the judgment creditor may, without notice of the equity, have fixed a lien upon the land in any of the modes provided by statute. Blankenship v. Douglas, 26 Tex. 225; Grace v. Wade, 45 Tex. 522; Frazer v. Thatcher, 49 Tex. 26; Senter v. Lambeth, 59 Tex. 259; Parker v. Coop, 60 Tex. 111; McKamey v. Thorp, 61 Tex. 648. We presume, however, that this question was certified by reason of the fact that before the appellant acquired its lien by recording an abstract of its judgment, Maxcy, the trustee, had conveyed the land to the appellee by a deed which was not filed for record, and of which the appellant had no notice. Upon the question as presented, the decisions of this court seem to be in conflict. In Blankenship v. Douglas, above cited, the trustee, as in this case, had conveyed the land by deed to the cestui que trust before the lien was acquired. The deed was not recorded, and, while there was evidence tending to show that the judgment creditor had constructive notice of the claim of the cestui que trust when the judgment was rendered and the execution was levied, the fact was not indisputably proved. It was distinctly held, however, that even if the judgment creditor had no notice, and the cestui que trust could claim nothing under his deed, the latter could assert his equity against the purchaser at execution sale. On the other hand, Calvert v. Roche, 59 Tex. 463, seems to hold the contrary doctrine. The ground of the opinion appears to be that, since the deed conveyed the legal title to the cestui que trust, his equity was extinguished, and that, therefore, he could claim neither under the deed nor under his original right. The determination of the point was hardly necessary to a decision of the case, and the question seems not to have received any very serious consideration. This appears by the fact that, while Blankenship v. Douglas is cited in support of another proposition in the opinion, the ruling in that case upon the point under consideration seems to have escaped attention. In Gaines v. Bank, 64 Tex. 18, the doctrine seemingly announced in Calvert v. Roche is apparently recognized, but the point was not there decided. We are of opinion that Blankenship v. Douglas lays down the just and logical rule. The statute makes an unrecorded deed void as against such creditors as establish a lien by judicial procedure against the property of the grantor without actual or constructive notice of the grantee's right. A deed that is void as between two parties cannot be held effective as between them for any purpose. If void, it is as if it did not exist. The creditor cannot, in the one breath, claim that it passed no title to the grantee as to him, and in the next, when the grantee asserts an equity existing before the deed, maintain that the equity was extinguished by the void conveyance. We are therefore of the opinion that, even if the land had been vacant, and the sale by the state valid, the applicant would have acquired no title by its purchase. And, on the other hand, we also think that if Maxcy had made the attempted purchase in his own right, and had paid his own money, the appellant would have acquired no title, either legal or equitable, to the fund, by its sale and purchase of the land under execution. We answer the question in the negative.

DOWDELL v. McBRIDE.

(Supreme Court of Texas. Nov. 3, 1898.)

MEDICAL EXAMINERS—CONSTITUTIONAL LAW.

Rev. St. 1895, art. 3778, requiring the members of the board of medical examiners to be graduates of a medical college recognized by the American Medical Association, which association is composed exclusively of allopathic physicians and recognizes no other school of medicine, is not repugnant to Const. art. 16, § 31, authorizing the legislature to prescribe the qualifications of physicians and surgeons, and providing that no preference shall be given to any school of medicine, since the saving clause only limits the power of prescribing qualifications and punishments.

Certified questions from court of civil appeals of Third supreme judicial district.

Action between Charles Dowdell and Joe McBride. From the judgment, the former appealed to the court of civil appeals, which certified questions.

W. H. Brown and Simmons & Crawford, for appellant. T. N. Graham, for appellee.

DENMAN, J. In this cause the court of civil appeals have certified to this court the question whether article 3778, Rev. St. 1895, which reads as follows: "Said board of medical examiners shall be composed of not less than three practicing physicians of known ability and who are graduates of some medical college recognized by the American Medical Association and who are residents of the district for which they are appointed,"—is in violation of article 16, § 31, Const. Tex., which reads as follows: "The legislature may pass laws prescribing the qualifications of practitioners of medicine in this state, and to punish persons for malpractice, but no preference shall ever be given by law to any schools of medicine,"—it being established as a fact on the trial that the "American Medical Association" is composed exclusively of graduates of the school of allopathy, and does not recognize any other school of medicine.

The first portion of the constitutional provision above quoted confers upon the legislature general power to pass laws (1) prescribing the qualifications of practitioners and (2) to punish persons for malpractice. Continuing the same sentence, the latter part of the provision subtracts from such otherwise general power, the word "but" being used in the sense of "except," by prohibiting the legislature in such laws from inserting any provision making a distinction in such qualifications or punishment on account of

the "school of medicine" to which any of such "practitioners" or "persons" may happen to belong. The first portion dealing solely with "qualifications of practitioners" and "punishment," and there being nothing in the context to indicate that the latter portion was intended to embrace any wider range of subjects, we must give it the effect, indicated by its situation and close connection with what precedes, of being merely a limitation upon the previous general power of prescribing "qualifications of practitioners" and "punishments." Therefore it should not be construed as intending to control the legislature in the entirely different matter of prescribing the qualifications of members of the "board of medical examiners" provided for in article 3778, above quoted. Soon after the adoption of the constitution, in 1876, the legislature, in enacting the law of which said article is a part, so construed the constitutional provision, and it is the duty of the courts to so far defer to such construction as to hold the act constitutional, unless it be clearly not. To show that the legislature so construed, and did not intend to violate, said constitutional provision, it clearly, in the light of the evidence in this case showing that only allopaths can become members of said "board of medical examiners," intended by said article 3778 to give a preference by law to that school in the organization of such board, but did not give such preference in prescribing the "qualifications of practitioners"; for it also provided, in article 3784, that "it shall be the duty of said board to examine thoroughly all applicants for certificates of qualification to practice medicine in any of its branches or departments, whether such applicants are furnished with medical diplomas or not, upon the following named subjects, to wit: Anatomy, physiology, pathological anatomy and pathology, surgery, obstetrics and chemistry; but no preference shall be given to any school of medicine." We understand the court of civil appeals, in passing upon this question in this cause prior to certifying same, to have expressed substantially the same view of the intention of the above provision. We answer that article 3778 is not in violation of said constitutional provision.

COLLIER v. COUTS.

(Supreme Court of Texas. Nov. 3, 1898.)

ADVERSE POSSESSION—INTERRUPTION BY CIVIL WAR—TACKING.

Pasch. Dig. art. 4631, providing that all statutes of limitations should be suspended until one year after the close of the civil war, and art. 4631a, providing that the time during which the war existed should not be counted in the application of any statute of limitations, and Const. 1869, art. 12, § 43, providing that the statutes of limitations should be suspended from the act of secession until "the acceptance of this constitution by the United States," and Rev. St. 1895, art. 3366, declaring that the laws of limitation were suspended during the Civil War, do not have the effect of tacking adverse possession before the war with that had after an abandonment during the war.

Error to court of civil appeals of Second supreme judicial district.

Suit in trespass to try title by Mrs. E. J. Collier against J. R. Couts. From a judgment of the court of civil appeals (45 S. W. 485), affirming a judgment for defendant, the plaintiff brings error. Reversed.

Alexander & Fain and W. S. Essex, for plaintiff in error. Harry W. Kuteman, for defendant in error.

GAINES, C. J. We take the following statement of this case, together with the conclusions of fact of the court of civil appeals, from the opinion of that court:

"On June 27, 1894, the appellant brought this suit in trespass to try title to recover from J. R. Couts, appellee, an undivided interest of $^{11}/_{24}$ of the Azariah Brackene 290-acre survey, adjoining the city of Weatherford, Parker county. The plaintiff is a daughter of Azariah Brackene, to whose heirs the land was patented. She was born on July 12, 1834, her father dying in March, 1842. The trial judge held her entitled to recover unless defeated by the defendant's plea of the 10-years statute of limitation, upon which alone the appellee prevailed. Among other matters, the plaintiff seeks to avoid the defense of limitation on the ground of coverture. It appears that she married D. D. Collier on April 14, 1859, and that this marriage terminated with his death on March 5, 1893. In connection with his plea, the defendant offered the following instruments: (1) A certified copy of the unconditional headright certificate to A. Brackene, dated November 21, 1848, to 640 acres of land. (2) A transfer by W. T. J. Brackene to John McMillan, dated November 16, 1849, transferring 290 acres of this certificate. The transfer itself purports to be the act of William T. J. Brackene, but the certificate of acknowledgment describes William Brackene as the grantor, and as acting in the capacity of administrator of the estate of A. Brackene, deceased. (3) A certified copy of a transfer dated December 16, 1854, from John McMillan to Jesse R. Wright, of 290 acres of the land called for by the unconditional certificate. (4) A transfer of the certificate from Jesse R. Wright to John Matlock, dated December 8, 1855, and a certified copy of the transfer of the same certificate from John Matlock to Joshua Barker, dated December 11, 1857. (5) A certified copy of the field notes of the survey of 290 acres of land, made for the heirs of A. Brackene by Llewellyn Murphy, surveyor of Parker county, describing the survey in controversy, dated December 21, 1852, and filed in the general land office July 26, 1858. (6) The original patent, dated December 22, 1860, from the state to the heirs of A. Brackene, to the land in controversy. With this claim of