St. Mary's Law Journal

Volume 6 | Number 4 Article 5

12-1-1974

Registration of Deeds Student Symposium - Texas Land Titles.

David C. Pennella

REGISTRATION OF DEEDS

A deed which has been properly constructed by the parties must still be registered before it can operate with the optimal effect. The general policy of the Texas registration laws is to make public all matters affecting land titles.[170] Article 6646 states:

> The record of any grant, deed or instrument of writing authorized or required to be recorded, which shall have been duly proven or acknowledged for record and duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument.[171]

The Texas Supreme Court has held that the registration acts require certain instruments to be recorded in order to give notice and to prevent fraud.[172] The secondary objective of recording is to perpetuate the instrument and give proof of its execution.[173] The effect of recording is to create an irrebuttable presumption that a subsequent purchaser has notice of the existence of any duly recorded deed.[174] Only those—such as subsequent purchasers, mortgagees, and creditors, for example—who have reason to anticipate some transfer or incumbrance are charged with this notice of prior transactions.[175]

RECORDABLE INSTRUMENTS

By its nature, recording law presupposes that instruments of conveyance must be in writing.[176] Basically, a writing may be recorded under one of two statutes, each of which provides for the recording of different interests and produces somewhat different effects.[177] Article 6627 requires recording

170. Turrentine v. Lasane, 389 S.W.2d 336, 337 (Tex. Civ. App.—Waco 1965, no writ); Popplewell v. City of Mission, 342 S.W.2d 52, 56 (Tex. Civ. App.—San Antonio 1960, writ ref'd n.r.e.). The term registration law is used interchangeably with recording law.

171. TEX. REV. CIV. STAT. ANN. art. 6646 (1969).

172. Grumbles v. Sneed, 22 Tex. 565, 576 (1858); Boucher v. Wallis, 236 S.W.2d 519, 526 (Tex. Civ. App.—Eastland 1951, writ ref'd n.r.e.); *accord*, Henry S. Miller Co. v. Evans, 452 S.W.2d 426, 433 (Tex. 1970), *quoting* Quarles v. Eaton-Blewett Co., 249 S.W. 465 (Tex. Comm'n App. 1923, jdgmt adopted).

173. Emory v. Bailey, 111 Tex. 337, 344, 234 S.W. 660, 662 (1921); Newsom v. Langford, 174 S.W. 1036, 1039 (Tex. Civ. App.—Amarillo 1915), *aff'd*, 220 S.W. 544 (Tex. Comm'n App. 1920, jdgmt adopted); *accord*, McNary v. Reeves, 461 S.W.2d 127, 131 (Tex. Civ. App.—Texarkana 1970, writ ref'd n.r.e.).

174. White v. McGregor, 92 Tex. 556, 559, 50 S.W. 564, 566 (1899), O'Mahoney v. Flanagan, 78 S.W. 245, 246 (Tex. Civ. App. 1904, no writ).

175. Argonaut Southwest Ins. Co. v. Moupin, 485 S.W.2d 291, 296 (Tex. Civ. App.—Austin 1972), *rev'd on other grounds*, 500 S.W.2d 633 (Tex. 1973); Cox v. Clay, 237 S.W.2d 798, 804 (Tex. Civ. App.—Amarillo 1950, writ ref'd n.r.e.).

176. Olds, *The Scope of the Texas Recording Act*, 8 SW. L.J. 36, 37 (1954).

177. There are several other statutes dealing with the recording of specific instruments: TEX. REV. CIV. STAT. ANN. arts. 6624 (patents and grants), 6625a (foreign deeds), 6638 (partitions) (1969). The *Lis Pendens* statute, TEX. REV. CIV. STAT. ANN. art. 6640 (1969), protects the rights of each party to a suit for title to land in that notice prevents either party from alienating the property in dispute. Black v. Burd, 225 S.W.2d

of all bargains, sales and other conveyances of land, tenements and hereditaments, deeds of settlement upon marriage, deeds of trust, and mortgages.[178] If any of these instruments is not recorded, it may be held void as to all creditors and bona fide purchasers.[179] Article 6626, the "may" statute, allows recording of all instruments concerning land, goods and chattels, or movable property,[180] including equitable land titles which are in writing.[181] An instrument recorded under this statute is given effect as notice through article 6646.[182] The "may" statute is distinguishable from the "must" statute in that there is an absence in the former of a penalty for failure to record.[183]

The recording of a deed which is not authorized or required to be recorded will not serve as notice.[184] For example, a forged deed is not entitled to

---

553, 555 (Tex. Civ. App.—Fort Worth 1953, writ ref'd n.r.e.). It gives constructive notice of claims made in the suit. Oynx Ref. Co. v. Evans Prod. Corp., 182 F. Supp. 253, 256 (N.D. Tex. 1959). *See generally* Olds, *Lis Pendens*, 4 Hous. L. Rev. 221 (1966).

178. Tex. Rev. Civ. Stat. Ann. art. 6627 (1969).

> All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall be valid and binding.

This statute is commonly referred to as the "must" statute.

179. *Id.*

180. Tex. Rev. Civ. Stat. Ann. art. 6626 (1969).

> The following instruments of writing which shall have been acknowledged or proved according to law, are authorized to be recorded, viz.: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements or goods and chattels, or moveable property of any description . . . .

This statute is commonly referred to as the "may" statute.

181. Baldwin v. Richardson & Co., 33 Tex. 16, 31 (1870); *see* Turrentine v. Lasane, 389 S.W.2d 336, 337 (Tex. Civ. App.—Waco 1965, no writ).

182. Tex. Rev. Civ. Stat. Ann. art. 6646 (1969).

183. Olds, *The Scope of the Texas Recording Act*, 8 Sw. L.J. 36, 41 (1954), states that if an instrument is not within article 6627 and subject to its protection, it should not be subject to a penalty for failure to record.

> This principle of mutuality is damaged somewhat in Texas by the effect of Article 6646 on Article 6626—that is, allowing an interest outside Article 6627 but within Article 6626 to gain the protection of recording. But protection is of two kinds—prospective and retrospective. The first is protection against instruments executed after the recording of the claim in question. The other is protection against instruments previously executed but not recorded at the time of the creation of the claim in question. Article 6646 deals only with the first and not with the other—with the prospective and not the retrospective type of protection. So, realizing the effect of the difference, we can say the principle of mutuality applies in the more limited sense of the retrospective type.

Id. at 41.

184. Burnham v. Chandler, 15 Tex. 441, 443 (1855) (although assignments may now be recorded the statement that non-recordable interests will not give constructive notice is still valid); Tandy v. Dickinson, 371 S.W.2d 81, 83 (Tex. Civ. App.—Amarillo 1963, no writ).

registration since it is absolutely void.[185] Title acquired by adverse possession is also not entitled to be recorded because it is a creation of law and by its nature cannot be reduced to writing.[186] Municipal ordinances are not required or permitted to be recorded; but since it is an instrument of record, an ordinance in a purchaser's chain of title is constructive notice to him.[187] Probate proceedings are generally not recorded in the deed records;[188] under certain circumstances, however, a judgment in a probate proceeding is required to be recorded.[189] The probate records serve as notice of their contents only to the parties to the proceedings and those in privity with them.[190]

THE RECORDING PROCESS

Article 6591 states that county clerks are to record all instruments of writing which are authorized or required to be recorded.[191] The county clerk's recording duties are ministerial and performance may be enforced by mandamus.[192] On receipt of an acknowledged instrument the clerk must make an entry in a book provided for that purpose, listing the names of the parties, the date and the nature of the instruments and the time of delivery for record.[193] The clerk will then give a receipt specifying the particulars of what was recorded.[194] As proof of the time of deposit, a notation must be made by the clerk at the foot of the record signifying the hour, day and year of such deposit.[195] The recording must be made without delay and in the order in which instruments are deposited with the clerk.[196]

185. Bibby v. Bibby, 114 S.W.2d 284, 287 (Tex. Civ. App.—El Paso 1938, writ dism'd); Abee v. Bargas, 65 S.W. 489, 490 (Tex. Civ. App. 1901, no writ).

186. Marshburn v. Stewart, 295 S.W. 679, 685 (Tex. Civ. App.—Beaumont 1927, writ dism'd); MacGregor v. Thompson, 26 S.W. 649, 650 (Tex. Civ. App. 1894), no writ).

187. Lesley v. City of Rule, 255 S.W.2d 312, 314 (Tex. Civ. App.—Eastland 1953, writ ref'd n.r.e.); Uvalde Co. v. Tribble, 292 S.W. 932, 934 (Tex. Civ. App.—San Antonio), *writ dism'd*, 300 S.W. 23 (Tex. Comm'n App. 1927, jdgmt adopted).

188. Fenley v. Ogletree, 277 S.W.2d 135, 142 (Tex. Civ. App.—Beaumont 1955, writ ref'd n.r.e.); Clemmons v. McDowell, 5 S.W.2d 224, 229 (Tex. Civ. App.—Amarillo 1927), *aff'd*, 12 S.W.2d 955 (Tex. Comm'n App. 1929).

189. TEX. REV. CIV. STAT. ANN. art. 6635 (1969), repealed to extent of conflict with TEX. REV. CIV. STAT. ANN. art. 1941(a) (Supp. 1974) (microfilming); Turrentine v. Lasane, 389 S.W.2d 336 (Tex. Civ. App.—Waco 1965, no writ).

190. Winchester v. Boggs, 112 S.W.2d 207, 208-209 (Tex. Civ. App.—Eastland 1937, no writ); *see* Steele v. Caldwell, 158 S.W.2d 867, 872 (Tex. Civ. App.—Eastland 1942, no writ).

191. TEX. REV. CIV. STAT. ANN. art. 6591 (1969), repealed to extent of conflict with TEX. REV. CIV. STAT. ANN. art. 1941(a) (Supp. 1974) (microfilming).

192. Turrentine v. Lasane, 389 S.W.2d 336 (Tex. Civ. App.—Waco 1965, no writ); *accord*, Cobra Oil & Gas Corp. v. Sadler, 447 S.W.2d 887, 895 (Tex. 1969).

193. TEX. REV. CIV. STAT. ANN. art. 6594 (1969), repealed to extent of conflict with TEX. REV. CIV. STAT. ANN. art. 1941(a) (Supp. 1974) (microfilming).

194. *Id.*

195. TEX. REV. CIV. STAT. ANN. art. 6595 (1969), repealed to extent of conflict with TEX. REV. CIV. STAT. ANN. art. 1941(a) (Supp. 1974) (microfilming).

196. *Id.*

An instrument is recorded within the meaning of the law on receipt and holding by the clerk,[197] even if the required fee has not been paid.[198] In the absence of evidence to the contrary, it will be presumed that the clerk has performed his statutory duty.[199] The depositor is not required to examine the clerk's records to verify that the instrument has been properly recorded.[200] Statutes concerning rights of parties rather than interests in land, however, may specifically require *recording* rather than filing of the instrument. In cases involving such statutes mere deposit of the instrument with the clerk will not constitute notice.[201]

There is no time limit for the recording of an interest in real property,[202] but the place of recording is limited to the county where the property is situated.[203] If the land is in an unorganized county, however, it is recorded in the county to which the unorganized county is attached for judicial purposes.[204] Interests in land lying in two different counties may be recorded in either county, and such recording will serve as notice for all the land.[205] Although a deed recorded in the wrong county does not operate as notice,[206]

197. TEX. REV. CIV. STAT. ANN. art. 6596 (1969), repealed to extent of conflict with TEX. REV. CIV. STAT. ANN. art. 1941(a) (Supp. 1974) (microfilming).

198. American Exch. Nat'l Bank v. Colonial Trust Co., 186 S.W. 361, 363 (Tex. Civ. App.—Texarkana 1916, no writ). A fee is provided for in TEX. REV. CIV. STAT. ANN. art. 3930 (Supp. 1974); *see* Knight v. Cadena, 467 S.W.2d 692, 694 (Tex. Civ. App.—San Antonio), *writ ref'd n.r.e. per curiam*, 474 S.W.2d 687 (Tex. 1971).

199. Harrison v. McMurray, 71 Tex. 122, 128, 8 S.W. 612, 614 (1888); Holman v. Chevaillier, 14 Tex. 337, 339 (1855); Zieben v. Krakower, 346 S.W.2d 401, 404 (Tex. Civ. App.—Houston 1961, writ ref'd n.r.e.); David v. Roe, 271 S.W. 196, 199 (Tex. Civ. App.—Fort Worth 1925, writ dism'd).

200. Throckmorton v. Price, 28 Tex. 606, 609-10 (1866); Griggs v. Montgomery, 22 S.W.2d 688, 694 (Tex. Civ. App.—Beaumont 1929, no writ); *see* Civil Service Comm'n v. Crager, 384 S.W.2d 381, 383 (Tex. Civ. App.—Beaumont 1964, writ ref'd n.r.e).

201. For example, in Industrial State Bank v. Oldham, 148 Tex. 126, 221 S.W.2d 912 (1949), a landlord attempted to protect his statutory lien [TEX. REV. CIV. STAT. ANN. art. 5238 (1962)] for rent which was more than 6 months overdue. He left an affidavit of the overdue rent in the chattel mortgage department of the city clerk's office, but the instrument was never recorded. Normally under the general registration laws the instrument would have been considered recorded at the time it was deposited. TEX. REV. CIV. STAT. ANN. art. 6596 (1969), repealed to extent of conflict with TEX. REV. CIV. STAT. ANN. art. 1941(a) (Supp. 1974) (microfilming). Here, however, the statute specifically required not only filing, but also recording, and the mere deposit by the landlord did not satisfy the statute.

Article 6652 provides a remedy against the clerk and his surety when the clerk is negligent, refuses to make an entry or give a receipt, fails to record within a reasonable time, or records incorrectly. In such event, the depositor may collect money damages against the clerk's official bond plus $250.00 forfeited by the clerk to be used by the depositor in the suit. TEX. REV. CIV. STAT. ANN. art. 6652 (1969).

202. Turner v. Cochran, 94 Tex. 480, 487, 61 S.W. 923, 925 (1901).

203. TEX. REV. CIV. STAT. ANN. art. 6630 (Supp. 1974).

204. *Id.*

205. Tom v. Kenedy Nat'l Farm Loan Ass'n, 123 S.W.2d 416, 419 (Tex. Civ. App.—El Paso 1938, no writ); Slaughter v. Hight, 239 S.W. 1018, 1020 (Tex. Civ. App.—El Paso 1922, no writ).

206. Adams v. Hayden, 60 Tex. 223, 226 (1883); Huff v. State, 93 S.W.2d 231, 232 (Tex. Civ. App.—El Paso 1936, no writ).

it may become effective through subsequent re-recording in the proper county.[207] The mechanics of recording constitute a means of giving notice to all subsequent purchasers with the primary purpose of precluding them from attaining the preferential status of innocent purchasers.

INNOCENT PURCHASERS

An innocent purchaser must take without notice, for a valuable consideration and in good faith.[208] Valuable consideration may be a benefit to the promisor, a detriment to the promisee, or the voluntary relinquishment of a legal right.[209] Valuable consideration is not necessarily the actual value of the property, but if the amount paid is grossly inadequate, a court may find that it is not valuable consideration.[210] Closely allied with valuable consideration is the element of good faith.[211] Although a case might arise where good faith is the only element at issue, it is usually dependent on the determination of notice and consideration.[212]

A purchaser takes without notice if he has neither actual nor constructive notice of any third party interests. There are two types of notice which operate to preclude innocent purchasers—actual and constructive. Actual notice embraces those facts of which the purchaser has express information, as well as those which would be revealed to him by a reasonably diligent in-

---

207. TEX. REV. CIV. STAT. ANN. art. 6631 (1969). If the purchaser had actual knowledge of the instrument, it would still be valid, even if recorded in the wrong county. *See* Steed v. Crossland, 252 S.W.2d 784, 787 (Tex. Civ. App.—Beaumont 1952, writ ref'd); Crosswhite v. Moore, 248 S.W.2d 520, 524 (Tex. Civ. App.—Austin 1952, writ ref'd) (purchaser had actual knowledge); Hays v. Morris, 204 S.W. 672, 673 (Tex. Civ. App.—Texarkana 1918, no writ) (knowledge that deed was included as mortgage).

208. Houston Oil Co. v. Hayden, 104 Tex. 175, 181, 135 S.W. 1149, 1152 (1911); Gerber v. Pike, 249 S.W.2d 90, 92 (Tex. Civ. App.—Texarkana 1952, no writ); Pevehouse v. Oliver Farm Equip. Sales Co., 114 S.W.2d 658, 663 (Tex. Civ. App.—Amarillo 1938, writ dism'd); Downs v. Steverson, 119 S.W. 315, 317 (Tex. Civ. App. 1909, writ ref'd); *see* Apeco Corp. v. Bishop Mobile Homes, Inc., 506 S.W.2d 711, 718 (Tex. Civ. App.—Corpus Christi 1974, writ ref'd n.r.e.).

Generally, the status of bona fide purchaser arises on satisfaction of these three requirements, but there can be no innocent purchaser under a deed which is void on its face. Hamman v. Keigwin, 39 Tex. 34, 43 (1873); Pearce v. Heyman, 158 S.W. 242, 244 (Tex. Civ. App.—San Antonio 1913, no writ).

209. Garcia v. Villarreal, 478 S.W.2d 830, 832 (Tex. Civ. App.—Corpus Christi 1971, no writ); Jeter v. Citizens Nat'l Bank, 419 S.W.2d 916, 918 (Tex. Civ. App.—Eastland 1967, writ ref'd n.r.e.); Mayfield v. Eubank, 278 S.W. 243, 246 (Tex. Civ. App.—Texarkana 1925, writ ref'd).

210. Nichols-Steuart v. Crosby, 87 Tex. 443, 453, 29 S.W. 380, 382 (1895); Clemmons v. McDowell, 5 S.W.2d 224, 229 (Tex. Civ. App.—Amarillo 1927), *aff'd*, 12 S.W.2d 955 (Tex. Comm'n App. 1929, jdgmt adopted) (assumption of vendor's obligation is valuable consideration); *see* Lemon v. Walker, 482 S.W.2d 713, 714-15 (Tex. Civ. App.—Amarillo 1972, no writ).

211. *See* Middlemas v. Wright, 493 S.W.2d 282, 285-86 (Tex. Civ. App.—El Paso 1973, no writ); Johnson v. Johnson, 207 S.W. 202, 204 (Tex. Civ. App.—Austin 1918, writ ref'd).

212. Houston Oil Co. v. Hayden, 104 Tex. 175, 181-82, 135 S.W. 1149, 1152 (1911).

quiry.[213] For example, in *Crosswhite v. Moore*[214] the holder of a lien on homestead property was held to have had actual knowledge of the homestead since he had originally sold the property to the defendants.[215] Likewise, one who purchases with actual knowledge that the deed to his grantor was intended as security for a debt is not an innocent purchaser.[216]

Although actual knowledge will prevent a subsequent purchaser from obtaining title, the recording act is designed to give the same protection by providing for *constructive notice* of all instruments which have been registered.[217] Constructive notice is knowledge imputed to a purchaser who, because of his position, has a duty to diligently search the records for any outstanding interest in the property.[218] The plaintiff in *Leonard v. Benford Lumber Co.*,[219] for example, derived title from Roe who had received the property in a partition of the estate of Cox, the donation certificate having been recorded on May 7, 1860. In 1908 the state patented the land to the heirs, including Roe, who in turn conveyed to the defendant, Benford Lumber Company.[220] The defendant claimed that because he had no actual knowledge of the prior conveyance, he was an innocent purchaser and therefore entitled to the land. The supreme court held, however, that the fact that Roe had not complied with his duty to search the records precluded him from asserting that he had no knowledge of the prior conveyance.[221] Regardless of the purchaser's

213. Portman v. Earnhart, 343 S.W.2d 294, 297 (Tex. Civ. App.—Dallas 1960, writ ref'd n.r.e.); O'Ferral v. Coolidge, 225 S.W.2d 583, 584 (Tex. Civ. App.—Texarkana 1949), *aff'd*, 149 Tex. 61, 228 S.W.2d 146 (1950); Sinton State Bank v. Odem, 75 S.W.2d 895, 897 (Tex. Civ. App.—Beaumont 1934, no writ); Masterson v. Harris, 83 S.W. 428, 429 (Tex. Civ. App.—1904, no writ).

214. 248 S.W.2d 520 (Tex. Civ. App.—Austin 1952, writ ref'd).

215. *Id.* at 524.

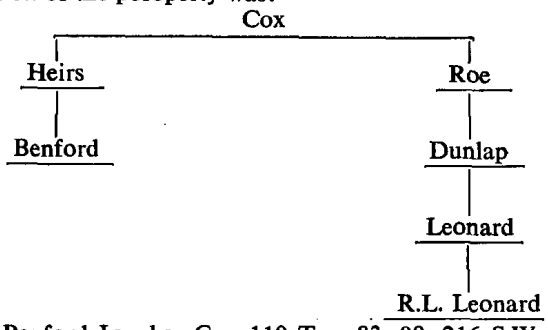
216. Hays v. Morris, 204 S.W. 672, 673 (Tex. Civ. App.—Texarkana 1918, no writ); *see* Woodward v. Oritz, 150 Tex. 75, 79, 237 S.W.2d 286, 289 (1951).

217. Watkins v. Edwards, 23 Tex. 443, 446 (1859); Texas Osage Co-operative Royalty Pool v. Clark, 314 S.W.2d 109, 112 (Tex. Civ. App.—Amarillo 1958); *writ ref'd n.r.e.*, 159 Tex. 441, 322 S.W.2d 506 (1959); *see* University State Bank v. Gifford-Hill Concrete Corp., 431 S.W.2d 561, 571 (Tex. Civ. App.—Fort Worth 1968, writ ref'd n.r.e.).

218. Olds, *The Scope of the Texas Recording Act*, 8 Sw. L.J. 36, 45 (1954).

219. 110 Tex. 83, 216 S.W. 382 (1919).

220. The disposition of the poroperty was:



221. Leonard v. Benford Lumber Co., 110 Tex. 83, 90, 216 S.W. 382, 384 (1919);

actual knowledge, the record served as constructive notice of previously recorded claims.[222]

If there is an incomplete record, subsequent purchasers are not charged with knowledge.[223] In *Taylor v. Harrison*,[224] Jouett and his wife conveyed to Sims, filing the deed but no acknowledgment. Harrison then acquired title from the grantee of Sims, but when Jouett died, the land was conveyed to Taylor by Jouett's administrator. Failure to file the wife's acknowledgment caused the notice to be defective and the appellant, Taylor, took title.[225]

Purchasers must take notice only of those recorded instruments which are within their chain of title. The chain of title is "[t]he successive conveyances, commencing with the patent from the government, each being a perfect conveyance of the title down to and including the conveyance to the present holder."[226] All purchasers of land are charged with complete knowledge of all facts which appear in that purchaser's chain of title and which would place a reasonably prudent person on inquiry as to other claims or rights in the same property.[227] The general rule, illustrated in the landmark case of *White v. McGregor*,[228] is that the recording of an instrument authorized to be recorded is notice only to *subsequent* purchasers from the same grantor.[229] In *White* both parties claimed title through John Crum. The first conveyance in the plaintiff's chain of title was from Crum to his mother, Jane Dickerson, transferred and recorded on August 23, 1884; the first conveyance in the defendant's chain of title was by a sheriff's sale which took place

---

see Hoover v. Redwine, 363 S.W.2d 485, 489 (Tex. Civ. App.—Fort Worth 1962, no writ).

222. Leonard v. Benfford Lumber Co., 110 Tex. 83, 90, 216 S.W. 382, 384-85 (1919); *see* Ireland v. Bible Baptist Church, 480 S.W.2d 467, 471 (Tex. Civ. App.—Beaumont 1972, writ ref'd n.r.e.), *cert. denied*, 411 U.S. 906 (1973).

223. Adams v. Hayden, 60 Tex. 223, 226 (1883); Tandy v. Dickinson, 371 S.W.2d 81, 82-83 (Tex. Civ. App.—Amarillo 1963, no writ).

224. 47 Tex. 454 (1877).

225. *Id.* at 457-58. *But see* Dean v. Gibson, 48 S.W. 57 (Tex. Civ. App. 1898, no writ).

226. Reserve Petroleum Co. v. Hutcheson, 254 S.W.2d 802, 806 (Tex. Civ. App.—Amarillo 1952, writ ref'd n.r.e.), *quoting* Havis v. Thorne Inv. Co., 46 S.W.2d 329, 332 (Tex. Civ. App.—Amarillo 1932, no writ).

227. Ellison v. McGlaun, 482 S.W.2d 304, 312 (Tex. Civ. App.—Amarillo 1972, writ ref'd n.r.e.); Painter v. McDonald, 427 S.W.2d 127, 135 (Tex. Civ. App.—Austin 1968), *rev'd on other grounds*, 441 S.W.2d 179 (1969); Texas Osage Co-operative Royalty Pool v. Clark, 314 S.W.2d 109, 113 (Tex. Civ. App.—Amarillo 1958, writ ref'd n.r.e.); Pipkin v. Ware, 175 S.W. 808, 811 (Tex. Civ. App.—Amarillo 1915, no writ).

228. 92 Tex. 556, 50 S.W. 564 (1899).

229. *Id.* at 558, 50 S.W. at 565; *accord*, Southwest Title Ins. Co. v. Woods, 449 S.W.2d 773, 774 (Tex. 1970); Atlantic Ref. Co. v. Noel, 443 S.W.2d 35, 40 (Tex. 1969).

and was recorded on August 4, 1885.[230] Mrs. White, who claimed under Dickerson, asserted that the recording of the deed from the sheriff's sale did not constitute notice to her.

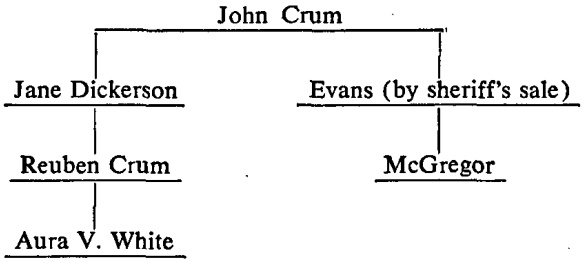
Interpreting the rule that a deed which is not properly recorded is void against subsequent innocent purchasers,[231] the supreme court held that subsequent purchasers are not "all persons who purchase the land after the deed is recorded, " but are "only those who are subsequent in the chain of title."[232] Therefore, a purchaser is not charged with notice of a conveyance in his grantor's chain of title recorded after the recording of the purchaser's deed.[233] Since White's title originated prior to the sheriff's sale, she was not charged with notice of that conveyance, and the court found her title to be superior.[234] In *Lone Star Gas Co. v. Sheaner*[235] the Waco Court of Civil Appeals further explained the basis for this rule: if parties were required to search outside their chain of title, they would have to make a general search of every instrument filed for record.[236]

> The principle is manifest . . . for every complete legal title, *prima facie*, carries with it, and covers the equitable title. If in any case, it does not so include it, in fact, the party claiming the equitable title must aver and prove it.[237]

Thus, the two rules—that subsequent grantees are charged with constructive notice of all conveyances recorded in their chain of title, and that the burden

---

230. The disposition of the land was:



231. TEX. REV. CIV. STAT. ANN. art. 6627 (1969), *formerly* Tex Laws 1840, at 154, 2 H. GAMMEL, LAWS OF TEXAS 328 (1840).

232. White v. McGregor, 92 Tex. 556, 558, 50 S.W. 564, 565 (1899); *see* Williams, *Recordation Hiatus and Cure by Limitation*, 29 TEXAS L. REV. 1 (1950).

233. White v. McGregor, 92 Tex. 556, 558, 50 S.W. 564, 565 (1899); *accord*, Andretta v. West, 415 S.W.2d 638, 642 (Tex. 1967) (petitioner not charged with constructive notice of lease amendment, which was executed and recorded after acquiring royalty interest); Lone Star Gas Co. v. Sheaner, 297 S.W.2d 855, 858 (Tex. Civ. App.—Waco 1956), *undisturbed in part, rev'd and remanded in part*, 305 S.W.2d 150 (1957) (chattel mortgage on heater executed by buyer who was not record owner of realty and not in chain of title did not constitute constructive notice to bona fide purchaser who purchased from true owner).

234. White v. McGregor, 92 Tex. 556, 558, 50 S.W. 564, 565 (1899).

235. 297 S.W.2d 855 (Tex. Civ. App.—Waco 1956), *undisturbed in part, rev'd and remanded in part*, 305 S.W.2d 150 (1957).

236. *Id.* at 858.

237. McAlpine v. Burnett, 23 Tex. 650, 651-52 (1859).

of proving the comparative validity of any equitable title rests on that claimant—combine to create an especially difficult barrier for a grantee who attempts to establish the superiority of an equitable title over a legal one.

In addition to the time of recording, the nature of the title claimed is also important in determining which of two claims is superior. A previously recorded legal title takes priority over a subsequent legal or equitable title, but a previously recorded equitable title is subordinate to a subsequent legal title if the holder of the legal title is an innocent purchaser;[238] in the case of two competing equitable titles, the first one recorded has priority.[239] Thus, a subsequent purchaser claiming an interest under an instrument required to be recorded must acquire the legal title in order to defeat one claiming under a previously recorded equitable title.[240] In this context the rule that "[a] purchaser is required to look only for conveyances made prior to his purchase by his immediate vendor, or by any remote vendor through whom he derives his title"[241] takes on further significance: in a situation where a subsequent purchaser holding legal title asserts that he took without notice of a prior equitable title, the burden of proving superior title still rests on the party claiming equitable title.[242]

After Acquired Title

The problem of after acquired title arises when a common grantor conveys land to which he does not have clear title. If the common grantor subsequently acquires title to the land, then there may arise a contest between a common grantor and the grantee. In *Baldwin v. Root*,[243] the rule was established that such after acquired title in the grantor passes *eo instanti* to the warrantee.[244]

If a grantor without title conveys to one grantee, then acquires title and conveys to a second grantee, the result of a contest between the two grantees

238. Heidelberg v. Harvey, 391 S.W.2d 828, 830 (Tex. Civ. App.—El Paso 1965, writ ref'd n.r.e.); Wilson v. Meredith, Clegg & Hunt, 268 S.W.2d 511, 516 (Tex. Civ. App.—Beaumont 1954, writ ref'd n.r.e.); Olds, *The Scope of the Texas Recording Act*, 8 Sw. L.J. 36, 44 (1954); *see* Amason v. Woodman, 498 S.W.2d 142, 143-44 (Tex. 1973), *cert. denied*, 414 U.S. 1066 (1973).

239. Olds, *The Scope of the Texas Recording Act*, 8 Sw. L.J. 36, 44 (1954).

240. Hennessy v. Blair, 107 Tex. 39, 42, 173 S.W. 871, 872 (1915); Slaughter v. Coke County, 79 S.W. 863, 865 (Tex. Civ. App. 1904, writ ref'd).

241. Houston Oil Co. v. Kimball, 103 Tex. 94, 108, 122 S.W. 533, 540 (1909).

242. McAlpine v. Burnett, 23 Tex. 650, 651 (1895); *accord*, Amason v. Woodman, 498 S.W.2d 142, 143-44 (Tex. 1973), *cert. denied*, 414 U.S. 1066 (1973); Gwin v. Griffith, 394 S.W.2d 191, 197 (Tex. Civ. App.—Corpus Christi 1965, no writ); Heidelberg v. Harvey, 391 S.W.2d 828, 830 (Tex. Civ. App.—El Paso 1965, writ ref'd n.r.e.).

243. 90 Tex. 546, 40 S.W. 3 (1897).

244. *Id.* at 553, 40 S.W. at 6; *accord*, Farmers Royalty Holding Co. v. Hahn, 187 S.W.2d 930, 931 (Tex. Civ. App.—Galveston), *aff'd*, 144 Tex. 316, 190 S.W.2d 62 (1945); Hunley v. Bulowski, 256 S.W.2d 932, 936 (Tex. Civ. App.—Texarkana 1953, writ ref'd n.r.e.).

will often depend on interrelationships between the various rules concerning recording. In *Breen v. Morehead*[245] the original owner, Rogers, held a contract to purchase land from the state and conveyed an undivided one-half interest to McKelligon who then transferred to Breen. After forfeiture of the contract by Rogers, McKelligon purchased the tract from the state and then transferred it to Morehead. Since title did not incept in McKelligon until he purchased the land from the state, his prior conveyance to Breen was not part of Morehead's chain of title.[246] Thus, the patent which McKelligon purchased from the state did not pass *eo instanti* to Breen, even though it was after acquired title, because Morehead took as a subsequent purchaser for value without notice.

A different result was reached in *Caswell v. Llano Oil Co.*[247] where the grantor, Lockhart, was the owner of the land but had conveyed two deeds of trust to Stally. Lockhart later conveyed an oil and gas lease to Patterson who in turn conveyed it to Llano Oil Company who recorded the assigned lease in 1925. In 1927, Lockhart defaulted on the notes and Duff, who had been appointed as a substitute trustee, conveyed the property to Stally who then conveyed back to Lockhart. Lockhart executed an oil and gas lease to Caswell, and he brought suit to confirm his title. The supreme court first determined that Caswell had constructive notice of Llano's title by the record of the lease from Lockhart to Patterson and from Patterson to Llano. The court then concluded that the warranty given by Lockhart through the lease defeated the title of Caswell.[248]

In *Rosenthal v. Central City Corp.*[249] the grantor had no interest in the land when he conveyed it, but he subsequently acquired title from his grantee. Prior to reacquiring the land and after having conveyed it for the first time, he conveyed again without title to a second grantee. The result was that the second grantee prevailed even though the grantor had not had title at the time of conveyance.[250] Professor Olds feels that the result in this case was due to the fact that the grantor reacquired title from the same party to whom he had first conveyed. This indicates that if one person appears more than once in the chain of title, his interest must be traced through the intervening period in order to avoid such a consequence.[251]

NOTICE TO CREDITORS

The constructive notice provided by recording acts extends to creditors who

245. 104 Tex. 254, 136 S.W. 1047 (1911).
246. Olds, *Recording Act—The Object of Search and the Period of Search*, 2 HOUS. L. REV. 169, 171 (1964).
247. 120 Tex. 139, 36 S.W.2d 208 (1931).
248. *Id.* at 147, 36 S.W.2d at 211-12.
249. 234 S.W.2d 97 (Tex. Civ. App.—Galveston 1950, writ ref'd n.r.e.).
250. *Id.* at 98-99.
251. Olds, *Recording Act—The Object of Search and the Period of Search*, 2 HOUS. L. REV. 169, 171 (1964).

acquire a lien by judicial proceedings.[252] If at the time of securing his lien the creditor has no notice of a prior conveyance, he is protected under the recording act.[253] A creditor is charged with constructive notice, just as a subsequent purchaser would be, under a recorded instrument.[254] In a contest between liens, however, constructive notice does not apply. For example, the conflict in *Shear Co. v. Currie*[255] was between two liens on property of a bankrupt—the attachment lien of Shear and the lien of the estate of Currie which arose under an unrecorded assignment of a vendor's lien which had been released on the record before the levy of the attachment. The Fifth Circuit found that under the common law rule of priority Currie's lien was superior because the interest of the creditor, Currie, was confined to the interest of the debtor in the property, and the debtor's interest was subject to the vendor's lien.[256] Shear could not have been an innocent purchaser because it paid nothing of value, and since attachment liens are not included in the recording statute, Shear was not protected from Currie's prior unrecorded claim.[257]

This holds true even where the lien is implied as illustrated in *Senter & Co. v. Lambeth*.[258] Lambeth's claim to the property in question was through a judgment on an unrecorded implied vendor's lien, while Senter claimed ownership as a bona fide purchaser in a sheriff's sale. Senter knew of the vendor's lien at the time of the sale, but had no notice that Lambeth had filed a writ of attachment or received a judgment on the property. The supreme court found that the vendor's lien, because it had arisen as an operation of law and not through an agreement of the parties, was an equitable claim, not included within the purvue of the registration statutes.[259] Therefore, since Lambeth's equitable prior interest could not have been recorded, the failure to record did not permit Senter to claim as a purchaser without notice, and Lambeth's claim was held superior.[260]

The basis for the *Senter* decision was found in *Blankenship v. Douglas*,[261] which concerned the status of a claimant under a judgment lien who took without notice of a prior equitable interest: "one who acquires a judgment lien, although without notice, is not to be regarded in the light of a purchaser

252. Shear Co. v. Currie, 295 F. 841, 843 (5th Cir. 1923); *see* United States v. Creamer Indus., Inc., 349 F.2d 625, 628 (5th Cir. 1965).
253. TEX. REV. CIV. STAT. ANN. art. 6627 (1969).
254. Henry S. Miller Co. v. Evans, 452 S.W.2d 426, 432 (Tex. 1970); David v. State Bank, 238 S.W. 979, 983 (Tex. Civ. App.—Amarillo 1922, no writ).
255. 295 F. 841 (5th Cir. 1923).
256. *Id.* at 842.
257. *Id.* at 844.
258. 59 Tex. 259 (1883).
259. *Id.* at 264; *see* Scull v. Davis, 434 S.W.2d 391, 394 (Tex. Civ. App.—El Paso 1968, writ ref'd n.r.e.).
260. Senter & Co. v. Lambeth, 59 Tex. 259, 265-66 (1883).
261. 26 Tex. 225 (1862).

and entitled to preference over prior equities."[262] J. J. Blankenship had purchased with David Blankenship's money, creating an equitable right in David. Mullins later acquired the property through a judgment lien, limiting his interest to the actual interest which the judgment debtor had held.[263] The supreme court held that the final disposition of the property would depend on whether Mullins had had notice of David's prior equitable interest, and remanded the case so that the issue of the effect of the recording statutes on the question of notice could be determined by the jury.[264]

Notice becomes effective when the deed is deposited for recording,[265] but when a sheriff's sale is involved, an important consideration arises concerning whether a purchaser at a foreclosure sale is to be charged with the judgment creditor's notice of a prior interest. The general rule is that actual knowledge of an unrecorded interest will not defeat a buyer at a sheriff's sale unless the judgment creditor had notice of the interest at the time his lien attached.[266]

Both the effect and the effectiveness of a deed depend not only on compliance with general rules of construction and recording, but also on the obligations which the deed places on the parties. In order to specify particular responsibilities and duties concerning the title conveyed which must be fulfilled by the grantor, a conveyance may be drafted to include any of a variety of statutory and common law covenants.

---

262. *Id.* at 229.
263. *Id.* at 228-29.
264. *Id.* at 230.
265. TEX. REV. CIV. STAT. ANN. art. 6596 (1969).
266. Linn v. LeCompte, 47 Tex. 440, 442-43 (1877).