wise even under this rule, the master will not be liable.[15] So in *Normington* v. *Neely*[16] the court held that it was necessary to find that the assault was a continuation of an occurrence which was within the scope of employment, and that after a taxi driver had checked in for the night, and then attended the theatre, the employer was not liable for an assault committed upon meeting a competing taxi driver, although the assault arose out of a quarrel which took place during working hours several hours previously. And in *Raben* v. *Hamilton Diamond Co.*[17] the California Court of Appeals sent a case back for retrial to determine whether the agent had completed his work before or after the assault took place. The facts in the principal case do not reveal the time intervening between the conflict for precedence on the road and the assault upon the plaintiff, and the absence of mention of the time factor indicates that it was viewed by the court as immaterial, as long as the conflict preceded the assault. If the intervening time was a matter of minutes rather than hours, the court has apparently aligned itself with the majority rule.

F.F.V

CONFLICT OF LAWS

CONFLICTS — SALES — EFFECT OF CERTIFICATE OF TITLE LAW ON OUT OF STATE CONDITIONAL SALE

One Welikson, on August 26, 1936, purchased an automobile from the Goodman Co. in New York upon a conditional sales contract which was duly recorded there. Later, the Union Commercial Corp. purchased the Goodman Co.'s interest in the note. Welikson, in 1937, without the consent or knowledge of the holder of the conditional sales contract brought the car to Ohio where he had obtained employment. In Richland County, Ohio, he filed a sworn statement of ownership with the Clerk of Courts without mentioning the conditional sales contract. Welikson then obtained an Ohio license. In January, 1938, he purchased a new car and traded in the old one to the R. J. Schmunck Co., filing with the Clerk of Courts of Cuyahoga County an application and certificate of title for the old car without disclosing the lien. A certificate of title was issued him showing it free of all encumbrances and he, in turn, assigned it to the R. J. Schmunck Co., which then had a new certificate issued to it. On February 2, 1938, the Union Commercial Corp. heard of the transaction and brought a replevin action, which was decided in favor of the defendant in the Cleveland Municipal Court.

[15] Richberger v. American Express Co., 73 Miss. 161, 18 So. 922 (1896).
[16] Normington v. Neely, 58 Idaho 134, 70 P. (2d) 369 (1937).
[17] Raben v. Hamilton Diamond Co., 19 Cal. App. (2d) 282, 65 P.(2d) 98 (1937).

The Court of Appeals of the Eighth District, Cuyahoga County, affirmed the decision[1] on the basis of the Certificate of Title Law relating to automobiles which had become effective on January 1, 1938,[2] subsequent to the New York recording of the conditional sale. In previous decisions, Ohio had held the Certificate of Title Law provided an exclusive method for transfer of title.[3] The majority opinion held in favor of the Ohio bona fide purchaser inasmuch as the encumbrance was not noted upon the certificate[4] and decided that the New York recording did not come within the one exception[5] to the Act for conditional sales and chattel mortgages recorded prior to its passage under Ohio G.C. secs. 8560-8572. The court held that the Certificate of Title Law expressly nullifies, with respect to automobiles, previous Ohio cases[6] which had followed the majority doctrine throughout the country in protecting the interest of out-of-state conditional vendors without whose consent or knowledge the chattel had been removed to a second state.[7] The dissent argues that the act was not intended to apply to transactions taking place outside the state and that the securing of the certificate through fraud is no better than a theft, which is clearly provided for by the act.[8]

The entire question of the rights of the out-of-state conditional vendor seems to be one of policy rather than of power to control. The problem does not arise until there has been a removal from state A to state B without the consent or knowledge of the owner and some new dealing or transaction with respect to the chattel in the new jursidiction.[9] The majority in reaching its conclusion relies upon a case which does not seem applicable to the facts involved,[10] and also relies upon a section

[1] Union Commercial Corp. v. R. J. Schmunk Co., 30 Ohio L. Abs. 116 (1939).

[2] Ohio G.C. secs. 6290-2 to 6290-20. This act relates only to automobiles. One purpose was to prevent putting old cars scrapped by manufacturers and dealers back on the road. Another purpose was to provide an exclusive method of transferring title.

[3] State *ex rel.* The City Loan and Savings Co. v. Taggart, Recorder, 134 Ohio St. 374, 17 N.E. (2d) 758 (1938); 5 O.S.L.J. 255.

[4] Ohio G. C. sec. 6290-4.

[5] Ohio G. C. sec. 6290-9.

[6] Kanaga v. Taylor, 7 Ohio St. 134, 70 Am. Dec. 62 (1857); Reising v. Universal Credit Company, 50 Ohio App. 289, 198 N.E. 52 (1935).

[7] Shapard v. Hynes, 45 C.C.A. 271, 104 Fed. 449, 52 L.R.A. 675 (1900); Baldwin v. Hill, 4 Kans. App. 168, 46 Pac. 329 (1896); Drew v. Smith, 59 Me. 393 (1871); National Bank of Commerce v. Morris, 114 Mo. 255, 21 S.W. 511; RESTATEMENT, CONFLICT OF LAWS, secs. 268 and 275; GOODRICH, CONFLICT OF LAWS, sec. 153; STURMBERG, CONFLICT OF LAWS, 364. *Contra*: Consolidated Garage Co. v. Chambers, 111 Tex. 293, 231 S.W. 1072 (1921).

[8] Ohio G. C. 6290-8.

[9] Mere removal does not affect title. RESTATEMENT, CONFLICT OF LAWS, (1934) sec. 260 (general), 266-67 (chattel mortgage) 273-274 (conditional sales), 280 (liens and pledges).

[10] Boyer v. M. D. Knowlton Co., 85 Ohio St. 104, 97 N.E. 137 (1911). This case refers to property purchased in New York to be shipped to Ohio and to be used in Ohio.

of the Restatement of Conflict of Laws which would not seem to apply.[11]

Valid argument from the standpoint of law and policy may be made for both the majority and dissenting opinions. That the Legislature intended the Certificate of Title to be an exclusive method of transferring title, so far as purely local transactions are concerned, seems rather clear,[12] although some states have held that their acts were not intended to be so confined.[13] A more difficult problem arises, however, in respect to legislative intent to regulate transactions occuring in other states. The applicable sections do not specifically mention this problem and so there is as much soundness in the dissent's argument that the act was not intended to apply to such a situation, as in the majority's that inasmuch as only one exception to the requirements is provided for, and this situation is not included,[14] it was not intended to except such transactions. Whether or not the intention of the legislature, to give the bona fide purchaser obtaining the certificate clear and conclusive evidence of his rights and ownership in the chattel, necessitates the loss of the out-of-state owner's interest is a consideration which is debatable. The dissent also argues that as the Registrar may cancel those certificates wrongfully obtained,[15] this section applies to the problem considered here and resolves it in favor of the owner.

It must be remembered that the ruling is intended to deal exclusively with automobiles. A car is an exceptionally mobile chattel and may require special treatment. Perhaps social ends are better served by placing a burden of loss upon foreign finance and insurance companies which can more easily shift it, especially since thefts are clearly taken care of by the act. Perhaps, further, the better policy in the case of the automobile is to protect the bona fide purchaser, thus affecting a safer, quicker market for automobiles, and in this manner even protecting the used-car dealers who felt themselves injured by the act's two-fold purpose.[16]

An interesting problem arises when state B feels it should exercise control and does so by granting a new title, and later the chattel is removed to state C. There seems to be conflict as to whether state C

[11] RESTATEMENT, CONFLICT OF LAWS, sec. 268, comment d. This refers to liens in the second state such as those of mechanics or for salvage and does not refer to dealings with the title.

[12] See note 3, *supra.*

[13] Thiering v. Gage, 132 Ore. 92, 284 Pac. 832 (1931) (not void *per se*); Parrot v. Gulick, 145 Okla. 129, 292 Pac. 48 (1930). *Contra*: Kimber v. Eding, 262 Mich. 670, 247 N.W. 777 (1933).

[14] See note 5, *supra.*

[15] See note 8, *supra.*

[16] See note 2, *supra.*

then must enforce the title gained in state B or that of state A.[17] The question is usually further complicated by the fact that no new transaction has occurred in state C.[18] Some of the writers have felt this involves a question of due process and full faith and credit under the Federal Constitution.[19] The problem of the action of other states toward the new Ohio title is, therfore, one which Ohio courts should not overlook.[20] A.B.

CONSTITUTIONAL LAW

CONSTITUTIONAL LAW — CIVIL LIBERTIES — PEACEABLE ASSEMBLY — VALIDITY OF ORDINANCE REQUIRING DISPERSAL OF CROWD

Defendant was convicted of violating a village ordinance which provided: "That it shall be unlawful for three or more persons to assemble . . . on any of the sidewalks, streets, avenues, alleys or parks . . . or to refuse or neglect, on being notified by the Marshall or Police Officer to do so, to forthwith quietly disperse." The facts showed that defendant and a few friends had been standing on a sidewalk, ostensibly behaving themselves in a quiet manner, the only basis of conviction being the refusal to "move on" at the police officer's command. The Court of Common Pleas of Hamilton County reversed the conviction and held the ordinance unconstitutional as being repugnant to the guarantee of peaceable assembly found in Article I, Section 3 of the Ohio Constitution and the Fourteenth Amendment.[1]

In the past, although a few jurisdictions have invalidated legislative exertions of similar character on grounds of infringement of state constitutional guaranties,[2] such ordinances have generally been sustained as valid exercises of municipal police power. Thus the municipal power to prevent obstruction of traffic,[3] to abate nuisances,[4] to prevent breaches

[17] Forgan v. Bainbridge, 34 Ariz. 408, 274 Pac. 155 (1928) refused to recognize the new title, on the basis of reciprocity; but see Edgerly v. Bush, 81 N. Y. 199 (1880). *Contra*: Fuller v. Webster, 5 Boyce 538, 95 A. 335, (Del. 1915).

[18] Leflor, Jurisdiction Over Tangible Chattels, (1937), 2 U. Mo. L. REV. 171; also see note 9, *supra*.

[19] Dodd, *Power of the Supreme Court to Review State Decisions in the Field of Conflict of Laws* (1926) 39 HARV. L. REV. 533; Ross, *Has The Conflict of Laws Become a Branch of Constitutional Law?* (1931) 15 MINN. L. REV. 161.

[20] Generally see Carnahan, *Tangibles In The Conflict of Laws*, (1935) 2 U. OF CHI. L. REV. 345.

[1] Deer Park (Village) v. Schuster, 30 Ohio L. Abs. 466, 16 Ohio Op. 485 (1940).

[2] State v. Coleman, 96 Conn. 190, 113 Atl. 385 (1921); State v. Hunter, 106 N.C. 796, 11 S.E. 366, 8 L.R.A. 529 (1890).

[3] People v. Pierce, 85 App. Div. 125, 83 N.Y.S. 79 (1903).

[4] Commonwealth v. Surridge, 265 Mass. 425, 164 N.E. 480 (1929).