duplicate certificate. The section says the previous certificate last issued shall be void. Where does this leave the claims of the "true" holder of the certificate, if there be one? The section later says the purchaser of such duplicate may require the seller to give indemnity against any loss which may be suffered by reason of any claims presented upon the original certificate. If such original certificate is void, how is the court supposed to recognize any claims on the original certificate?

The foregoing discussion should indicate that the courts in other states have not been entirely consistent, in spite of the language of the statute, in whether to consider the statute, of the type Iowa now has, strictly or loosely. Certain other cases, in which the conclusiveness of the certificates has been in issue, are referred to in the footnote without elaborate discussion.[67] It

[67] (a) Action for damages to vehicle may not be maintained without production of certificate in evidence: *Mielke v. Leeberson*, 150 Ohio St. 523, 83 N.E.2d 209 (1948); *Beyer v. Miller*, 9 Ohio App. 66, 103 N.E.2d 588 (1951); *Wells v. Baltimore & O. R. Co.*, 97 N.E.2d 75 (Ohio App. 1949); *Clampitt v. Cleveland*, 86 N.E.2d 506 (Ohio App. 1949). *Compare with Wolford v. Grinnell*, 179 Iowa 689, 161 N.W. 686 (1917) (may recover even though car not properly registered at time of accident).

(b) Resulting trust theory still applicable against one holding certificate in his name; court states statute applies to legal title and not beneficial interests (but query, in view of statement "no court at law or equity"): *Douglas v. Hubbard*, 91 Ohio App. 200, 107 N.E.2d 884 (1951), 101 U. OF PA. L. REV 425 (1952), *appeal dismissed* 157 Ohio St. 94, 104 N.E.2d 182 (1952).

(c) No effective gift inter vivos without transferring certificate of title: *Hiple v. Skolmutch*, 88 Ohio App. 529, 100 N.E.2d 642 (1950).

(d) Buyer was successful against seller in replevin for return of car under agreement to return if not satisfactory, even though seller had certificate in his name and buyer had none: *Martin v. Ridge Motor Sales, Inc.*, 78 Ohio App. 116, 69 N.E.2d 93 (1946).

(e) Buyer successful, without certificate, against seller when seller did not deliver certificate with correct engine number: *Martin v Coffman*, 87 Ohio App. 398, 95 N.E.2d 286 (1949).

(f) Buyer could not sue seller for damages and for certificate to car purchased in trade-in deal when buyer did not have certificate; lack of authority of agent is involved but court did not discuss that: *Kelley Motors, Inc., v. Adams*, 91 Ohio App. 68, 107 N.E.2d 363 (1951). *Compare with Curry v. Iowa Truck & Tractor Co.*, 193 Iowa 397, 187 N.W. 36 (1922) (buyer successful even though no compliance with registration laws).

(g) In action by husband to regain possession from sister of wife, to whom husband had allegedly transferred title to car on promise to retransfer when he returned from service, husband failed when he had no certificate; independent basis for decision was lack of evidence of conspiracy by sister: *Kattwinkel v. Kattwinkel*, 80 Ohio App 397, 74 N.E.2d 418 (1947).

(h) In action by minor to rescind contract of sale of car, now wrecked, defense could not introduce evidence, contradictory to certificate, that adult was purchaser of vehicle: *Davis v. Clelland*, 92 N.E.2d 827 (Ohio App. 1950). See emphasis in *Rush v. Grevey*, 90 Ohio App. 536, 107 N.E.2d 560 (1951) that minor, when disaffirming, must return certificate.

(i) In suit for breach of warranty it was held not competent to show named owner in certificate was not owner: *Garbark v. Newman*, 155 Neb. 188, 51 N.W.2d 315 (1952).

(j) Action against county clerk for failure to note mortgage unsuccessful for the reason, among others, that letter requesting noting was not presented "together with the certificate": *Securities Credit Corp. v. Pindell*, 153 Neb. 298, 44 N.W.2d 501 (1950). See Acts, 55th G.A. c. 127 § 21 (Iowa 1953), Iowa Code § 321.50 (1954).

should be recognized, however, that whenever a statute is drafted in such inclusive and comprehensive language that purports to change generally accepted rules on the disposition of property, consequences will be felt in many areas perhaps not anticipated by the legislature. The court, when presented with a situation, for instance, as to the conclusiveness of a certificate where to do so would lead to what it considers an unjust result, is likely, understandably, to try to avoid the result, with or without language in support. One judge expressed his feelings as follows:

> "And while wording . . . permits academic debate on the problem at hand, it is this court's duty to discover the latent meaning of this positive law and to fill in the gaps if necessary. If this process is called legislation, the reply is that there is no system of jus scriptum which has been able to escape the need of it under certain circumstances. In the interpretation of statutes it is the duty of the court to supply omissions, clarify uncertainties, and harmonize results with justice."[68]

It is to be hoped that the stated objectives of this new law will be accomplished and will be sufficient in value to overcome any confusion which may ensue in some areas of the law.

EDITORIAL NOTES

From time to time the Drake Law Review will publish brief notes supplementing the material or reporting new developments in the problems discussed in articles appearing in prior issues of the Review.

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SOME ASPECTS OF ASSIGNMENT OF ERROR, 2 Drake L. Rev. 9 (1952), considered, in part, the effect of failure to comply with Iowa Code R.C.P. 344 (1950). In *Broadston v. Jasper County Savings Bank, Inc.*, 58 N.W.2d 309 (Iowa 1953), the court sustained a motion to dismiss the appeal for failure of the appellant to comply with Rule 344. The article referred to pointed out that such result might occur if the frequent warnings of the court as to compliance with the Rule were disregarded.

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Brief mention was made in AN ANOMALY IN CRIMINAL APPEAL, 2 Drake L. Rev. 66 (1953), of Iowa Code section 793.18 (1950), which requires that where an appeal is taken by the defendant, the court shall examine the record without regard to technical errors or defects which do not affect the substantial rights of the parties. In the recent case of *State v. Fischer*, 60 N.W.2d 105 (Iowa 1953), the defendant assigned thirteen errors as grounds for reversal, but argued only one, with brief points and authorities submitted. Lack of adequate finances was given as the reason for not presenting brief points and argument in support of the other assigned

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[68] Erie County United Bank v. Fowl, 71 Ohio App. 220, 227, 40 N.E.2d 61, 65 (1942).

errors, and defendant sought to invoke the examination called for by section 793.18. The court stated, 60 N.W.2d 105, at 110, that:

> "Whether we are required to do this when the defendant is represented by counsel and files a formal brief and argument we do not decide. We suggest such procedure would in many cases be unfair to the state, which of course answers only the contentions raised by the defendant's assigned errors which are argued. In any event, we have in this case searched the record as presented to us and find no prejudicial error."

REMEDIES FOR JUDGMENT OBTAINED THROUGH PERJURY

The evidence is in; an adverse judgment has been entered. If it can be established by the party against whom the judgment has been entered that it was based upon perjured testimony,[1] what will be the remedies of the aggrieved party? Among the alternatives which might be available to him are: a motion for new trial,[2] a petition for new trial,[3] an action in equity to set aside the damages,[5] judgment,[4] an action for damages,[5] or persuading proper authorities to presecute for perjury.[6] Which of these should he pursue if his problem is to be presented in the Iowa courts?

The difficulty that faces courts in this situation is a conflict between two fundamental policies of the law. First, the law seeks to afford parties to litigation the fullest opportunity to establish their rights; and, secondly, it desires to maintain and enforce its judgments after the parties have enjoyed the opportunity to establish their rights.[7] The courts are faced with the dilemma that to correct the wrong as between the parties could result in hardship to innocent third persons. For instance, to allow a divorce to be set aside after a period of time might well make an innocent person guilty of bigamy, establish children of the parties as illegitimate, and destroy an expected dower interest. Further, to cancel a deed after a prior lawsuit might well damage an innocent

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[1] Some courts have drawn a distinction between perjured testimony—intentional giving of known untrue facts, and false testimony—unintentional giving of mistaken facts. *E.g.*, Moore v. Gulley, 144 N. C. 81, 56 S.E. 681 (1907). Iowa has not drawn a distinction of this nature and no distinction is intended in this paper by the use of the terms perjured testimony or false testimony. Iowa does not include forged, fraudulent and fabricated documents within the rules discussed in this paper. Use of documents is extrinsic fraud. Bates v. Carter, 222 Iowa 1263, 271 N.W. 307 (1937).

[2] Iowa Code R.C.P. 244 (1950).

[3] Iowa Code R.C.P. 252 (1950).

[4] Iowa Code § 611.15 (1950).

[5] Iowa Code § 611.2 (1950).

[6] Iowa Code c. 721 (1950).

[7] *See* Heathcote v. Haskins & Co., 74 Iowa 566, 570, 38 N.W. 417, 419 (1888).

purchaser for value. With the passage of time the possibility of hardship increases.

In choosing between these conflicting policies the courts have recognized the importance of "time"; thus great weight is given the time the aggrieved party returns to court to challenge the judgment. The dividing time-line in Iowa is the expiration of the time to file a motion for a new trial.[8] If such motion is made within the statutory limit of ten days,[9] the dominant consideration is that the parties be afforded the fullest opportunity to litigate their claims. However, when such time has elapsed, and a new trial is petitioned for,[10] or an action in equity is brought the dominant consideration is that the court must maintain and enforce its judgments after the parties have enjoyed the opportunity to establish their rights.

The motion for a new trial, a remedy available only for ten days after verdict or for a short period thereafter upon permission of the court, is generally made for: (1) material evidence, newly discovered, that could not with reasonable diligence have been discovered and produced at the trial,[11] or (2) misconduct of the prevailing party,[12] or (3) both.[13] The granting of the motion lies within the sound discretion of the court.[14] The supreme court will set aside the trial court's ruling only in a strong case of abuse of discretion,[15] but will interfere more readily where the trial court denies a new trial than where it grants one.[16] If the motion is based upon newly discovered evidence the general requirements relating thereto would apply.[17] If the motion is based upon misconduct of the prevailing party, in addition to showing the false testimony it must be shown that the aggrieved party did not know at the time of the trial that the evidence was false, or did not know of the evidence to prove that the testimony was false.[18]

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[8] Moore v. Goldberg, 205 Iowa 346, 217 N.W. 877 (1928); Guth v. Bell, 153 Iowa 511, 133 N.W. 883 (1911).

[9] IOWA CODE R.C.P. 247 (1950): "Motions . . . must be filed within ten days after the verdict . . ., unless the court, for good cause shown and not ex parte, grants an additional time not to exceed thirty days."

[10] IOWA CODE R.C.P. 252, 253 (1950).

[11] IOWA CODE R.C.P. 244 (g) (1950).

[12] IOWA CODE R.C.P. 244 (b) (1950).

[13] Seven other grounds upon which the motion for new trial may be founded are specified in Iowa Code R.C.P. 244 (1950). The only other one pertinent to the subject matter of this article is found in R.C.P. 244 (c), which involves "accident or surprise which ordinary prudence could not have guarded against."

[14] A motion for a new trial may be granted in the discretion of the court when it clearly appears that the prevailing party offered false testimony upon material matters and the court cannot say that the same conclusion would probably have been reached without such evidence. Moore v. Goldberg, 205 Iowa 346, 217 N.W. 877 (1928).

[15] *Ibid.*

[16] *See* Maland v. Tesdall, 232 Iowa 959, 970, 5 N.W.2d 327, 333 (1942); White v. Zell, 224 Iowa 359, 364, 276 N.W. 76, 78 (1937).

[17] Henderson v. Edwards, 191 Iowa 871, 183 N.W. 583 (1921).

[18] *See* Heathcote v. Haskins & Co., 74 Iowa 566, 38 N.W. 417 (1888).