *National Furniture Mfg. Co. v. Price*, 195 N. C. 602, 143 S. E.

even if these outside parties had full knowledge of the encumbrance. And the buyer-mortgagor may lose his possession and interest in the car or have to pay the claims of prior lienors. If the recording acts are to be rigorously enforced it is imperative that they provide a system suited to modern conditions.

While local registration is perfectly adapted to mortgages on real property, it has not solved the problem of the movable chattel, specifically, the automobile.¹² Like many states,¹³ North Carolina requires registration of a chattel mortgage in the county where the purchaser resides, or in the case of an out of state purchaser the county where the chattel is situated.¹⁴ Such registration is not in fact adequate notice or protection against fraud. It is too easy for the mortgagor to sell the car in another county or state, representing it to be unencumbered.¹⁵ It is too difficult for the prospective purchaser or creditor to search the records of several counties to uncover liens.¹⁶ And if

208 (1928); *General Motors Acceptance Corp. v. Mayberry*, 195 N. C. 508, 142 S. E. 767 (1928); *Yelverton Hardware Co. v. Garage Co.*, 184 N. C. 125, 113 S. E. 601 (1922); *Observer Co. v. Little*, 175 N. C. 42, 94 S. E. 526 (1917). Section 70(c) of the National Bankruptcy Act, 52 STAT. 879 (1938), 11 U. S. C. §110(c) (1940), gives a trustee in bankruptcy the status of lien or judgment creditor. 4 COLLIER ON BANKRUPTCY (14th ed. 1942) §§70.56-8.

¹² Purchasers for value include subsequent mortgagees. *Wallace v. Cohen*, 111 N. C. 103, 15 S. E. 892 (1892); *Southerland v. Fremont*, 107 N. C. 565, 12 S. E. 237 (1890); *Weaver v. Chunn*, 99 N. C. 431, 6 S. E. 370 (1888); *Brem v. Lockhart*, 93 N. C. 191 (1885); *Todd v. Outlaw*, 79 N. C. 235 (1878); *Moore v. Ragland*, 74 N. C. 343 (1876); *Potts v. Blackwell*, 57 N. C. 58 (1858). Assignees for benefit of creditors are purchasers for value. *Cowan v. Dale*, 189 N. C. 684, 128 S. E. 155 (1925); *Starr v. Wharton*, 177 N. C. 323, 98 S. E. 818 (1919). But a tort-feasor against the mortgaged chattel is neither purchaser nor creditor. *Harris v. Seaboard Air Line Ry.*, 190 N. C. 480, 130 S. E. 319 (1925). In *Wallace v. Benner*, 200 N. C. 124, 156 S. E. 795 (1930), the registration statute was held not to defeat application of the doctrine of equitable subrogation of lien in favor of one advancing money to pay off existing mortgage liens upon the property. Cf. *Blacknall v. Hancock*, 182 N. C. 369, 109 S. E. 72 (1921).

¹³ Note (1939) *A Comparison of Land and Motor Vehicle Registration*, 48 YALE L. J. 1238.

¹⁴ JONES, *op. cit. supra* note 1, §§190, 1008 *et seq.*

¹⁵ N. C. GEN. STAT. (1943) §§47-20, 23; See also *Industrial Discount Corp. v. Radecky*, 205 N. C. 163, 170 S. E. 640 (1933) (residence means actual residence and not domicile); *Ward v. Southern Sand & Gravel Co.*, 33 F. (2d) 773 (M.D.N.C. 1929) (foreign corporation has no residence in state regardless of location of its principal place of business).

¹⁶ Compare *Appelwhite Co. v. Etheridge*, 210 N. C. 433, 187 S. E. 588 (1936) with *Hornthal v. Burwell*, 109 N. C. 10, 13 S. E. 721 (1891). N. C. GEN. STAT. (1943) §14-114 makes the fraudulent disposal of mortgaged property by the mortgagor a misdemeanor. See (1940) 26 VA. L. REV. 1074 commenting on Virginia statute requiring filing of liens on motor vehicle certificate of title.

On the problems of recordation in conflict of laws: JONES, *op. cit. supra* note 1, §§260, 1158-61; WILLISTON, *op. cit. supra* note 4, §339; Notes (1938) 17 N. C. L. REV. 56, (1928) 41 HARV. L. REV. 779, (1922) 6 MINN. L. REV. 153, (1934) 6 MISS. L. J. 416; (1928) 28 COL. L. REV. 111; (1929) 13 MINN. L. REV. 724; (1926) 74 U. OF PA. L. REV. 749.

¹⁷ A properly recorded mortgage need not be recorded again in the county to which the property is removed by the mortgagor. *Barrington v. Skinner*,

recording is in the wrong county, which is not unlikely in view of shifting residences and shifty buyers, the mortgagee is at the mercy of parties dealing with the mortgagor.¹⁷

Out of the complex security transactions of dealers, manufacturers and finance companies¹⁸ rises one of the most vexing situations in this field—the clash between a recorded mortgage on the dealer's cars and a sale to an innocent purchaser from the stock in trade. Recognizing the common failure to check dealers' titles and the hindrance to business such checking would occasion, most courts protect the purchaser without actual notice by finding an express or implied agency in the dealer to sell free of the mortgage lien, or an estoppel against the mortgagee's enforcement of the lien.¹⁹ North Carolina has applied the agency doctrine,²⁰ but not the broader principle of estoppel.²¹

Since defective registration is no registration at all, sellers or mortgagees may find themselves ensnared by technical pitfalls in the recording process. Chattel mortgages and conditional sale agreements must be acknowledged and probated before registration,²² and proper index-

117 N. C. 47, 23 S. E. 90 (1895); *Harris v. Allen*, 104 N. C. 86, 10 S. E. 127 (1889). A few states permit filing of mortgages on movable chattels with the secretary of state, thus making them effective anywhere in the state. *Legis.* (1933) 19 VA. L. REV. 635, 639.

¹⁷ *In re Franklin*, 151 Fed. 642 (E.D.N.C. 1907) (mortgagor had no fixed place of residence and recording in county where mortgage executed was proper); *Sloan Bros. v. Sawyer-Felder Co.*, 175 N. C. 657, 96 S. E. 39 (1918) (Georgia mortgage of truck located in N. C. not recorded in N. C.); *Bank of Colerain v. Cox*, 171 N. C. 76, 87 S. E. 967 (1916) (mortgage of sawmill and fixtures registered in county where mill located); *Weaver v. Chunn*, 99 N. C. 431, 6 S. E. 370 (1888) (mortgage of stock of goods of branch store registered in county where store located).

¹⁸ See *Adelson* (1935) *The Mechanics of the Installment Credit Sale*, 2 LAW & CONTEMP. PROB. 218. The article states that large finance companies find it more economical to set up a reserve against losses to third parties from failure to record than to comply with recording statutes. *Myerson* (1935) *Practical Aspects of Some Legal Problems of Sales Finance Companies*, 2 LAW & CONTEMP. PROB. 244, at 250.

¹⁹ *Fogle v. General Credit*, 122 F. (2d) 45 (App. D. C. 1941), 136 A. L. R. 814, 821 (1942); (1927) 27 COL. L. REV. 334; (1939) 23 MINN. L. REV. 846; (1931) 15 MINN. L. REV. 837; (1930) 2 ROCKY MT. L. REV. 261; (1940) 3 U. OF DETROIT L. J. 152; (1932) 80 U. OF PA. L. REV. 755.

²⁰ *Atlantic Discount Corp. v. Young*, 224 N. C. 89, 29 S. E. (2d) 29 (1944); *Merritt v. Kitchin*, 121 N. C. 148, 28 S. E. 358 (1897); *Etheridge v. Hilliard*, 100 N. C. 250, 6 S. E. 571 (1888); *Bynum v. Miller*, 89 N. C. 393 (1883).

²¹ *Whitehurst v. Garrett*, 196 N. C. 154, 144 S. E. 835 (1928); *Rogers v. Booker*, 184 N. C. 183, 113 S. E. 671 (1922); Note (1929) 7 N. C. L. REV. 306; (1929) 42 HARV. L. REV. 573. The purchaser from the mortgagor without knowledge of the recorded mortgage may be sued by the mortgagee for conversion. *Whitehurst v. Nixon*, 196 N. C. 823, 146 S. E. 599 (1929).

²² N. C. GEN. STAT. (1943) §§47-1 through 47-17; *National Bank of Goldsboro v. Hill*, 226 Fed. 102 (E.D.N.C. 1915); *Cowan v. Dale*, 189 N. C. 684, 128 S. E. 155 (1925); *Best v. Utley*, 189 N. C. 356, 127 S. E. 337 (1925); *Allen v. Stainback*, 186 N. C. 75, 118 S. E. 903 (1923); *Lance v. Tainter*, 137 N. C. 249, 49 S. E. 211 (1904); *Blanton v. Bostic*, 126 N. C. 418, 35 S. E. 1035 (1900); *Quinnerly v. Quinnerly*, 114 N. C. 145, 19 S. E. 99 (1894); *Long v. Crews*, 113 N. C. 256, 18 S. E. 499 (1893); *White v. Connelly*, 105 N. C. 65, 11 S. E. 177 (1890); *Todd v. Outlaw*, 79 N. C. 235 (1878); *Starke v. Etheridge*, 71 N. C. 240 (1874).

ing and cross-indexing are essential parts of registration.²³ On the other hand, recording within a specified time limit is not required, the instrument simply taking effect against subsequent parties from the date and hour of recordation.²⁴ And as recording is good until cancellation of the mortgage, or the expiration of fifteen years,²⁵ renewal during the life of the average car is unnecessary.

If a different method of registering automobile liens were available, one which provided central registration for the whole state, simplified the procedure of registration and investigation, and combined actual notice through documents in common use in the trade with constructive notice through recording in one place, would its adoption not be highly desirable? As a matter of fact, the fundamentals of such a system exist at present in the provisions of the North Carolina Motor Vehicle Act²⁶ requiring a certificate of title for every automobile operated on the public highways,²⁷ and without major change this Act can supersede the general recording acts in their application to mortgages on this class of extremely mobile chattels.

Every owner²⁸ must apply to the department of motor vehicles for registration of his automobile and issuance of a certificate of title.²⁹ The department has broad powers to investigate the genuineness and legality of the application,³⁰ and may refuse registration for stated causes, one of which is a reasonable belief that issuance of the certificate would constitute a fraud against the rightful owner or lienor.³¹ The certificate contains owner's name and address, date of issuance,

²³ N. C. GEN. STAT. (1943) §161-22; *Tocci v. Nowfall*, 220 N. C. 550, 18 S. E. (2d) 225 (1941); *Dorman v. Goodman*, 213 N. C. 406, 196 S. E. 352 (1938); *Pruitt v. Parker*, 201 N. C. 696, 161 S. E. 212 (1931); *Story v. Slade*, 199 N. C. 596, 155 S. E. 256 (1930); *Whitehurst v. Garrett*, 196 N. C. 154, 144 S. E. 835 (1928); *Merchant & Farmers Bank v. Harrington*, 193 N. C. 625, 137 S. E. 712 (1927); *Fowle v. Ham*, 176 N. C. 12, 96 S. E. 639 (1918); *Ely v. Norman*, 175 N. C. 294, 95 S. E. 543 (1918); (1938) 52 HARV. L. REV. 170. For a justification of courts' demands for strict compliance with the statutory details of recording, see (1930) 28 MICH. L. REV. 351.

²⁴ *Blacknall v. Hancock*, 182 N. C. 369, 109 S. E. 72 (1921); *Carolina-Tennessee Power Co. v. Hiawassee Riv. Power Co.*, 175 N. C. 668, 96 S. E. 99 (1918); *McKinnon v. McLean*, 19 N. C. 79 (1836); *Davison v. Beard*, 9 N. C. 520 (1823).

²⁵ N. C. GEN. STAT. (1943) §45-37(5).

²⁶ *Id.* §§20-38 through 20-84; 220-3.

²⁷ Certain vehicles are exempt from the registration and certificate of title requirements, for example, federal government vehicles, cars brought into the state by non-residents under reciprocity permission, farm tractors and other farm implements, and new cars held by manufacturers or dealers for sale. N. C. GEN. STAT. (1943) §20-51.

²⁸ N. C. GEN. STAT. (1943) §20-38(t) defines owner to include conditional vendee and chattel mortgagor.

²⁹ N. C. GEN. STAT. (1943) §§20-50, 20-52. The application must bear the written signature of the owner, acknowledged by him before a person authorized to administer oaths.

³⁰ N. C. GEN. STAT. (1943) §§20-44 through 20-46.

³¹ *Id.* §20-54.

description of the car, and "a statement of the owner's title and of all liens and encumbrances upon the vehicle therein described, and whether possession is held by the owner under a lease, contract or conditional sale, or other like argreement."³² Where liens exist the certificate is mailed to the holder of the first lien, to be retained until payment.³³ Certificates remain valid until cancelled by the department for cause or upon transfer of title or interest.³⁴ A transfer is accomplished by endorsing an assignment, warranty of title and notation of liens on the back of the instrument,³⁵ and forwarding it to the department, which then issues a new certificate showing any liens or encumbrances.³⁶ The same procedure is followed for a lienholder's release or assignment of his interest to the owner.³⁷

No certificates are needed for new automobiles held by manufacturers or dealers,³⁸ but upon sale to other parties applications must be forwarded to the department.³⁹ And every vendor of used cars must accompany delivery of the machine with an endorsed certificate of title.⁴⁰ Other sections of the Act cover keeping of records in the state agency,⁴¹ their inspection by the public,⁴² fees for issuance and transfer of certificates,⁴³ and monthly reports by manufacturers and dealers of vehicle transfers.⁴⁴ Operation of an automobile for which no certifi-

³² *Id.* §20-57(d).

³³ *Id.* §20-57(f).

³⁴ *Id.* §20-57(h).

³⁵ *Id.* §20-72(b).

³⁶ N. C. GEN. STAT. (1943) §20-73. Where transferor is a conditional vendor or mortgagor he may then forward the certificate to department for recording of the lien. *Id.* §20-72(b). Where transferee is a dealer he need not forward until resale of the car. *Id.* §20-75. If certificate is lost or unlawfully detained the department may issue a new one upon proper application. *Id.* §20-76. §20-77 provides for transfers by operation of law, such as bankruptcy, execution sale, repossession by vendor; transfers by inheritance, devise or bequest; and notice of sale under mechanics lien.

³⁷ N. C. GEN. STAT. (1943) §§20-58(a), 20-59.

³⁸ *Id.* §§20-51, 20-79(b). Several states require the delivery of a manufacturer's or importer's certificate of origin upon sale of a new automobile to dealer, and the assignment of this certificate to a purchaser from the dealer. NEB. COMP. STAT. (Kyle, Supp. 1941) §§60-1002, 4, 5; OHIO GEN. CODE ANN. (Page, 1938) §§6290-2, 4, 5; TEX. ANN. PEN. CODE (Vernon, Supp. 1945) art. 1436-1, §§28, 29.

³⁹ N. C. GEN. STAT. (1943) §20-52. Both the dealer and purchaser fill out the application form, thus insuring a double check on the amount and nature of any lien created.

⁴⁰ N. C. GEN. STAT. (1943) §20-221. A statute requiring sellers of used cars brought in from other states to post bonds to save purchasers harmless from title failures and assessing a ten dollar fee for each bond filed was declared unconstitutional as an interference with interstate commerce. *Id.* §§20-220, 20-222, 20-223; *McLain v. Hoey*, 19 F. Supp. 990 (E.D.N.C. 1937).

⁴¹ Registration and title certificates are filed by registration number, owner's name and engine number, and these records are checked prior to any vehicle registration. N. C. GEN. STAT. (1943) §§20-55, 20-56. All applications and surrendered certificates of title are retained to permit tracing of title. *Id.* §20-78.

⁴² N. C. GEN. STAT. (1943) §20-43.

⁴³ *Id.* §20-85 (fifty cents for each new certificate).

⁴⁴ *Id.* §20-82.

cate has been issued is made unlawful,⁴⁵ and penalties are provided for this and other violations of the statute.⁴⁶

In view of these comprehensive provisions for lien recording it is not surprising that the argument was soon advanced that the statement of mortgages and conditional sales on a certificate of title was sufficient notice to third parties. The court answered this contention in *Carolina Discount Corporation v. Landis Motor Company*⁴⁷ by declaring the Act "a police regulation to protect the public from fraud, imposition and theft of motor vehicles,"⁴⁸ and holding that it did not repeal by implication the general registration acts.⁴⁹ This decision is in accord with the refusal of other courts to construe similar statutes as recording acts,⁵⁰ except where a contrary legislative intent is clear.⁵¹

However, the legislative trend has been toward utilization of certificates of title as the exclusive method of recording liens on automobiles, as well as aids in recovery of stolen vehicles and administration of state taxes.⁵² Today fifteen states and the District of Columbia make the certificates constructive notice of liens and encumbrances, and exempt mortgages on automobiles from the general recording acts.⁵³ The

⁴⁵ *Id.* §20-111(a).

⁴⁶ *Id.* §§20-176, 20-177. See also §§20-39, 20-59, 20-71, 20-74, 20-108, 20-111, 20-112.

⁴⁷ 190 N. C. 157, 129 S. E. 414 (1925). The case involved the original certificate of title act, N. C. PUB. LAWS 1923, c. 236, but its provisions are basically those of the present statute.

⁴⁸ *Carolina Discount Corp. v. Landis Motor Co.*, 190 N. C. 157, 160, 129 S. E. 414, 416 (1925).

⁴⁹ After deciding that defendant purchaser from the mortgagor was owner of the automobile, the court suggested that the superior court could properly order plaintiff to deliver the certificate of title to defendant. *Id.* at 161, 129 S. E. at 417 (1925). For the same results by an action to recover possession of the certificate, see *Fogle v. General Credit*, 122 F. (2d) 45 (App. D. C. 1941); *Associates Discount Corp. v. Hardesty*, 122 F. (2d) 18 (App. D. C. 1941).

⁵⁰ *Meyer Herson Auto Sales Co. v. Faunkhauser*, 65 F. (2d) 655 (App. D. C. 1933); *In re Rosen*, 23 F. (2d) 687 (D. Md. 1928); *L. B. Motors, Inc. v. Prichard*, 303 Ill. App. 318, 25 N. E. (2d) 129 (1940); *Nelson v. Viergiver*, 230 Mich. 38, 203 N. W. 164 (1925); *Commercial Credit Co. v. Schreyer*, 120 Ohio St. 568, 166 N. E. 808 (1929); *Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 158 N. E. 81 (1927); *King-Godfrey v. Rogers*, 157 Okla. 216, 11 P. (2d) 935 (1932); *accord*, *Amick v. Exchange State Bank*, 164 Minn. 136, 204 N. W. 639 (1925). *Cf.* *Merchants Rating & Adjusting Co. v. Skaug*, 4 Wash. (2d) 46, 102 P. (2d) 227 (1940). Note (1932) 8 NOTRE DAME LAWYER 97.

⁵¹ *In re Berlin*, 147 F. (2d) 491 (C.C.A. 3rd, 1945); *In re Wiegand*, 27 F. Supp. 725 (S. D. Cal. 1939); *Van Syckle v. Keats*, 125 N. J. L. 319, 15 A. (2d) 321 (1940); *Commercial Credit Co. v. Amer. Mfg. Co.*, 155 S. W. (2d) 834 (Tex. Civ. App. 1941).

⁵² Legis. (1936) 12 WIS. L. REV. 92.

⁵³ ARIZ. CODE ANN. (1939) §66-231; CODES OF CAL. (Deering, 1943) *Vehicle Code* §§195-8; DEL. REV. CODE (1935) §5574(a); FLA. STAT. ANN. (1943) §319.15; MICH. STAT. ANN. (Henderson, Supp. 1944) §9.1497 (applies to accessories only); MONT. REV. CODES ANN. (Anderson & McFarland, 1935) §1758.3; NEB. COMP. STAT. (Kyle, Supp. 1941) §60-1009, as amended by NEB. SESS. LAWS 1943, c. 134, §4; NEV. COMP. LAWS (Supp. 1931-41) §4435, as amended by NEV. STAT. 1945, c. 240, §§15(a)-(g); N. J. STAT. ANN. (1940) §39:10-14 (con-

great need is of course uniformity throughout the nation, and there have been demands for a national registration system.⁵⁴ However, an effective state-wide recording system supplies uniformity within the state, and through its tie-up with state registration plates and certificates of title provides real notice and protection to out of state purchasers and creditors.

In order to simplify automobile financing, protect innocent parties, preserve the security interest of conditional vendors and mortgagees, and eliminate opportunities for fraud, the following provisions should be added to the North Carolina Motor Vehicle Act:⁵⁵

1. No mortgage, deed of trust, conditional sale or title retention contract, or other lien or encumbrance⁵⁶ on or covering a motor vehicle or on any equipment or accessories affixed or sold to be affixed to such vehicle shall be valid as against creditors or subsequent purchasers or encumbrances but from its registration in compliance with section 2 to 6 of this act.⁵⁷

2. There shall be deposited with the register of deeds in the county where such instrument is executed a copy of the instrument evidencing such lien or encumbrance, with an attached or endorsed certificate of a notary public, accompanied by the certificate of title last issued for such vehicle, or if no certificate has been issued there-

ditional sales only); N. M. STAT. ANN. (1941) §§68-113-9, as amended by N. M. LAWS 1943, c. 73, §§8, 10; OHIO GEN. CODE ANN. (Page, 1938) §6290-9; PA. STAT. ANN. (Purdon, Supp. 1944) tit. 75, §§33, 38; TEX. ANN. PEN. CODE (Vernon, Supp. 1945) art. 1436-1, §§41-5; UTAH CODE ANN. (1943) §§57-3a-80-7; VA. CODE ANN. (Michie, Sublett & Stedman, 1942) §2154(64)(b); D. C. CODE (1940) §40-702.

In addition to these states, seventeen states, including North Carolina, require certificates of title for motor vehicles, but do not make notation of liens on the certificates constructive notice. Legis. (1936) 12 WIS. L. REV. 92.

⁵⁴ Isaacs, *Installment Selling: The Relation Between Its Development in Modern Business and the Law*, (1935) 2 LAW & CONTEMP. PROB. 140 at 146.

⁵⁵ Upholding the constitutionality of similar acts are *State v. Taggart*, 134 Ohio St. 374, 17 N. E. (2d) 758 (1938) and *In re Fell*, 16 F. Supp. 987 (E. D. Pa. 1936).

⁵⁶ This would include trust receipts used in the purchase of motor vehicles. *General Motors Acceptance Corp. v. Mayberry*, 195 N. C. 508, 142 S. E. 767 (1928).

⁵⁷ Just as under present recording acts this would leave an unregistered mortgage good between the parties. See discussion of Virginia statute in *Janney v. Bell*, 111 F. (2d) 103 (C. C. A. 4th, 1940). The amendment would not make the certificate of title conclusive as to ownership of the car. The statutes of California, Iowa, Kansas, Missouri, Montana, Nebraska, Ohio, and Utah provide that every transfer of title or interest in a motor vehicle is void unless in compliance with the certificate of title act. Notes (1939) 37 MICH. L. REV. 758, (1935) 94 A. L. R. 948. This strict title registration system represents a radical departure from the normal requirements of a valid sale or transfer of personal property, and tends to produce more uncertainty and litigation than at present; it is not considered advisable for this jurisdiction. However, an amendment to the Act making certificates of title *prima facie* evidence of title would promote regularity and reliability of title papers without the disadvantages of a rigid system of registration.

for, by an application by the owner for an original certificate of title. Upon receipt of the above documents in proper order the register of deeds shall endorse thereon the date and hour received, and shall collect a registration fee, which shall be uniform throughout the state. On the same day on which received, the register of deeds shall forward said documents, together with such part of the fee charged as may be prescribed by statute, to the department of motor vehicles for filing and recording of the lien or encumbrance upon the certificate of title. Further filing or registration in the office of register of deeds shall not be required nor of legal effect.

3. Upon receipt of the copy of the instrument evidencing a lien or encumbrance and the certificate of title or application therefor, the department shall file the same, and shall issue a new certificate of title in usual form, giving the name of the owner and a statement of all liens and encumbrances certified to the department against said vehicle. The department shall maintain an appropriate index of all lien, encumbrance or title retention instruments filed, and shall furnish upon request information on liens and encumbrances against motor vehicles.⁵⁸

4. Such filing and the issuance of a new certificate of title shall constitute the exclusive method of giving constructive notice of all mortgages, deeds of trust, conditional sale or title retention contracts or other liens or encumbrances against the vehicle described therein,⁵⁹ and such mortgages and other instruments shall be exempt from the provisions of sections 47-20 and 47-23 of the General Statutes of North Carolina. Provided, that if the documents referred to above are received and time of receipt endorsed thereon by the register

⁵⁸ To provide for instances of loss caused by departmental errors in issuing and transferring certificates of title, recording liens and furnishing information, the department should be required to set up an insurance fund for payment to injured parties. See *Maryland Credit Finance Corp. v. Franklin Credit Finance Corp.*, 164 Va. 579, 180 S. E. 408 (1935) for an example of such a loss.

⁵⁹ It may be wise to provide specifically for mechanics' liens created by N. C. GEN. STAT. (1943) §44-2. By judicial construction of this statute a mechanic's lien on a motor vehicle is superior to the lien of a recorded mortgage or conditional sales contract. *Reich v. Triplett*, 199 N. C. 678, 155 S. E. 573 (1930); *Johnson v. Yates*, 183 N. C. 24, 110 S. E. 603 (1922) (in a strong dissent Clark, C. J., argues that the decision permits the mortgagor to "improve the owner out of his property"); *Carolina Sales Co. v. White*, 183 N. C. 671, 110 S. E. 607 (1922); cf. *Willis v. Taylor*, 201 N. C. 467, 160 S. E. 487 (1931); *Twin City Motor Co. v. Rouger Motor Co.*, 197 N. C. 371, 148 S. E. 461 (1929); *Notes* (1922) 1 N. C. L. REV. 127, (1927) 40 HARV. L. REV. 762, (1934) 88 A. L. R. 1185, (1936) 104 A. L. R. 267. A suggested provision: "Liens and encumbrances noted upon certificates of title shall have priority over any other liens against such motor vehicle, however created or recorded, except the mechanics' lien for repairs given by §44-2 of the General Statutes of North Carolina, to the extent of fifty (\$50) dollars." See *CODES OF CAL.* (Deering, 1943) *Vehicle Code* §425; *VA. CODE ANN.* (Michie, Sublett & Stedman, 1942) §2154(64)(b).

of deeds within six days after date said documents were executed, constructive notice shall date from the time of execution, otherwise from the time of receipt as shown by the endorsement of the register of deeds thereon.

5. The holder or owner of every mortgage, deed of trust, conditional sale or title retention contract or other lien or encumbrance on any vehicle registered in another state and filed or recorded in that state shall within ninety days after such vehicle is removed to this state file with the department of motor vehicles the original or a certified copy of such mortgage or other instrument. Every mortgage or other such instrument not so filed shall be subject to any lien or encumbrance against such vehicle thereafter filed with the department according to this act, provided said vehicle shall have continuously remained in this state for said period of ninety days.

6. This act shall be in full force and effect from and after the date of its ratification, except that it shall not affect the validity of any mortgage, deed of trust, conditional sale or title retention contract, or other lien or encumbrance on a motor vehicle which was executed and registered according to law at the date of such ratification. But all such mortgages and other instruments not filed with the department within a period of six months after said date of ratification shall be subject to liens and encumbrances thereafter filed against such vehicle.

WALLACE C. MURCHISON.

Federal Jurisdiction—Removal of Causes— Removal by an Automobile

A considerable contribution to legal animism is made by a recent opinion of a Federal District Court sitting in South Carolina.¹ A state statute² provides that when a motor vehicle is operated in violation of law or negligently one thereby sustaining personal injuries or property damage has a lien on the vehicle for his damages and may attach it in the manner provided for other attachments.³ A native son was killed in an automobile accident and his administrator brought action in the State Court for \$25,000 against the car's owner (who was apparently also its driver) and, pursuant to South Carolina practice, against the car itself. The owner was served personally and the car was attached. The car was licensed in Pennsylvania, of which state

¹ *Weatherford v. Radcliffe et al.*, 63 F. Supp. 107 (D.C.S.C. 1945). The "al." is "one Sport Model four-door, Ford Automobile, 1944 Pennsylvania License No. IFC76."

² Code of Laws of S. C. (1942) §8792.

³ This statute has been in force, without amendment, since 1912. It refers to damages to "a buggy or wagon or other property."