IOWA MOTOR VEHICLE CERTIFICATE OF TITLE LAW III

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The recent opinion in *Federated Mutual Implement & Hardware Insurance Company v. Rouse*,[1] by Judge Graven of the United States District Court for the Northern District of Iowa, apparently the first opinion interpreting the Iowa Motor Vehicle Certificate of Title Law, is the reason for this addition to the two previous articles on the same subject.[2] The case was a declaratory judgment action by an insurance company which had issued an auto garage liability policy to Rouse for liability arising out of the ownership, use or maintenance of automobiles in connection with the operations necessary to his business. The insurance company requested a holding that it was not liable under that policy for any injuries or damage which occurred as a result of an accident in December, 1954, involving an automobile driven by Sturtz, a defendant, to whom Rouse had sold the automobile in March, 1954, under a conditional sales contract. The point of contention by various defendants who sustained injuries as a result of the alleged negligence of Sturtz was that, at the time of the accident, Rouse was still the owner of the automobile and liable under the "owner's liability" provisions of the Iowa statutes[3] because he had not, by the time of the accident, completed the necessary assignment of the certificate of title for the car to Sturtz but had instead held it in his possession.[4] It was conceded, apparently, that except as affected by the Certificate of Title Law, Rouse was not the owner.

The question presented was the effect of the Certificate of Title Law on the "owner's liability" provisions. In the previous articles by this writer on this subject the conclusion was expressed that, with respect to incidents occurring prior to July 4, 1955, the effective date of amendments subsequently referred to in this article, in the absence of a completed assignment the person listed on the certificate would be conclusively the owner for "owner's liability" purposes.[5] Judge Graven, in the opinion referred to in

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1 133 F.Supp. 226 (N.D. Iowa 1955).

2 Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 DRAKE L. REV. 3 (1953); Hudson, *Iowa Motor Vehicle Certificate of Title Law II*, 4 DRAKE L. REV. 86 (1955).

3 IOWA CODE § 321.493 (1954).

4 IOWA CODE §§ 321.48, 321.67 (1954). An application for title to Sturtz was signed but neither it nor the transfer by the seller, Rouse, was ever completed . The certificate should have been obtained in Sturtz's name (§ 321.46), the lien of the conditional sale noted on the certificate (§ 321.50), and the certificate turned over to Rouse (§ 321.24).

5 Hudson, *Iowa Motor Vehicle Certificate of Title Law*, 3 DRAKE L. REV. 3, 6, 8 (1953); Hudson, *Iowa Motor Vehicle Certificate of Title Law II*, 4 DRAKE L. REV. 86, 92 (1955).

the first paragraph, decided that neither the insurance company nor Rouse was liable to any of the defendants, that plaintiff was not liable to Rouse, and that the intention of the legislature was not to change the "owner's liability" law by the Certificate of Title Law.

Judge Graven was confronted with a very troublesome problem in a case like this. He was compelled to guess as to what the Iowa Supreme Court would do, because they had issued no decisions on the subject, and further he was forced to decide as to legislative intention under circumstances in which it may be reasonable to assume that individual legislators had no positive thoughts on the matter. The process of decision may then assume even more of the characteristics of a legislative function than in the usual case.[6]

The argument in the opinion under discussion may, it is believed, be summarized in the following statements. "Owner's liability" is a special statutory liability of great seriousness. The 55th General Assembly of Iowa in 1953, when enacting the Certificate of Title Law,[7] made no reference to the sections having to do with "owner's liability".[8] Especially it is noted that, of all the sections of the 1950 Iowa Code from 321.45 through 321.52 relating to transfer of title or interest, only section 321.51, which provided that an owner who had made a bona fide sale or transfer of title or interest and who had delivered possession would not thereafter be liable for any damages from negligent operation of such vehicle driven by another, was left intact. At the very next legislative session, in 1955, after the incident involved, Chapter 157 of the Laws of the 56th General Assembly was enacted, specifically providing that pertinent sections of the Owner's Responsibility Law were not controlled by the Certificate of Title Law.[9] In a previous situation when the Iowa legislature amended the chapter on Motor Vehicles while litigation was pending, to provide specifically that the definition of owner did not include a conditional seller, the Iowa Supreme Court repelled the imposition of statutory liability on those not owners in fact and also regarded the amendment as having been passed to remove doubt and not to change the law.[10] The sale by Rouse to Sturtz was a "bona fide" sale to bring him within the provisions of section 321.51.

Assuming the relevance of the foregoing factors in attempting to determine legislative intention and what the Iowa Supreme

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[6] See Tunks, *Assigning Legislative Meaning: A New Bottle,* 37 IOWA L. REV. 372 (1952), for an excellent discussion of the problems of statutory interpretation, with emphasis on the legislative function.

[7] Iowa Laws 1953 c. 127.

[8] IOWA CODE §§ 321.493, 321.1(36) (defining owner as conditional buyer in conditional sale) and 321.51 (1950).

[9] See discussion in Hudson, *Iowa Motor Vehicle Certificate of Title Law II,* 4 DRAKE L. REV. 86, 87, 89, 90 (1955), with conclusion that amendments applied only to the factual situation of sale as in the case presently commented on.

[10] Hansen v. Kuhn, 226 Iowa 794, 285 N.W. 249 (1939).

Court might do, and without any attempt to discuss extensively the points mentioned in the opinion or to balance theories and contrasting canons of stautory interpretation, it is believed that certain other factors not emphasized in the opinion speak more strongly than any of those mentioned. The language in section 321.45 (Iowa Code 1954) that "no person shall acquire any right, title, claim or interest . . . except by virtue of a certificate of title" and that "no court in any case at law or in equity shall recognize the right, title, claim or interest of any person . . . unless evidenced by a certificate. . . ." is so strong, so forceful, that, it is submitted, no amount of speculation as to legislative intention based either on what the legislature omitted to say previously or did subsequently, or reliance on what the courts have decided previously when a statute was amended, can remove the all-inclusiveness of the words used.[11] The retention in sections 321.51 and 321.1(36) of references to the avoidance of liability by transfer of title and possession and to the conditional buyer's being defined as the owner is entirely consistent with such title and interest being that recognized by the new certificate law. There was no need to amend those sections to give strength to the certificate.

Also attention is invited to the fact that the Iowa Supreme Court has previously considered that a statute as to a certificate of title did have an impact on the "owner's liability" provisions. In Enfield v. Butler,[12] where there was an accident in Iowa, the court affirmed a lower court holding that a father listed as owner on a Missouri certificate of title was owner as matter of law for "owner's liability" purposes in Iowa in spite of attempts to show transfer to a son. The controlling Missouri law that a sale without assignment of a certificate of ownership shall be fraudulent and void, while different in exact language, conveys no stronger sense of all-inclusiveness than the Iowa provisions that "no person shall acquire any right, title, claim or interest . . . except by virtue of a certificate issued or assigned to him" and that "no court in any case at law or in equity shall recognize the right, title, claim or interest of any person . . . unless evidenced by a certificate. . . ."

There is another matter for comment, as to the possible effect of this opinion on the decisions in other controversies under the Certificate of Title Law. It should be noted again that, at least as to incidents occurring on or after July 4, 1955, the provisions of Chapter 157 of the Laws of the 56th General Assembly would clearly relieve from liability a person in the position of the seller Rouse. Although there is some discussion in the opinion against applying the Certificate of Title Law in such a manner as to prevent a court from looking behind the ownership indicated on the

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11 See Reference in Hudson, *Iowa Motor Vehicle Certificate of Title Law II*, 4 DRAKE L. REV. 86, 96 (1955), to the opinion in *In re Case's Estate*, 161 Ohio St. 288, 118 N.E.2d 836 (1953), applying the literal, strict interpretation.

12 221 Iowa 615, 264 N.W. 546 (1935).

certificate, it is not believed that the decision against conclusiveness of the certificate should be carried to situations other than those with the exact facts there involved. This is suggested because of the doubts as to the conclusion itself, the use in the opinion of the legislative changes in 1955 as bearing on legislative intention and the reference to the retention in 1953 of section 321.51 relating to relief from liability where there has been sale and transfer of posssion, and the court's statement, at page 237, that "It is the view of the court that the indicia showing legislative intent not to change the Owner's Responsibility Law here involved preponderates", a comparatively mild statement.