Of course the argument could be advanced that such treatment of the municipal debt problem by the court would be an open flaunting of the constitutional prohibition.[71] However, such a contention disregards the fact that from the beginning the amendment as it read was unworkable,[72] and that the court has indirectly recognized that relief is sometimes necessary.[73] The present confusion in the field is a result of the court's failure to bring such recognition out into the open.[74] A frank statement to that effect would have prevented subsequent courts, as in the *Cerajewski* and *Rappaport* cases, from ignoring the basic issue involved.

The problem of municipal indebtedness today is neither academic nor remote. There is little doubt that there will be a continuing need on the part of local units to evade the 2% limitation.[75] It is suggested that the proposed approach, based upon the real considerations present in a debt limitation, will provide both just and certain relief.

SECURITIES

CERTIFICATE OF TITLE AS NOTICE OF LIENS UPON MOTOR VEHICLES

Crissinger, the owner of a motor vehicle, gave to the Community State Bank a chattel mortgage which was duly filed in the chattel mortgage records. At the same time the bank took possession of the certificate of title, but subsequently returned it to Crissinger for the alleged purpose[1] of permitting the

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the debt limitation of the constitution for all practical purposes is nullified." Rappaport v. Dept. of Health, 87 N. E.2d 77, 82 (Ind. 1949). *See also* Cerajewski v. McVey, 225 Ind. 67, 73, 72 N. E.2d 650, 652 (1947).

71. "If within our constitution, as it is, we cannot finance necessary hospital additions and improvements then we should amend the constitution, not flout it." Young, J. in Rappaport v. Dept. of Health, 87 N. E.2d 77, 82 (Ind. 1949).

72. See Williams and Nehemkis, *Municipal Improvements as Affected by Constitutional Debt Limitations,* 37 COL. L. REV. 177, 184 (1937).

73. Otherwise why was the "local improvement" district saved by the majority in the *Rappaport* decision?

74. In nearly all of the cases in which evasion was allowed, the court went out of its way to show that evasion was not taking place.

75. Cottrell, *Problem of Local Government Reorganization,* 2 WESTERN POLITICAL QUARTERLY 599 (Dec. 1949):

> Population in most metropolitan areas is now pressing beyond the safety margin of the resources available for its support. . . . Finances and facilities of all governments are strained by the problems presented. The situation is one in which governments are trying to meet demands for more schools, playgrounds, streets, recreational areas, utilities, and numerous other services through a two inch pipe when a ten inch main is required.

1. The Indiana statutes seemingly require an applicant for registration plates to "present satisfactory evidence" that the applicant has been issued a certificate of title. IND. STAT. ANN. (Burns Supp. 1949) § 47-2501. As a matter of practice, however, an applicant for registration plates is not required to produce the certificate of title because, through its records, the department determines whether or not a certificate has been issued to him.

latter to obtain registration plates. Crissinger, however, sold the vehicle and assigned the certificate of title to Bobb, the defendant buyer, who had no actual knowledge of the prior lien. In a suit to determine priority of the parties' rights, the Indiana Appellate Court held that the mortgagee's prior lien was not defeated because it surrendered temporary possession of the certificate of title to the owner. The purchaser was charged with constructive notice of the filed chattel mortgage. *Community State Bank* v. *Crissinger,* 89 N. E. 2d 78 (Ind. App. 1949).

The *Crissinger* case sheds further light on the importance of the title certificate as a means for imparting notice of security interests in motor vehicles. The problem is significant because of a possible conflict between the Chattel Mortgage Act[2] and the legislative provisions permitting liens on motor vehicles to be recorded on the certificate of title when it is originally issued.[3] But because of apparent legislative oversight, the act does not clearly provide for a method of recording liens thereon once the certificate has been issued. This hiatus in the title certificate law was made the basis for the holding in the instant case, since the lien was taken after the owner had been issued his certificate of title. But in so holding the court overlooked several factors which strongly militate against the result reached. The principal purpose of the title certificate law was the avoidance of illegal transfers of highly mobile property, as the one here involved.[4] Accordingly the Commissioner of the Bureau of Motor Vehicles was given the power to prescribe the form of the title certificate,[5] and this power reasonably includes the establishment of methods by which subsequent liens are to be shown upon the certificate of title. Furthermore, the court was unaware of the practice of the Bureau to re-issue a new certificate showing subsequent liens.[6] Left un-

2. The Chattel Mortgage Act of 1935 requires chattel mortgages on personal property to be filed in the county of the residence of the mortgagor, or, if not a resident of the state, in the county where the property is located. IND. STAT. ANN. (Burns Supp. 1949) § 51-509.

3. IND. STAT. ANN. (Burns Supp. 1949) § 47-2501.

4. The present language of the Indiana title certificate law relating to liens is, except for the administrative provisions, substantially in accord with the language of the UNIFORM MOTOR VEHICLE ANTI-THEFT ACT. *Compare* IND. STAT. ANN. (Burns Supp. 1949) § 47-2501 *with* UNIFORM MOTOR VEHICLE ANTI-THEFT ACT § 6(b), 11 U. L. A. 147 (1942). The latter act has been declared obsolete by the Uniform Commissioners. *Id.* 11 U. L. A. 10 (Supp. 1949). While the Uniform Act was adopted to prevent thefts of motor vehicles, the act required an endorsement of all liens and encumbrances upon a transfer of the title, thus indicating an intent to give notice to purchasers not only of ownership, but liens as well. *Cf.* Lusk, *Effect of Registration and Certificate of Title Acts on the Ownership of Motor Vehicles,* 21 IND. BUS. STUDIES 1, 81 (1941).

5. IND. STAT. ANN. (Burns Supp. 1949) § 47-2501.

6. An investigation of this departmental practice reveals that the procedure for recording liens subsequent to the original certificate is effectual, simple and inexpensive. For example, suppose that E bank wishes to perfect a mortgage on an automobile owned by M where M holds a subsisting certificate of title. E can have M fill out the assignment on the reverse side of his certificate by using M's name and address as both assignee

considered by the court was not only the business practice of bankers and lenders in preserving their interests by this method,[7] but also the sound policy reasons for maintaining a centralized recording system for motor vehicles, the need of which has been recognized by decision[8] and legislation[9] for many

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and assignor. At the same time the encumbrance can be entered in the space provided on the back of the certificate. The instrument may then be sent to the State House by E where the transaction is processed and a new certificate issued. Under this process the name of the new assignee and the encumbrance thus appearing on the old certificate are photostated on the face of the new certificate, and the old is filed as a part of the record upon the vehicle under its proper serial number. The new title is then mailed back to any party designated in the application. Consequently E is thoroughly protected by having his interest permanently recorded with the Bureau, and by having the certificate mailed to the bank or M as it is desired. The Bureau of Motor Vehicles justifies this procedure upon an interpretation of the provision:

> The original certificate of title together with all assignments thereof, and any *subsequent reissues* thereof, shall be retained by the department and, appropriately classified and indexed, in such a manner as is most convenient to trace title to such vehicle described therein. (Italics supplied)

IND. STAT. ANN. (Burns Supp. 1949) § 47-2502. The courts will take judicial notice of the practical interpretation of a statute by an administrative agency. Cotton v. Commonwealth Loan Co., 206 Ind. 626, 634, 635, 190 N. E. 853, 856-857 (1934).

7. A spot check of the Bureau's records, and consultation with lending agencies shows that this procedure has become very common with the lending institutions in the larger cities.

8. *E. g.*, Nichols v. Bogdo Motors, Inc., 118 Ind. App. 156, 77 N. E. 2d 905 (1948); Maryland Credit Finance Corp. v. Franklin Credit Finance Corp., 164 Va. 579, 180 S. E. 408 (1935); Merchants Rating & Adjusting Co. v. Skaug, 4 Wash. 2d 46, 102 P.2d 227 (1940). *Contra*: Carolina Discount Corp. v. Landis Motor Co., 190 N. C. 157, 129 S. E. 414 (1925).

9. Many states require liens to be perfected upon the certificate of title and provide protection to and against purchasers and creditors. *E.g.*, ARIZ. CODE ANN. (1940) § 66-231 (liens upon motor vehicles excluded from other recording provisions); CAL. VEHICLE CODE (Supp. 1949, 1948) §§ 196, 198 (exclusive method of imparting notice of chattel mortgage); IDAHO CODE ANN. (1948) § 49-412; *id.* (Supp. 1949) § 49-414 (exclusive method of imparting notice of lien); MONT. REV. CODES ANN. (1949) § 53-110 (liens exempted from requirements of filing elsewhere); NEV. COMP. LAWS. ANN. (Supp. 1949) § 4435.14a; N. M. STAT. ANN. (1941) § 68-119; OHIO GEN. CODE ANN. (Supp. 1949) § 6290-9 (lien noted on title certificate by clerk of court); PA. STAT. ANN. (Supp. 1950) tit. 75, § 33; TEX. STAT., PENAL CODE (1948) art. 1436-1 § 44; VA. CODE ANN. (1950) § 46-71 (recording of liens in any other place shall not be required or have any effect); WYO. COMP. STAT. ANN. (Supp. 1949) § 60-208 (certificate surrendered to county clerk who records and notes lien on certificate). In other states the statutes requiring transfers to be made through the certificate of title either fail to provide for recording of liens on the title, or where permitted or required do not state the effect of such provisions as imparting notice to third persons. *E.g.*, ARK. DIG. STAT. (1947) § 75-106; COLO. STAT. ANN. (Supp. 1947) c. 16, § 1; ILL. ANN. STAT. (1950) c. 95½, § 77; N. J. STAT. ANN. (Supp. 1941) § 10-9, 14; N. C. GEN. STAT. ANN. (Supp. 1949) § 20-72; N. D. REV. CODE (1943) § 39-0505; ORE. COMP. LAWS. ANN. (Supp. 1947) § 115-114. Centralized filing through the medium of the title certificate was tentatively proposed as a Reporter's Draft of the UNIFORM COMMERCIAL CODE, but the provision has not yet been incorporated in a proposed draft. *Compare* UNIFORM COMMERCIAL CODE Part 8 (May 1949 Draft) *with* UNIFORM COMMERCIAL CODE (Proposed Final Draft, Spring 1950). Congress has provided for centralized recording of liens upon aircraft. 52 STAT. 1006 (1938), as amended, 54 STAT. 1235 (1940), 49 U. S. C. § 523 (1946); 62 STAT. 494 (1948), 49 U. S. C. § 523 (Supp. 1949). In Indiana liens upon railroad rolling stock are filed with the Secretary of State. IND. STAT. ANN. (Burns 1943 Repl.) § 58-807 (applying to conditional sale).

years. Assuming the court erred in failing to recognize that a lienholder has the legal means for perfecting his interest upon the certificate of title and the records of the Bureau of Motor Vehicles, it may be useful to examine the effect of this new system for imparting notice of security interests in motor vehicles.

Unfiled chattel mortgage

It sometimes happens that a chattel mortgage is taken as security, but without filing with the county recorder.[10] In such cases where the chattel mortgagee perfects his interest upon the certificate of title, it would seem that he should be fully protected for the reason that subsequent persons dealing with the property are charged with constructive notice of the title and the public records.[11] This position finds support in the general reliance placed upon the title by the public. The time and expense of searching the chattel mortgage records in the larger communities have made those records a source of little value in title investigation.[12] Furthermore, the Chattel Mortgage Act and the certificate of title law should be interpreted together.[13] The latter concerns a special phase of the whole subject of chattel mortgages on personal property, thus creating a reasonable inference that the certificate of title law was intended to govern the method for imparting constructive notice of the lienholder's rights in motor vehicles.[14]

10. In Indiana an unrecorded mortgage is invalid as against "subsequent mortgagees, purchasers and/or creditors. . . ." IND. STAT. ANN. (Burns Supp. 1949) § 51-504; *cf.* Universal Discount Corp. v. Brooks, 115 Ind. App. 591, 58 N. E.2d 369 (1944) (holding that an unacknowledged mortgage was invalid as against all creditors); Maple v. Seaboard Surety Co., 117 Ind. App. 627, 73 N. E.2d 80 (1947) (but an unrecorded chattel mortgage is valid between the immediate parties).

11. *Cf.* Personal Finance Co. v. Flecknoe, 216 Ind. 330, 340, 24 N. E.2d 694, 698 (1940) (court indicating that subsequent artisan lienholder could find previous mortgage through certificate of title); Nelson v. Fisch, 39 N. W.2d 594 (Iowa 1949) (seller who retained possession of certificate prevailed over Iowa purchaser); Eline v. Commercial Credit Corp., 307 Ky. 77, 209 S. W.2d 846 (1948) (conditional seller's interest registered on Indiana certificate of title filed with county clerk in Kentucky); Chandler v. Conabeer, 198 N. C. 757, 153 S. E. 313 (1930) (subsequent purchaser informed that first lienholder held certificate of title). *But cf.* Taplinger v. Northwestern Nat. Bank, 101 F.2d 274 (3d Cir. 1939) (applying peculiar and criticized interpretation by Pennsylvania inferior courts of statute now repealed); Security Nat. Bank v. Bell, 125 N. J. L. 640, 17 A.2d 552 (Err. & App. 1941). In states where the statute clearly requires liens upon the certificate to be registered, and manifests an intent to protect third persons, the lien is held effective without local filing or recording. Van Syckle v. Keats, 125 N. J. L. 319, 15 A.2d 321 (Sup. Ct. 1940); *see* C. I. T. Corp. v. Guy, 170 Va. 16, 195 S. E. 659, 662 (1938).

12. Investigation reveals that most automobile dealers rely entirely upon the status of the title certificates in buying and trading in used automobiles. Of the dealers examined, none admitted to a practice of examining the county chattel mortgage records to determine the existence of liens upon the motor vehicles acquired.

13. In general see 2 SUTHERLAND, STATUTORY CONSTRUCTION § 5201 *et seq.* (3d ed., Horack, 1943).

14. *Cf.* Christian v. Boyd, 222 S. W.2d 157 (Tex. Civ. App. 1949); Merchants Rating & Adjusting Co. v. Skaug, 4 Wash.2d 46, 102 P.2d 227 (1940). *Contra*: Carolina Discount Corp. v. Landis Motor Co., 190 N. C. 157, 129 S. E. 414 (1925).

Serious difficulties may arise where the chattel mortgagee's interest is not perfected through the procedure of recording with the Bureau and a reissue of the certificate showing the lien. Should the mortgagee permit the debtor to retain possession of the motor vehicle and the certificate of title, under the chattel mortgage act the mortgage would be invalid as against the claims of subsequent purchasers and creditors without actual notice.[15] Unfortunately, the title certificate statute fails to designate the third persons[16] who may claim an estoppel against the lienholder because of the latter's failure to perfect his security interest, but it is reasonable to assume that they are the same as those protected by the Chattel Mortgage Act.

Where the mortgagee retains possession of the title certificate, or causes his lien to be stamped or written on the certificate without recording through the procedure of reissue,[17] a third person purchasing the vehicle would be

15. See note 10 *supra.*

16. The Indiana title certificate law provides that the records of the Bureau shall be open to the public, and for a fee a copy of any record of the department will be furnished on request. IND. STAT. ANN. (Burns Supp. 1949) § 47-2408. The title certificates are indexed under the engine number of the vehicle, and consequently third persons desiring to determine the owner's status must ascertain the engine number from the certificate of registration.

17. It will be observed that the lienholder's interest *may* serve as notice to the public through dealings with the certificate of title in at least four situations: (1) The lien may be written on the title, and the title then processed through the department by assignment or reissue. In this case the lien becomes a matter of public record. (2) The lienholder may merely retain possession of the title certificate. The lien is thus not made a matter of public record, except insofar as persons dealing with the title are charged with notice that the lien debtor does not have possession of it. *E.g.,* Associates Discount Corp. v. Hardesty, 122 F.2d 18 (App. D. C. 1941) (lienholder financing dealer kept certificate of origin); *In re* Soss, 52 F. Supp. 123 (D. Del. 1943) (debtor pledged certificate of title); Buss v. McKee, 115 Colo. 159, 170 P.2d 268 (1946); Nelson v. Fisch, 39 N. W.2d 594 (Iowa 1949) (seller attached certificate of title to buyer's check, so that buyer could obtain title only after check cleared); Colonial Finance Co. v. Hunt, 290 Ky. 299, 160 S. W.2d 591 (1942) (lienholder financing dealer kept certificate of origin); Chandler v. Conabeer, 198 N. C. 757, 153 S. E. 313 (1930) (mortgagee retained certificate of title); General Credit Corp. v. Lee James, Inc., 8 Wash.2d 185, 111 P.2d 762 (1941) (assignee of mortgagee took certificate showing original lien); *cf.* Superior Finance Co. v. American Security Co., 107 Ind. App. 461, 25 N. E.2d 256 (1940) (assignee of conditional sales contract took title certificate in name of original seller, but relinquished possession to buyer). (3) The lien may be written, stamped, or otherwise fastened to the certificate of title, in which case the lien is not a public record, except as third persons are charged with the duty of dealing with the certificate. *E.g.,* Superior Finance Co. v. American Security Co., 107 Ind. App. 461, 25 N. E.2d 256 (1940) (certificate of title delivered to buyer, but rider attached to certificate showing conditional sale); Eline v. Commercial Credit Corp., 307 Ky. 77, 209 S. W.2d 846 (1948) (lien not perfected by reissue, but shown on title); Ross v. Leuci, 194 Misc. 345, 85 N. Y. S.2d 497 (N. Y. City Ct. 1949) (owner signed transfer blank on back of certificate and entrusted instrument to swindler). (4) The lienholder may cause the title to be assigned to him, or may refuse to assign the title in the case of a conditional sale. Here the lienholder's possible claim appears upon the records of the department for the reason that nothing on the records shows that the lien debtor has title. *Cf.* International Harvester Co. v. Holley, 106 Ind. App. 329, 18 N. E.2d 484 (1939) (conditional seller who perfected his lien upon the title certificate prevailed against subsequent execution creditor); Commercial Credit Co. v. McNelly, 6 Harr. 88, 171 Atl. 446 (Del. Super. Ct. 1934) (owner who held certificate

charged with notice of a defect in the mortgagor's title by his failure to produce the certificate for assignment, or where the lien appears in writing on the instrument by the actual notice imparted thereby. Consequently a good argument is present for protecting the lienholder against a purchaser in such circumstances.[18] The situation is further complicated by the relative ease with which a last certificate may be replaced, and fraudulent application is not effectively prevented.[19] The new certificate vests the mortgagor with apparent ownership, and bona fide purchasers taking an assignment of the certificate should be protected, since the mortgagee could have recorded his lien with the Bureau through the process of reissue.[20] Where creditors of the mortgagor are involved the issue becomes more difficult because there are no public records from which subsequent creditors can ascertain the lien-

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turned possession of automobile over to agent at used car market). The practice whereby the lienholder retains or causes the title certificate to be registered in his own name is undesirable because the certificate constitutes evidence of ownership, and thus may imperil the real owner's right. *Cf.* Automobile Underwriters v. Tite, 85 N. E.2d 365 (Ind. App. 1949); Greaf v. Breitenstein, 97 Ind. App. 525, 187 N. E. 347 (1933); Meskiman v. Adams, 83 Ind. App. 447, 149 N. E. 93 (1925); Coffey v. Williams, 69 Ariz. 126, 210 P.2d 959 (1949) (where only written evidence of security consisted of certificate of title in lienholder's name); Majors v. Majors, 349 Pa. 334, 37 A.2d 528 (1944) (evidence insufficient to show W was owner of automobile where certificate taken in name of H, although W furnished the consideration).

In some states failure to comply with the title certificate law invalidates the transfer. *E.g.*, Scarborough v. Detroit Operating Co., 256 Mich. 173, 239 N. W. 344 (1931) (where certificate not transferred to conditional buyer, conditional seller could not enforce contract); Peper v. American Exchange Nat. Bank, 357 Mo. 652, 210 S. W.2d 41 (1948) (lienholder took certificate improperly acknowledged). *But cf.* Janney v. Bell, 111 F.2d 103 (4th Cir. 1940). The effect of dealings with the title certificate should not be confused with statutes requiring registration for purpose of taxation and identification plates. Such legislation is not intended to impart notice of liens and ownership to third persons. Union Bank & Trust Co. v. Willey, 237 Iowa 1250, 24 N. W.2d 796 (1946); Kurtz v. Adrian, 46 S. D. 125, 191 N. W. 188 (1922) (license registration in name of mortgagee). *But cf.* Personal Finance Co. v. Flecknoe, 216 Ind. 330, 340, 24 N. E.2d 694, 698 (1940) (subsequent artisan's lienholder charged with notice of ownership through possibility of checking registration card); Security Nat. Bank v. Bell, 125 N. J. L. 640, 17 A.2d 552 (Err. & App. 1941) (debtor retained registration plates in own name, though certificate of title showed lien).

18. *Cf.* International Harvester Co. v. Holley, 106 Ind. App. 329, 18 N. E.2d 484 (1939) (conditional seller prevailed over subsequent execution lienholder); Nelson v. Fisch, 39 N. W.2d 594 (Iowa 1949); Eline v. Commercial Credit Corp., 307 Ky. 77, 209 S. W.2d 846 (1948) (lien of Indiana seller written on title prevailed against purchaser in Kentucky who could have found lien on Kentucky records); Chandler v. Conabeer, 198 N. C. 757, 153 S. E. 313 (1930). *But cf. In re* Soss, 52 F. Supp. 123 (D. Del. 1943); Christian v. Boyd, 222 S. W.2d 157 (Tex. Civ. App. 1949).

19. IND. STAT. ANN. (Burns Supp. 1949) § 47-2512. Since the statute requires the Bureau to mark the replaced certificate with the word "duplicate," the argument might be raised that all subsequent purchasers are to be charged with the uncertain character of the instrument.

20. *Cf.* Motor Inv. Co. v. Knox City, 141 Tex. 530, 174 S. W.2d 482 (1943); General Credit Corp. v. Lee James, Inc., 8 Wash.2d 185, 111 P.2d 762 (1941). The power of the debtor to obtain a new certificate is comparable to the situation where an owner or lienholder puts the debtor or another in a position of holding apparent authority to dispose of the property. *E.g.*, Ross v. Leuci, 194 Misc. 345, 85 N. Y. S.2d 497 (N. Y. City

holder's interest.[21] As a practical matter, however, the creditor who loans upon the debtor's balance sheet can require the debtor to verify his ownership of motor vehicles by producing the title certificate. On the other hand, the chattel mortgage records provide a valuable source of credit information to the large credit agencies, and an argument can be made that creditors should be permitted to rely upon the public records.[22]

Filed chattel mortgage

Because the Chattel Mortgage Act and the title certificate law seemingly provide for different methods of imparting notice of security interests in motor vehicles, the odd situation often arises, as it did in the *Crissinger* case, that the chattel mortgage is filed, but the lien is not perfected through the certificate of title.[23] This demonstrates forcefully a very real dilemma facing a prospective buyer or lender who loans on the security of motor vehicles. The alleged owner may present an unencumbered certificate of title, yet the lender or buyer is forced to withhold action until he has searched the chattel

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Ct. 1949) (auto turned over to agent with assignment blanks on title certificate signed by owner). A thief who obtains possession of a certificate of title assigned in blank cannot pass good title. Adkisson v. Waitman, 213 P.2d 465 (Okla. 1949). Nor will a person who accepts title with knowledge of the facts be protected. Sax Motor Co. v. Mann, 71 N. D. 221, 299 N. W. 691 (1941).

21. There may be danger that the lien could be cut off by a bona fide purchaser, thus constituting a preference in bankruptcy. 52 STAT. 869 (1938), 11 U. S. C. § 96 (1946); Corn Exchange Nat. Bank & Trust Co. v. Klauder, 318 U. S. 434 (1943); *In re* Soss, 52 F. Supp. 123 (D. Del. 1943) (pledgee of title certificate held an equitable lien, and therefore the lien constituted a preference).

22. Consultation with several of the larger credit investigating agencies (Retailers Commercial Agency Inc., Dun & Bradstreet Inc., etc.) reveals that regular and current information from the chattel mortgage records is transcribed from all of the chattel mortgage records of the state. This information is forwarded to the central office of the credit agencies where it is indexed and classified to provide a valuable source of credit information to subscribers of the service furnished by the agencies. Since the motor vehicle mortgage is the largest single class of property from which this credit information is obtained, a source of credit information might be destroyed if means were not provided for public recordation of all such liens. It is submitted, however, that if all liens upon motor vehicles were recorded with the Bureau of Motor Vehicles the efficiency of the credit investigating agencies would be increased, because the records would show in addition to chattel mortgages those liens held by way of conditional sale. In addition the geographical distribution of the task of investigating local records would be reduced by the corresponding reduction of the number of liens filed in the local records.

23. This same dilemma has commonly faced bankers and automobile lienholders in other states. *Cf.* Buss v. McKee, 115 Colo. 159, 170 P.2d 268 (1946); Sorensen v. Pagenkopf, 151 Kan. 913, 101 P.2d 928 (1940); Associates Discount Corp. v. Davis Motor Sales, 275 App. Div. 745, 87 N. Y. S.2d 757 (4th Dep't 1949); First National Bank v. Sheldon, 161 Pa. Super. 265, 54 A.2d 61 (1947); Motor Inv. Co. v. Knox City, 141 Tex. 530, 174 S. W.2d 482 (1943); Higgins v. Robertson, 210 S. W.2d 250 (Tex. Civ. App. 1948); Merchants Rating & Adjusting Co. v. Skaug, 4 Wash.2d 46, 102 P.2d 227 (1940). In some states the statutes compromise the political demand for local recording with the title certificate law by requiring the lien to be filed with the county officer who is required to certify or note the lien on the title. *E.g.*, MO. REV. STAT. ANN. (Cum. Supp. 1944) § 3488; Butler County Finance Co. v. Miller, 225 S. W.2d 135 (Mo. App. 1949).

mortgage records of the proper county, unless he is permitted to rely upon the certificate of title. To the banker and to the business man this is a real hardship.[24] Sales may be delayed; the cost of making the loan is increased; and the lender is put to the task of ascertaining not only the residence of the borrower,[25] but previous owners as well.[26] Here, as elsewhere, the courts should strain for a legal solution in conformity with commercial reality.

As previously suggested, the Supreme Court should be justified in construing the two statutes together.[27] Since the title certificate law purports to cover a particular type of property insofar as the method of imparting notice to third persons is concerned, it is fair to assume that this statute was intended to supercede the chattel mortgage law to the extent that third persons may

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24. See note 12 *supra.*

25. The difficulty of ascertaining the borrower's residence is demonstrated by Bergman v. Columbia Securities Co., 84 Ind. App. 403, 151 N. E. 367 (1926). There the certificate owner of a motor vehicle who was employed in Marion County and gave as his address a place in that county gave a chattel mortgage to a Marion County lending agency. The borrower, however, was in fact a resident of Hamilton County. The court held that the mortgage which was recorded in Marion County was invalid as against a third person who obtained possession and a certificate of title as a result of judicial proceedings establishing a prior equitable right to the vehicle.

26. *Cf.* National Fire Ins. Co. v. Collinsworth, 288 Ky. 398, 156 S. W.2d 157 (1941); Associates Discount Corp. v. Davis Motor Sales, 275 App. Div. 745, 87 N. Y. S.2d 757 (4th Dep't 1949) (where automobile sold on recorded conditional sale to H, but certificate of title taken in the name of W, held that assignee of seller's contract prevailed over bona fide purchaser from W who perfected his interest through the title certificate). *But cf.* Rigney v. Swingley, 112 Mont. 104, 113 P.2d 344 (1941) (mortgage from owner whose interest did not appear in the chain of title on the title certificate cut off by bona fide purchaser); Majors v. Majors, 349 Pa. 334, 37 A.2d 528 (1944) (execution creditor prevailed over owner who claimed prior right which was not perfected on certificate of title). Dispute as to ownership of motor vehicles very commonly arises where a defrauded seller asserts rights to the property. As a general rule a voidable title is cut off where property comes into the hands of a bona fide purchaser for value. Patterson v. Indiana Investment & Securities Co., 75 Ind. App. 489, 131 N. E. 19 (1921) (seller who delivered automobile on bad check of buyer cut off by bona fide purchaser who relied upon bill of sale); UNIFORM SALES ACT, 1 U. L. A. § 24 (1950); IND. STAT. ANN. (Burns Repl. 1943) § 58-208. In settling the rights between the defrauded seller and purchasers of the buyer the courts have been surprisingly astute in examining the customs of the trade relating to the certificate of title for purposes of determining good faith. Dresher v. Roy Wilmeth Co., 118 Ind. App. 542, 82 N. E.2d 260 (1948) (purchaser from buyer who gave bad check and fictitious name protected on the ground that purchaser received certificate of title in buyer's fictitious name); Shockley v. Hill, 91 Colo. 451, 15 P.2d 623 (1932) (purchaser from fraudulent buyer protected because purchaser obtained certificate of title); Nelson v. Fisch, 39 N. W.2d 594 (Iowa 1949) (purchaser from fraudulent buyer did not prevail against defrauded seller who attached certificate of title to bad check); Sims v. Sugg, 165 Kan. 489, 196 P.2d 191 (1948) (purchaser from fraudulent buyer did not prevail because purchaser failed to get certificate of title); Ross v. Leuci, 194 Misc. 345, 85 N. Y. S.2d 497 (N. Y. City Ct. 1949) (purchaser from fraudulent buyer prevailed on the ground that purchaser obtained certificate of title); *cf.* Craig Brokerage Co. v. Joseph A. Goodard Co., 92 Ind. App. 234, 175 N. E. 19 (1931) (subsequent purchaser of canned goods left in the possession of the seller charged with notice of rights of a previous purchaser because the latter's labels were placed upon the cans).

27. See notes 13 and 14 *supra.*

rely upon the status of the certificate of title.[28] Persons dealing with motor vehicles would thus be permitted to rely upon the certificate of title, without regard to the chattel mortgage records.[29]

The validity of this reasoning was sustained by *Nichols v. Bogda Motors, Inc.*,[30] a recent appellate court decision refusing to sustain a Michigan mortgage on an automobile sold by the borrower to a bona fide purchaser in Indiana. Although the mortgage was duly filed in the chattel mortgage records in Michigan, the court refused to charge the Indiana purchaser with constructive notice of the lien because the lien was not perfected upon the certificate of title. The court therefore refused to recognize the previous mortgage because it violated an "established policy of this state and universally recognized principles of equity."[31] The *Crissinger* case, however, is a complete reversal of the policy unless it can be distinguished on the basis that possession of the title certificate was given up for a temporary purpose.[32] Assuming that the indicia of ownership were incorporated in the certificate of title, the fact situation bears close analogy to the so-called equitable pledge, since possession was relinquished for a "temporary and limited purpose."[33] But in no Indiana case has an equitable pledge been upheld as against a bona fide purchaser.[34] It is the universal rule that the bona fide purchaser will cut

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28. This result has been reached without finding an implied repeal of the local recording laws, but by broadening the requisites of a *"good faith"* purchaser. Merchants Rating & Adjusting Co. v. Skaug, 4 Wash.2d 46, 102 P.2d 227 (1940) (subsequent purchaser from mortgagor who obtained certificate of title prevailed over lien of prior mortgagee properly filed in the local records); *cf.* Sorensen v. Pagenkopf, 151 Kan. 913, 101 P.2d 928 (1940).

29. A subsequent purchaser who examines and finds a prior mortgage upon the county records, would probably be charged with actual notice of the lien. *Cf.* Walter v. Hartwig, 106 Ind. 123, 6 N. E. 5 (1886) (purchaser who saw imperfectly recorded instrument in real estate records charged with actual notice of the transaction).

30. 118 Ind. App. 156, 77 N. E.2d 905 (1948).

31. *Id.* at 161, 77 N. E.2d at 908; *cf.* First National Bank v. Sheldon, 161 Pa. Super. 265, 54 A.2d 61 (1947).

32. Community State Bank v. Crissinger, 89 N. E.2d 78, 80 (Ind. App. 1949):

> . . . in this case the bank did take up the certificates. They were relinquished to the borrower for a legitimate purpose, and without knowledge on the part of the bank that they would be used for the purpose of accomplishing a fraud. The bank made reasonable efforts to recover them. In the absence of a statute requiring the bank to take up and hold them, we must conclude that the court erred in holding that Bobbs' title was not subject to the lien of the mortgages.

33. *Cf.* 2 GLENN, FRAUDULENT CONVEYANCES AND PREFERENCES § 490 (Rev. ed. 1940); Fletcher American Nat. Bank v. Federal Securities Co., 94 Ind. App. 379, 169 N. E. 599 (1929).

34. *Cf.* Fletcher American Nat. Bank v. Fed. Securities Co., 94 Ind. App. 379, 169 N. E. 599 (1929); New Albany Nat. Bank v. Brown, 63 Ind. App. 391, 114 N. E. 486 (1916).

off the rights of such pledgee.[35] The Uniform Trust Receipts Act[36] recognizes the validity of the equitable pledge for some purposes as against general creditors, and common law decisions will bear out this result.[37] It is likely, therefore, that the court may have confused the rights of creditors with those of bona fide purchasers.

Conditional sale

Because Indiana has not adopted filing or recording provisions generally applicable to conditional sales, the conditional seller normally is protected as against all third persons,[38] with the exception of purchasers in the regular course of trade.[39] The precise effect of the title certificate law upon these principles has not been conclusively settled by court decisions. But it has been held that the conditional seller may estop himself as against third persons where the title certificate is assigned to the buyer without showing the encumbrance.[40] This seems justified, since the title certificate law clearly authorizes the conditional sellers lien to be perfected through the title certifi-

35. RESTATEMENT, SECURITY § 11, comment *c* (1941); *cf.* Canal-Commercial Trust & Sav. Bank v. New Orleans, T. & M. Ry., 161 La. 1051, 109 So. 834 (1926).

36. UNIFORM TRUST RECEIPTS ACT § 3; IND. STAT. ANN. (Burns Supp. 1949) § 51-603 (recognizing that a pledge not accompanied by possession may be valid for 10 days from the time new value is given by the pledgee). Bona fide purchasers from the pledgor, however, are protected by the express terms of the section.

37. Clark v. Iselin, 88 U. S. 360 (1874); *cf.* Fletcher American Nat. Bank v. McDermid, 76 Ind. App. 150, 128 N. E. 685 (1920).

38. The filing provisions of the UNIFORM CONDITIONAL SALES ACT (with the exceptions of railroad rolling stock and fixtures) were eliminated from the statute as adopted by Indiana. IND. STAT. ANN. (Burns 1943 Repl.) §§ 58-801, 58-829. *Cf.* Abels v. National Bond & Inv. Co., 105 Ind. App. 434, 13 N. E.2d 903 (1938).

39. IND. STAT. ANN. (Burns 1943 Repl.) § 58-808; Lett v. Eastern Moline Plow Co., 46 Ind. App. 56, 91 N. E. 978 (1910); *cf.* Andre v. Murray, 179 Ind. 576, 101 N. E. 81 (1913). However, borrower and lender cannot make a conditional sale out of a transaction where there is no bona fide sale. Federal Building Co. v. Ford Motor Co., 101 Ind. App. 286, 199 N. E. 163 (1936) (automobiles received by dealer financed under sham arrangement whereby lending institution took bill of sale and purported to resell on conditional sale to dealer).

40. Superior Finance Co. v. American Security Co., 107 Ind. App. 461, 25 N. E.2d 256 (1940). Other cases have protected the bona fide purchaser receiving an unencumbered certificate of title, but in each case the purchase was made in the regular course of business from a dealer. LaPorte Discount Corp. v. Bessinger, 91 Ind. App. 635, 171 N. E. 323 (1930); Guaranty Discount Corp. v. Bowers, 94 Ind. App. 373, 158 N. E. 231 (1932). *But cf.* Abels v. National Bond & Inv. Co., 105 Ind. App. 434, 13 N. E.2d 903 (1938) (assignee of conditional sales contract made to dealer prevailed over subsequent purchaser who was also a dealer although title certificate passed to latter). Where the conditional seller perfects his lien upon the certificate he is protected as against third persons. International Harvester Co. v. Holley, 106 Ind. App. 329, 18 N. E.2d 484 (1939); *cf.* Eline v. Commercial Credit Corp., 307 Ky. 77, 209 S. W.2d 846 (1948). The various means by which the creditor can perfect his lien upon the title certificate are discussed in note 17 *supra*. As to the rights of the conditional buyer's creditors where lien of the seller is not perfected *compare* West v. Fulling, 36 Ind. App. 617, 76 N. E. 325 (1905) (creditors of buyer, who was a dealer in merchandise, covered by conditional sale, prevailed over seller) *with* Andre v. Murray, 179 Ind. 576, 101 N. E. 81 (1913) (holding to the contrary).

cate.[41] Although business men recognize sound reasons for dispensing with filing or recording because of nuisance expense,[42] especially in the case of small consumer sales, the sale of motor vehicles normally involves substantial sums of money. The opportunity for central recordation creates no burden since an assigument of the certificate from buyer to seller is required in any event.[43] Hence the only disadvantage to the seller is that he would be required to fill in the space upon the certificate provided for showing of encumbrances.

Pledge or other special lien

Because possession serves as constructive notice of security interests,[44] a pledgee or lienholder who obtains possession of a motor vehicle should be protected as against creditors and subsequent purchasers irrespective of the status of the title certificate.[45] Persons claiming other common law or statutory possessory liens[46] should, likewise, be accorded the same protection.[47] In Indiana the statute giving a lien to one who has furnished repairs to motor vehicles provides that the mechanic may file his lien in the miscellaneous records of the county in which the work was done,[48] thus inferring that the lien continues after filing although possession be returned to the owners.[49]

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41. IND. STAT. ANN. (Burns Supp. 1949) § 47-2501; *cf.* Security Nat. Bank v. Bell, 125 N. J. L. 640, 17 A.2d 552 (Err. & App. 1941) (statute requiring bill of sale to be registered with the Motor Vehicle Department applies to conditional sales, and not mortgages).

42. *Cf.* UNIFORM COMMERCIAL CODE (Proposed Final Draft, Spring 1950) § 9-303 (excepting liens upon consumer and other goods from the filing provisions of the Code, but apparently including motor vehicles).

43. IND. STAT. ANN. (Burns Supp. 1949) § 47-2501.

44. *Cf.* Franklin Nat. Bank v. Whitehead, 149 Ind. 560, 49 N. E. 592 (1898).

45. Dennis v. Bank of America Nat. Trust & Savings Ass'n., 34 Cal. App.2d 618, 94 P.2d 51 (1939); Peper v. American Exchange Nat. Bank, 205 S. W.2d 215 (Mo. App. 1947), *rev'd in part,* 357 Mo. 652, 210 S. W.2d 41 (1948) (dealer obtained loan upon security of certificate of title to vehicle which had been delivered to a buyer); Motor Inv. Co. v. Knox City, 141 Tex. 530, 174 S. W.2d 482, 487 (1943) (possession of buyer sufficient to charge subsequent lienholder perfecting lien upon title); *cf.* San Joaquin Valley Securities Co. v. Prather, 123 Cal. App. 378, 11 P.2d 45 (1932); Colorado State Bank v. Riede, 92 Colo. 362, 20 P.2d 1010 (1933). The mortgagee or lienholder who properly obtains possession for purposes of foreclosure or protecting his interests prevails as against creditors and subsequent purchasers. Janney v. Bell, 111 F.2d 103 (4th Cir. 1940). However a mortgage taken with a design toward obtaining possession may violate the bulk sales statutes, and therefore be in fraud of creditors. Van Camp Hardware & Iron Co. v. Ellis, 209 Ind. 582, 198 N. E. 75 (1935). For procedure whereby the interest of the buyer at judicial or foreclosure sale is perfected upon the certificate see IND. STAT. ANN. (Burns Supp. 1949) § 47-2505.

46. For the various types of such liens see RESTATEMENT, SECURITY § 61 (1941).

47. *See* Elder Chevrolet Co. v. Bailey County Motor Co., 151 S. W.2d 938, 942 (Tex. Civ. App. 1941).

48. IND. STAT. ANN. (Burns Supp. 1949) §§ 43-809, 43-810.

49. No cases were found holding that the lien continues after the artisan returns possession to the owner. *Cf.* Lincoln Finance Corp. v. Morgan, 90 N. E.2d 522 (Ind. App. 1950) (mortgagee made both artisan lienholder and mortgagor parties in replevin action).

This may create an intolerable situation because third persons would be required to search the records of all the ninety-two counties in the state. This may be avoided by requiring the artisan to perfect his lien upon the certificate of title before relinquishing possession.[50]

Dealer Financing

The title certificate normally does not play an important role in dealer financing of motor vehicles because the dealer is entrusted with the title on the supposition that the property will be sold in the course of trade. It is generally recognized that a buyer in the regular course of trade will be protected as against a person claiming a lien upon a stock of merchandise.[51] In conformity with that principle the decisions protect the buyer who receives an unencumbered certificate of title from the dealer as against a financer claiming a lien upon the vehicle.[52] The most difficulty arises where the buyer in regular course of business fails to obtain an unencumbered certificate of title, as where the financer keeps the certificate of title or certificate of origin, or otherwise perfects his lien thereon. In this case it is doubtful that the lienholder should be protected because the circumstances create an apparent authority in the dealer to make the sale, and it would seem unreasonable to subject the buyer to the lienholder's rights in the absence of actual knowl-

50. Related to this problem is the dispute which may arise between a person holding a lien upon accessories and a subsequent lienholder claiming a lien upon the vehicle. *Cf.* Goodrich Silvertown Stores v. Brashear Freight Lines, 198 S. W.2d 357 (Mo. App. 1946) (mortgagee holding lien upon tires which was filed in local records prevailed over subsequent purchaser who obtained perfected title certificate). The Indiana artisan's lien law applies to accessories "furnished in connection with the repair, storage, servicing or maintenance of any such motor vehicle. . . ." IND. STAT. ANN. (Burns Supp. 1949) § 43-807. That the lien should be perfected upon the title certificate is supported by analogy to the law of fixtures. *E.g.*, IND. STAT. ANN. (Burns 1943 Repl.) § 58-806 (conditional sale of fixtures must be recorded in deed records to protect seller from subsequent purchasers of real estate from buyer).

51. *E.g.*, Helms v. American Security Co., 216 Ind. 1, 22 N. E.2d 822 (1939); Indiana Inv. & Sec. Co. v. Whisman, 85 Ind. App. 109, 138 N. E. 512 (1923); Finance Corp. of New Jersey v. Jones, 98 N. J. L. 165, 119 Atl. 171 (1922). A dealer who purchases from a dealer is not a buyer in the regular course of trade. Abels v. National Bond & Inv. Co., 105 Ind. App. 434, 13 N. E.2d 903 (1938); *cf.* Lett v. Eastern Moline Plow Co., 46 Ind. App. 56, 91 N. E. 978 (1910). Nor is a subsequent mortgagee lending to the dealer. *Cf.* Morberg v. Commercial Credit Corp., CCH CONDITIONAL SALE & CHATTEL MORTGAGE REP. para. 12,249 (Minn. March 31, 1950); Haugen v. Neiswonger, 209 P.2d 267 (Wash. 1949). *But cf.* Commercial Credit Corp. v. Dassenko, CCH CONDITIONAL SALE & CHATTEL MORTGAGE REP. para. 12,250 (N. D. March 25, 1950).

52. LaPorte Discount Corp. v. Bessinger, 91 Ind. App. 635, 171 N. E. 323 (1930); Guaranty Discount Corp. v. Bowers, 94 Ind. App. 373, 158 N. E. 231 (1932); Sorensen v. Pagenkopf, 151 Kan. 913, 101 P.2d 928 (1940); Tyler State Bank & Trust Co. v. Monaville Independent School Dist., 226 S. W.2d 207 (Tex. Civ. App. 1950); *cf.* Ross v. Leuci, 194 Misc. 345, 85 N. Y. S.2d 497 (N. Y. City Ct. 1949). Compare also the cases cited in note 51 *supra*.

edge of the lien and lack of power in the dealer to sell in such a manner.[53] This conclusion is supported by the realities of the dealer-consumer relation whereby the buyer more often than not trusts the dealer to manage the paper work necessary for perfecting the buyer's title. Furthermore, since other legal devices for financing the dealer[54] are provided and commonly practiced, there is no reason for charging the consumer public with the technical niceties of the title certificate law when dealing with those charged with the skills of the trade.

Assignment of lienholder's interest

The Indiana title certificate law does not provide a satisfactory method whereby the assignee of the lienholder can perfect or record his lien upon the certificate of title. However the assignee can require the assignor to deliver possession of the certificate showing the lien thereon, thus providing sufficient protection against third persons.[55] An admitted weakness in this transaction occurs where the assignor and lien-debtor fraudulently obtain a duplicate by claiming to have lost the original title certificate, and the new title certificate is then transferred to a bona fide purchaser.[56] Yet this danger is not real for several reasons. Most assignments in the field of automobile financing are made from dealer to financing company as the result of retail sales. Consequently the assignee has confidence in a dealer

53. Associates Discount Corp. v. Hardesty, 122 F.2d 18 (App. D. C. 1941); Tharp v. San Joaquin Valley Securities Co., 20 Cal. App.2d 20, 66 P.2d 230 (1937); Western States Acceptance Corp. v. Bank of Italy, 104 Cal. App. 19, 285 Pac. 340 (1930); Colorado State Bank v. Riede, 92 Colo. 361, 20 P.2d 1010 (1933) (title certificate law excepted new sales); Commercial Credit Co. v. McNelly, 6 Harr. 88, 171 Atl. 446 (Del. Super. Ct. 1934) (owner delivered automobile to used car market where auto was sold to bona fide purchaser); L. B. Motors, Inc. v. Prichard, 303 Ill. App. 318, 25 N. E.2d 129 (1940); Buttinghausen v. Rappeport, 131 N. J. Eq. 252, 25 A.2d 877 (Ch. 1942); Owen v. Miller, 190 Okla. 205, 122 P.2d 140 (1942); *cf.* Peper v. American Exchange Nat. Bank, 357 Mo. 652, 210 S. W.2d 41 (1948); Automobile Finance Co. v. Munday, 137 Ohio St. 504, 30 N. E.2d 1002 (1940). *Contra*: Colonial Finance Co. v. Hunt, 290 Ky. 299, 160 S. W.2d 591 (1942) (strictly applying Ohio law). The lien, however, may be valid as against creditors. Universal Credit Co. v. M. C. Gale, Inc., 40 Cal. App.2d 796, 105 P.2d 1003 (1940); Universal Credit Co. v. Botetourt Motor Co., 180 Va. 159, 21 S. E.2d 800 (1942) (lienholder retaining title certificate excepted from Virginia "Traders Act").

54. The title certificate law should not be construed to supercede the statutory methods provided for trust receipts financing. Universal Credit Co. v. M. C. Gale, Inc., 40 Cal. App.2d 796, 105 P.2d 1003 (1940); Commercial Credit Corp. v. Horan, 325 Ill. App. 625, 60 N. E.2d 763 (1945).

55. As to the various methods by which the lien may be perfected through the title certificate see note 17 *supra.*

56. General Credit Corp. v. Lee James, Inc., 8 Wash.2d 185, 111 P.2d 762 (1941); *accord,* Buss v. McKee, 115 Colo. 159, 170 P.2d 268 (1946) (where buyer induced dealer-seller to give dealer's certificate to third person, although dealer-seller knew that buyer had given a prior mortgage, held that mortgagee could recover damages from dealer-seller on the ground that the third person prevailed). *But cf.* Motor Investment Co. v. Knox City, 141 Tex. 530, 174 S. W.2d 482 (1943) (assignee by subrogation who obtained replacement of manufacturer's title did not prevail over intervening purchaser in possession).

with whom the financing company regularly does business. Again, the lien ordinarily secures negotiable paper, with the result that a lien-debtor is charged with notice that payments must be made to the holder of the negotiable instrument.[57] This also eliminates the expense and trouble of perfecting an assignment upon records. Recent decisions establish a not uncommon hazard to the finance company taking assignments of liens held by an automobile dealer, who has sold the vehicle to an employee on conditional sale or on sale with chattel mortgage back as a sham transaction for obtaining credit through the discount method. The conditional sale or mortgage is then discounted with a lending institution, thus enabling the dealer to obtain credit upon his stock in trade by a device which conceals its real purpose. Where the assignee fails to obtain the title certificate, a subsequent buyer in the ordinary course of business is protected as against the claims of the assignee.[58] But where the assignee has obtained the certificate of title the subsequent buyer and the assignee may both be innocent parties. Several well reasoned decisions, however, charge the assignee with liabilities of a dealer-financer upon the basis that the finance company is informed of the customs of the trade.[59] Consequently, the buyer in the course of trade should be protected where he has no actual knowledge of the assignment.

Conclusion

The direct result of the *Crissinger* decision will force conservative lenders and buyers to examine both the chattel mortgage records and the status of the certificate of title before loaning money upon the security of, or before purchasing motor vehicles. Conversely, this means that the conservative bank or lender will cause all liens upon motor vehicles to be perfected in the county chattel mortgage records and upon the certificate of title as well. On the other hand the business man, who deals in a competitive market, and others who are bound by the customs of the trade may continue to rely upon the notice imparted by the certificate of title without regard to the ninety-two sets of chattel mortgage records in the state. The convenience of this practice will, undoubtedly, justify the risk. Therefore,

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57. Third persons who deal with the *property,* however, may rely upon the status of the public records. *Cf.* Connecticut Mut. L. Ins. Co. v. Talbot, 113 Ind. 373, 14 N. E. 586 (1887) (purchaser from mortgagor prevailed where records showed that mortgage was released by mortgagee although mortgagee had previously assigned mortgage and note securing it).

58. LaPorte Discount Corp. v. Bessinger, 91 Ind. App. 635, 171 N. E. 323 (1930); Guaranty Discount Corp. v. Bowers, 94 Ind. App. 373, 158 N. E. 231 (1932); Parke v. Franciscus, 194 Cal. 284, 228 Pac. 435 (1924).

59. Sorensen v. Pagenkopf, 151 Kan. 913, 101 P.2d 928 (1940); *cf.* Guaranty Discount Corp. v. Bowers, 94 Ind. App. 373, 158 N. E. 231 (1932). See cases cited note 53 *supra.*

it is not unreasonable to suggest that future decisions upon this problem reserve space to consider the customs, usages and needs of the trade.[60]

60. That the practical realities of the trade will determine the policy of the common law and statutory rules governing the rights of lienholders *compare* Kruger v. Wilcox, 1 Amb. 252, 27 Eng. Rep. 168 (Ch. 1755) *with* Helms v. American Security Co., 216 Ind. 1, 22 N. E.2d 822 (1939).