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Motor Vehicle Certificates of Title in Wyoming

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third case[21] involved a defendant convicted in the municipal court of driving a motor vehicle under the influence of intoxicating liquor which was in violation of a city ordinance. The defendant gave notice of appeal and then two years later filed a motion for dismissal on the grounds that the prosecution failed to diligently prosecute his appeal. The court held that the statutory provision for discharge of the defendant for undue delay in bringing him to trial, cannot be invoked by the defendant because he has had one speedy trial and was convicted thereat. The court said further that because the defendant did not diligently prosecute his appeal it should be dismissed.

Weighing the various considerations, it would seem preferable that the obligation for securing a speedy trial in Wyoming should be placed on the prosecution. The Wyoming statutes,[22] significantly use the language "if any person . . . shall not be brought to trial . . . he shall be entitled to be discharged." The words "be brought" would infer that the trial must be brought by the prosecution, thus placing the burden there. By putting the burden on the prosecution there is no undue hardship, since the state should desire to bring the defendant speedily to trial while its evidence is fresh. It comports more with the general spirit of our criminal system, as indicated by such doctrines as the presumption of innocence, to place the burden of securing a speedy trial on the prosecution.

The statutes of New York and Indiana[23] are somewhat similar to the Wyoming statutes on speedy trial. The decisions of the New York and Indiana courts[24] seem well reasoned, and should be followed.

WILLIAM W. GRANT

MOTOR VEHICLE CERTIFICATES OF TITLE IN WYOMING

Wyoming is one of the 35 states that has some form of certificate of title act. Although all of the 48 states require some sort of registration of motor vehicles, some 13 states have no certificate of title act of any kind. Of the states having such an act, many are inadequate and very few are similar, resulting in a lack of uniformity, in form and substance. Such

21. City of Casper v. Wagner, 284 P.2d 409 (Wyo. 1955).
22. Wyo. Comp. Stat. § 10-1312, § 10-1313 (1945).
23. N.Y. Code Cr. Proc. § 668 (1939): "If a defendant, indicted for a crime whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found the court may, on application of the defendant, order the indictment to be dismissed, unless good cause to the contrary be shown."

    Ind. Stat. § 9-1403 (Burns' Replacement 1956): "No person shall be held by recognizance to answer an indictment or affidavit without trial for a period embracing more than three terms of court, not including the term at which a recognizance was first taken thereon, if taken in term time; but he shall be discharged unless a continuance be had upon his own motion, or the delay be caused by his act, or there be not sufficient time to try him at such third term; and, in the latter case, if he be not brought to trial at such third term, he shall be discharged, except as provided in the next section."
24. Zehrlaut v. State, 230 Ind. 175, 102 N.E.2d 203 (1951); People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955).

acts may be classified in two general categories: those merely allowing the noting of encumbrances on the certificate of title, and those, as in Wyoming, making it mandatory, under threat of penalty, to note encumbrances on the certificate of title.

This note will be limited to discussion of two problems arising from Wyoming's certificate of title statutes.[1] The first situation is where an encumbrance, such as a conditional sales contract, a chattel mortgage, or a mechanic's lien, is properly recorded, but is not noted on the certificate of title. The second, and one of growing importance, is where a clear Wyoming certificate of title is secured, but there is an encumbrance recorded in some other state.

As to the first problem, there appears to be no difficulty where the encumbrance and the purchase of the automobile occur simultaneously since encumbrances are noted on the old title if the automobile is used, and on the application for certificate of title if new and noted on the new certificate of title. Some county clerks, as a matter of convenience, will note the encumbrance on the certificate even though the encumbrance has not been recorded, knowing that it will be recorded in a few days. Other county clerks will not issue a new certificate until the encumbrance has been recorded when they have notice of the same from the old title or application.[2] Under either procedure, the encumbrance is noted on the certificate and will eventually be properly recorded. But under Section 60-208 (e), Wyoming Compiled Statutes, 1945, as amended, where a vehicle is encumbered subsequent to the certificate of title being issued, problems may arise. This statute says that the owner shall deliver the title to the holder of the encumbrance who shall have the same noted. However, if the owner does not deliver the title to the holder of the encumbrance, and the title, therefore, does not show the encumbrance, but the encumbrance has been duly recorded and a purchaser buys in reliance on the clear title, the question arises as to who is to prevail as between the holder of the encumbrance and the purchaser. The statute[3] provides that any person failing to comply with the above procedure shall upon conviction be subject to the penalties of a misdemeanor. It is important to note that nowhere is it provided that the encumbrance must be noted on the certificate of title to put the buyer on notice of such encumbrance. Perhaps the insertion of this additional provision in the certificate of title statutes would clear up many of the questions arising therefrom. In support of the buyer, it could be argued that the certificate of title statutes place the additional burden of noting the encumbrance on the title to constitute notice; or as was held in a Washington case,[4] the one making possible the wrongful act of the mortgagor in passing an apparently unencumbered title should be re-

1. Wyo. Comp. Stat. §§ 60-201 to 60-215 (1945).
2. From conversation with county clerks.
3. Wyo. Comp. Stat. § 60-215 (1945). $100 fine and/or 6 months maximum.
4. Merchants Rating & Adj. Co. v. Skug, 4 Wash. 46, 102 P.2d 227 (1940).

quired to bear the loss; or as in a Texas case[5] where the seller registered a chattel mortgage evidencing the lien retained by it as required by statute, but did not note such lein on the manufacturer's certificate as provided in the certificate of title act, the court held for the buyer saying that he was not charged with notice of such lien. The buyer has prevailed in similar circumstances in Indiana,[6] Kansas,[7] Missouri,[8] and Nebraska.[9] But in all these states recording of encumbrances on motor vehicles has been removed from the general recording statutes and placed under those peculiar to automobiles, and the statutes further provide that such encumbrances must be noted on the certificate of title to constitute notice to an innocent purchaser.

Since our statutes do not make these additional provisions, perhaps our court would arrive at the same conclusion as an Oklahoma court did.[10] That court held that the provisions of the motor vehicle registration act that provided for the noting of liens on the certificate of title did not supersede mortgages on motor vehicles. In a recent Wisconsin case[11] it was said that the lien of an owner of a properly recorded automobile conditional sales contract was superior to the right of a subsequent purchaser of that automobile notwithstanding the fact that the certificate of title failed to show a lien of the owner of a conditional sales contract.

It is, therefore, concluded that under Wyoming's present certificate of title stautes in a situation as outlined above, the holder of a duly recorded encumbrance would prevail as against any purchaser even though such encumbrance was not noted on the certificate of title.

The second problem is very real, and in an ever moving population is becoming one of major importance. Merely because an owner has a clear Wyoming certificate of title, it is impossible to tell whether the vehicle has been encumbered in some other jurisdiction. If the vehicle is encumbered in some other jurisdiction and properly recorded therein, but a clear Wyoming certificate of title is secured, and a buyer purchases in reliance thereon, the same question arises as in the first problem as to who will prevail as between the holder of the encumbrance and the purchaser. If the legislative intent is given the proper interpretation, perhaps the court would say that the purpose of the certificate of title statutes is to make such certificate a negotiable document, and a bona fide purchaser for value may rely on a clear Wyoming certificate of title. On the other hand, our court might hold as the Ohio court did in a similar case.[12] A New York resident bought an automobile from another New York resident

5. Motor Inv. Co. v. Knox City, 141 Tex. 530, 174 S.W.2d 482 (1943).
6. Nichols v. Bogda Motors, 118 Ind. App. 156, 77 N.E.2d 905 (1948).
7. Sorenson v. Pagenkgof, 151 Kan. 913, 101 P.2d 928 (1940).
8. Mound City Finance Co. v. Frank, 239 Mo. App. 807, 199 S.W.2d 902 (1947).
9. Bank of Keystone v. Kayton, 155 Neb. 79, 50 N.W.2d 511 (1951).
10. King-Godfrey, Inc. v. Rogers, 157 Okla. 216, 11 P.2d 935 (1932).
11. Commercial Credit Corp. v. Schneider, 265 Wis. 264, 61 N.W.2d 499, 18 A.L.R.2d 813 (1953).
12. Associates Discount Corp. v. Colonial Finance Co., 88 Ohio App. 205, 98 N.E.2d 848 (1950).

on a conditional sales contract which was properly recorded in New York. The New York registration certificate did not show the lien, nor was it required to. Application was then made for an Ohio certificate of title which did not show the lien. Ohio has a statute that says a lien must be noted on the face of the certificate of title. Subsequently, the automobile was purchased by a bona fide purchaser for value. In holding for the New York lien holder, the court said that if evidence of title has been procured through fraud and deception, the title of a subsequent innocent holder for value, which arose therefrom, can have no greater solemnity than the source from which it sprang. It would seem from this case that any time there is fraud involved in the procurement of a clear title, the bona fide purchaser takes subject to any previous encumbrances. The only time any dispute arises in these cases is when there is fraud on the part of the owner who secures a clear title when it should in fact be encumbered. It is important to note that this decision was reached in a jurisdiction that has a certificate of title statute that is intended to make such certificate a negotable document and is aimed primarily at protecting the purchaser. It would then seem that our court could readily arrive at the same conclusion since our statutes are not nearly as strong for the protection of the purchaser. A similar conclusion was reached in an Illinois case[13] involving a Wyoming title. Mrs. Bell executed a chattel mortgage to the First National Bank of Nevada. The mortgage was properly recorded under the laws of Nevada. She then obtained a clear Wyoming certificate of title and subsequently sold the automobile to auto dealer Johnson, an innocent purchaser for value, who in turn sold to Swegler, a bona fide purchaser. The Illinois court held for the Nevada bank and said that the weight of authority is to the effect that the owner of a chattel mortgage, valid in the state where it is executed and recorded, has a prior right in the property mortgaged against an innocent purchaser for value who purchases the property in Illinois. There is then every reason to believe that in the second problem, as in the first, the holder of the encumbrance would prevail over the purchaser.

This condition will continue to exist until such time as all states pass a uniform law, such as the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act adopted by the National Conference of Commissioners on Uniform State Laws. It is extremely doubtful that all or even the majority of the states will adopt such legislation so that perhaps appropriate legislation for the protection of Wyoming purchasers is in order.

Under Wyoming's present statutes, a "clear" Wyoming certificate of title is meaningless and in itself offers no assurance to the buyer that he will take free of any encumbrances. Wyoming, to one purchasing an automobile, is indeed the land of caveat emptor.

LEONARD MCEWAN

13. First Nat. Bank of Nevada v. Swegler, 336 Ill. App. 107, 82 N.E.2d 920 (1948).