

a refusal to charge that the prosecutrix must use her "voice by calling for aid or giving an alarm" did not constitute error where the court did instruct that she must resist "to the utmost extent of her ability." T. S. '27.

**SALE OF REGISTERED AUTOMOBILE WITHOUT ASSIGNMENT OF CERTIFICATE OF TITLE IS VOID UNDER MISSOURI STATUTE.**—Defendant bought an automobile from a company into whose hands plaintiff had delivered it for sale. Plaintiff had made no assignment of the certificate of title as required by the Motor Vehicle Act of 1921, Special Session, page 88, section 18, which requires an assignment, and provides that failure to comply with the statute renders the transaction fraudulent and void. He sued in replevin for the recovery of the automobile. The trial court directed a verdict for the plaintiff and was sustained by the St. Louis Court of Appeals. *Held*, that the provision of the statute was mandatory and all sales without compliance therewith were fraudulent and void. *Quinn v. Gehlert* (Mo. 1927) 291 S. W. 138.

The decision of the court is based on the earlier decision of the Supreme Court of Missouri which first construed the statute and held the same to be mandatory. *Connecticut Fire Ins. Co. v. Cox*, 306 Mo. 537, 268 S. W. 87, 37 A. L. R. 1456. In this case the purchaser of an automobile had not had the certificate of title assigned to him but had taken out insurance on the vehicle. A loss occurred and he sued for the insurance. It was held that the sale was void and the plaintiff had no insurable interest in the automobile and hence could not recover. The statute is held to be mandatory the court, quoting with approval the statement of counsel, said: "The law as settled in Missouri seems to be that a disregard or a violation of positive law cannot be a consideration for a valid contract and that such contracts will not be enforced in our courts and this whether the act which is forbidden either at common law or by statutory law is *malum in se* or merely *malum prohibitum*."

The court then cites numerous cases in which similar statutes were held mandatory and contracts in violation of the statute held void and unenforceable. Failure to comply with positive statute prohibiting possession of certain game during certain seasons of the year in that the contract sued on involved the possession of the game within the prohibited season was held void. *Haggerty v. St. Louis Ice Mfg. & Storage Co.*, 143 Mo. 238. Sale of a lot made without compliance with statute requiring plat of town to be made out, acknowledged, and recorded before sale, held void. *Downing v. Ringer*, 7 Mo. 585. Contracts made by foreign corporations which have not complied with the statute and secured a license to do business in the state, held void and unenforceable. *Tri-State Amusement Co. v. Forest Park Highland Amusement Co.*, 192 Mo. 404. There are few cases in other jurisdictions on this precise point and most of them are collected in the note, following the *Connecticut Fire Insurance Case* in 37 A. L. R. 1465. Most of the cases follow the rule laid down by the Missouri court and declare the transaction void when the statute had not been complied with. A vendor is not allowed to recover the purchase price from the vendee if the title has not been transferred in the manner required by the statute. *Arotzky v. Kropintzky*, (1923) 98 N. J. L. 344. And this is true even though notes have been given by the purchaser. *Swank v. Moisan*, 85 Ore. 662. Kansas courts seem to follow this general rule. *Hammond Motor Co. v. Warren*, 213 P. 810. In this case a mortgagee was allowed to replevin the automobile which had been sold by the mortgagor without making the assignment of the title required. On almost the same facts as the instant case a Texas court in *Ferris v. Langston*, 253 S. W. 309, held the same as the Missouri court, and for some time this was the doctrine of the Texas courts. Recent decisions have effected a complete reversal, however, and it is now held in that state that failure to comply with the statute will not void the transaction which is otherwise valid.

*Hennessy v. Automobile Owners Ins. Assn.*, 282 S. W. 791; *Moore v. Gakey*, 286 S. W. 679 and *Home Ins. Co. v. Stubblefield*, 287 S. W. 297. Colorado seems to be in accord with this view and regards the statutes of this kind as being preventative of crime but of no effect as to the civil rights of parties who have contracted with reference to the property without complying with the statute. *Littell v. Brayton Motor Co.*, 70 Colo. 286. It is with this same view that the New Jersey courts have held that failure to comply with the statute does not effect a judicial or statutory sale there being in such case no reason for the application of the statute. *Edson & Co. v. Shuster*, 128 Atl. 602. It has been held that the failure of the purchaser to comply with the statute does not preclude him from recovering the automobile from a third person. Admittedly the purchaser has a defective title but it is held that he has such an interest in the property as will be sufficient to sustain his action for its recovery, *Wiedeman v. Campbell*, (1923) 108 Ore. 55; *Moody v. Goodwin*, 53 Cal. App. 693.

The general trend of the cases seems to be to hold that failure to comply with these statutes renders the whole transaction relating to property void and the courts will leave the parties where it finds them unless the true owner with his perfect statutory title seeks to recover his property where he finds it. In such cases he is generally given relief.

F. M. H. '27.

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## Books Reviews

**DUE PROCESS OF LAW.** By *Rodney L. Mott*, Ph.D. pp. lxxi and 702. Indianapolis: The Bobbs-Merrill Company, 1926.

This work as its author indicates is "a historical and analytical treatise of the principles and methods followed by the courts in the application of the concept of the 'law of the land.' Ten of the twenty-six chapters, including more than one-fourth of the text, are devoted chiefly to the origin and development of these principles before the Constitution went into effect. While the remaining parts of the work are mainly concerned with the application of the principles by the courts, emphasis is constantly placed upon the historical development occurring during this process. As a result the work affords an excellent opportunity for studying the methods followed by and the conditions influencing the Courts in exercising their function of judicial review.

While Dr. Mott as a political scientist has naturally emphasized origin, development and methods, it should not be assumed that the practical legal aspects have been neglected. The author has excellent qualifications as a student and teacher of constitutional law and has had in mind the problems and needs of attorneys engaged in the practice of law.

The discussion of the modern law of due process follows a logical arrangement. After a consideration of due process and procedure the author considers the relation between due process and equal protection of the law. In succeeding chapters he explains the extension and application of the principle to the police power, the power to alter corporate charters and the powers of taxation and eminent domain. The growing importance of questions of fact in cases involving due process is discussed in chapters on "Evidence in Due Process Cases" and "Legislative Determination of Facts and Judicial Technique." In his concluding chapter Dr. Mott presents his conception of "The Function of Due Process of Law."