# Monthly Bulletin

*of*

# The American Title Association

(Formerly The American Association of Title Men)

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## MEMBERSHIP CAMPAIGN TO CLOSE SHORTLY.

**Last Chance to be Listed in Directory.**

The Membership Campaign has been going fine in some states. This is particularly true in some of them and the last call will be sent out in a very short time. Certainly the opportunity of being listed in the directory cannot be ignored. Some of the states have not yet made much effort to get into the thing and this is indeed to be regretted.

There are only a few weeks left. The definite date of the end of the contest will be announced in the March Bulletin, so everyone should get busy to make the most of the remaining time.

There certainly is every inducement in the world for those who do not now belong to any state association to join.

The circulation of the Directory will probably be increased several thousand for every effort will be made to place a copy of it in the hands of every realtor, mortgage banker and others who are good patrons of title companies' offices and abstracters' work.

Missouri seems to have broken all records for new memberships. They have certainly done some great work down there and have results to show for it.

Kansas, Colorado, Michigan, Nebraska, Oklahoma and Texas have also achieved much success and several other states are now working hard. The officials of these state organizations deserve lots of praise for their energy and consideration. They may well be proud of the results.

Some of the other states are just beginning to work hard at it and have found all it takes is a little effort and the results will be very gratifying.

Nebraska probably holds the record for "high-pressure," as a united effort in a three day campaign netted them over a twenty-five per cent increase.

The winning State Association for the President's Cup is far from being determined at this time.

The point is, LET'S GO! It can be done by just a little effort and this is the time of all times. Every abstracter and title man should belong.

## *Abstracts of Land Titles—Their Use and Preparation.*

*This is the second of a series of articles or course of instruction on the use and preparation of abstracts.*

IV.

**The Source of Information.**

There are many definitions of abstracts. In short they are a history or pedigree of a piece of land. As such they should show all of the matters of record affecting a title so that one examining the abstract may learn its exact condition. People buy abstracts for no other reason than to learn the EXACT condition of the title to a property they are buying or lending money with land as security or in other things where an evidence of the title is needed and depend and rely upon it to safeguard their interest or investment.

This means that an abstract should contain a brief or digest of all instruments of writing, conveyances, encumbrances, miscellaneous matters, estates, court actions, taxes, assessments, liens of all descriptions, judgments, suits pending, transcripts from the United States courts, Federal Liens and in short, EVERYTHING affecting the title or having a bearing thereon.

These items should be set forth in a clear understandable manner, in chronological order so that one examining the abstract can do so easily, and will not be distracted by a misarrangement of the material or lack of proper and sufficient references tying the chain with affidavits, abstracts of court proceedings or worried by insufficiency of showing or indefinite statements that would leave a feeling of doubt.

The abstracter then makes a proper certificate as to these things and the correctness thereof. We will only be concerned with the showings at present but later will devote a whole chapter to the certificate.

The true test of a real abstract is one answering the above qualifications, gotten up neatly, and creating a confidence in the examiner so that after examination he has a feeling that he can rely entirely upon the abstract; that he is not in doubt as to any matters set forth and that he can safely depend upon it for a true evidence of the title.

The expression "the records hold" is very true and the record title is what an abstract is supposed to show. This is because of our recording acts or laws of the various states and the abstracter should not concern himself or insert in the abstract, any unnecessary matter. HOLD TO MATTERS OF RECORD. As the records are the real source of information we will briefly study their place and use.

Governments early recognized it a governmental duty to provide a system of records, and prescribe methods and procedure in the uses thereof. Even the ancients realized the necessity of preserving a record of the transactions involving real estate and in their histories as well as in many places in the Bible it tells of the deeds, evidences of livery of seizin, etc., being placed in an earthen vessel, vault, or other place of keeping that they may be continued many days.

The first master stroke in providing for a recording system was the Domesday Survey of England, ordered and initiated by William the Conquerer, in the year 1080. This provided that the land rights of all parties in the Empire be determined, the boundaries of their land established and all other matters provided for that would serve to establish a basis of a record system, of the owners and rights of those in possession of the land. The titles of the land in England began with this survey, and from it has grown our present record and title system.

The "traditionary" title has its use and value but can do harm as well as good. The abstracter has no business putting in any "town gossip" or neigh-

borhood hearsay. Real facts of the traditionary history are valuable in correcting titles, material for completing requirements, etc., but should be used only for such advantageous purposes.

The necessity for some discipline in the use of the generous, elastic recording systems provided for in the various states brought forth the "recording acts," the purposes of which are very clearly and ably told in "Thompson on Real Property," as follows:

"Registry laws are intended to furnish the best and most easily accessible evidence of the title to real estate; to the end that those designing to purchase may be fully informed of instruments of prior date affecting the subject of their contemplated purchase, and also that having availed themselves of this means of knowledge they may rest there, and purchase in absolute security; provided, that they do so without knowledge, information or such suggestions from other facts, as would be gross negligence to ignore, of some antecedent conveyance or equitable claim. The object of recording acts is to impart information to parties dealing with property respecting its transfers and incumbrances, and thus to protect them from prior secret conveyances and liens. The policy of such acts is that the title to real estate and all that affects it should be disclosed by the public records, and upon the theory that the record makes such disclosure, the rule obtains that purchaser may rely upon the title as it appears of record, and that he will be protected against unrecorded conveyances, outstanding equities, secret liens and conditions of which he has no notice. These acts in substance provide that all conveyances of real estate shall be void as against subsequent purchasers in good faith without notice, unless they are recorded in the registry of deeds for the county where the land lies.

"Every subsequent purchaser is bound to take notice of a recorded deed in the line of title previously recorded, although he has no actual notice of it. If he has relied upon the representations of his grantor in regard to the title to the premises without consulting the record, which is always open to his inspection, he has done so at his peril; and although he may in such case be an innocent purchaser in fact, he is not regarded as such in law. The purpose of such acts is by registration to impart constructive notice of deeds and other instruments affecting the title to real estate, and to authorize priority of title in accordance with priority of registration. In general, registration is equivalent to actual notice, and actual notice is equivalent to registration. But the record imparts constructive notice only to such instruments as the statutes require or authorize the recording of. And though the recording of the instrument is authorized, if entries are made in the reception-book, or in the index, which are not required or authorized to be made, purchasers are not charged with constuctive notice of such entries.

"Unless an instrument is such as the law requires to be recorded, putting it on the record is of no avail as notice to persons dealing with the same grantor and the same land. As between the parties themselves, registration is generally unnecessary and without effect. It is as against subsequent purchasers or incumbrancers for value without notice, that recording is necessary; and as against such purchasers recording is necessary to protect any title or interest in the land, though this be a mere easement such as a right of way. Though recording is not necessary as against the grantor's heirs, it is necessary as against a purchaser from such heirs having no notice of the prior conveyance. There are, however, a few cases in which it has been held that the protection afforded by the registration laws against unrecorded conveyances extends only to purchasers from the grantor himself, and not to purchasers from his heirs or devisees."

Therefore the abstracter must get his information from the records. This means that he is expected to furnish a brief of every instrument or writing, conveyance, probate or civil court poceeding. In doing so he MUST SHOW THE MATTERS OF RECORD AS THEY ARE AND NOT GIVE AN OPINION AS TO THEIR VALIDITY.

This means that he must know where to go to get everything of record against the particular land to be abstracted, and show the essentials of everything JUST AS THEY ARE.

It is not for him to decide whether this instrument or that affects the land, but if it involves it in any way whatsoever, make a proper notation of it. TAKE NOTHING FOR GRANTED, and when in doubt, play safe by showing it. It has very truthfully been said that an abstracter cannot take anything at all for granted, not even that he is married.

Another very important thing, never let anyone "talk you out" of showing something affecting the title. Sometimes there will be little matters sometimes big matters, which seemingly have no influence or pertain particularly to the title, and the seller, his agent or others interested in seeing that the deal is put through in a hurry without any hindrances try to "high pressure" the abstracter and induce him to leave something out. A doctor will not let his patient's friends tell him what to do and not to do in a case; one cannot talk a banker out of signing the note when he borrows money; the tailor will not make a coat and leave one sleeve out of it, so why should the abstracter be told how to do his work by people who have absolutely no idea about the making of abstracts or what an abstract really is.

This is likewise very true of court proceedings. A few years ago an abstract consisted only of the "chain." Court proceedings were not attached both on account of it not being the custom for the reasons that a judicial sale was supposed to have been done regularly and correctly as prescribed by law, and the abstracter was not supposed to have been efficient or capable enough to make an abstract or even a methodical copy of a court action.

The proceedings back of a judicial sale or any decree affecting the title and all probate proceedings are just as much a matter of the abstract as the entry showing the conveyances culminating from the court actions. An abstract not showing such items is not a modern abstract and anyone requesting an abstracter to make such a one is either provincial or ignorant, certainly not fair to the abstracter.

No other trade or business will let outsiders tell them how to do their work or make their product, and it certainly is not within the bounds of reason or fair play to expect the abstracter to make abstracts any other way than right—and the abstracter himself knows better than anyone else what is right and wrong in their making.

And as he should not take anything for granted as to what records to show, he should likewise not take anything for granted as to what of the records to show.

SEARCH THE RECORD ITSELF, and do not take marginal notes, notes on the indexes or any references for the record itself.

It is only the record itself that counts and these marginal notations or references have no decision. This is shown in the case of Wacek vs. Frink, Page 282 of Volume 51, Minnesota Reports, wherein an abstracter had abstracted a partial release of a mortgage so as to mislead the purchaser of the property to believe that the mortgage was fully released. The abstracter set up a plea that the recorder was in error in having noted upon the margin of the record that the mortgage was "satisfied," when, in fact, it should have been noted as "Partially Released." In making the abstract he had relied upon this marginal entry and had not examined the contents or record of the release itself.

The court held that it was his duty to "make a full and true search and examination of the records relating to the title of the land and to note upon the abstract accurately, every transfer, conveyance or other instrument of record in any way affecting the title. He is not required to give any opinion as to the legal effect of any of the instruments and just how full or minute a description of them he should give, was perhaps to a certain extent a matter for himself to decide, but insofar as he assumed to describe them, certain due care and skill required that such description should be accurate. The record and not a marginal reference to it by the register is what determines the character and legal effect of an instrument and the duty of an examiner of titles is not fulfilled by merely assuming the accuracy of such a reference without examining the instrument itself. Any other rule

would render abstracts of title SO UNRELIABLE AS TO BE OF LITTLE VALUE."

Thus you will see that the burden of the thing is put upon the abstracter. Doctors, lawyers, veterinaries, dentists, banks, and hundreds of businesses, profesions and others are regulated by law. Not so the abstracter, and as a result it has come to pass and been decreed that he is supposed to have requisite skill and knowledge to do his work.

An abstracter is not an indemnitor or guarantor, but is responsible for his work.

An abstracter is not liable if he mistakes in matters of the difficulty of the law, but is if he certifies that he has made an examination of the records and finds no incumbrances and will be liable if an incumbrance is of record in such a way as to give constructive notice of it. He is bound to know what is a lien and what is not, and to find them when a matter of record. IF THERE SHOULD BE SOMETHING OF RECORD WHERE HE MIGHT HAVE REASONABLE DOUBT AS TO WHETHER IT IS A LIEN OR NOT, AND HE DECIDES IT IS NOT, HE DOES SO AT HIS OWN PERIL. The best way to escape liability is to make a notation of everything, then let the examiner decide their bearing.

In the well known and basic case of Banker vs. Caldwell, Page 94 of Volume 3, Minnesota Reports, the court said: "the making of a perfect abstract of the title to a piece of land, with all the incumbrances which affect it, involves a great exercise of legal learning and careful research, that I presume no lawyer will dispute. The person preparing such an abstract must understand fully all the laws on the subject of conveyancing, descents and inheritances, uses and trusts, and, in fact, every branch of the law that can effect real estate in its various mutations from owner to owner, sometimes by operation of law, and again, by act of the parties."

The courts have also considered the duties of an abstracter to his client and the liabilities imposed upon him in his work. It has been definitely settled too, that persons engaged in making abstracts of title occupy a relation of confidence toward those employing them and cannot use the information obtained through such employment for their own benefit and the prejudice of their employer. This is brought out in the case of Vallette vs. Tedens, Page 607 of Volume 122, Illinois Reports, which says: "Persons engaged in the business of making abstracts of title occupy a position of confidence toward those employing them which is second only, in the sacredness of its nature to the relation which a lawyer sustains to his client. Such persons consult the evidences of ownership and become familiar with the chains and histories of title. They handle private title papers and become aware of whatever weakness or defects may exist in the legal proceedings, through which the ownership of real property is secured. They should be held to a strict responsibility in the exercise of the trust and confidence which are necessarily reposed in them."

An abstracter impliedly undertakes in making up an abstract that he has the requisite skill and knowledge and that he will use skill and care in the performance of his duties.

This is emphasized in the case of Stephenson vs. Cone, South Dakota Reports, which says:

"One who undertakes the examination of titles, for compensation, is liable for want of ordinary care and skill in the performance of that task. To furnish abstracts of title is a business —a sort of a profession. The party undertaking it assumes the responsibility of discharging his duty in a skillful and careful manner. That is just what he is paid for doing. Patience in the investigation of records is the main capacity required. There are no professional opinions required of the abstracter. It is his duty to furnish facts from the records, without concern for their legal effect. Upon the facts furnished, the purchaser must make his own examination and determine for himself on their sufficiency. The abstracter collects the evidence from the records, and notes the same on the abstract, and if he makes a mistake or oversight or omission resulting in damage, he must respond to the injured party."

(This article has dealt with the records themselves. The next chapter will deal with the ways of finding them, the various kinds of Indexes or keys to the proper record.)

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## A REAL ESTATE CONTRACT TOLD IN VERSE.

Henry R. Chittick, of The Lawyers' Title & Trust Co., New York, clipped the following from the July 19, 1923, issue of the N. Y. Law Journal:

Editor New York Law Journal:

Sir: The annexed verses contain, as you will notice, a brief reminder of every important phrase and clause in the regular real estate contract, and as such may prove of value to members of the Bar in drawing contracts for conveyance of real property.

Truly yours,
LOUIS SILLS.

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(A brief reminder of every important clause in the regular real estate contract.)

First the broker must agree
If and when he earns a fee.

Then the contract should commence:
Dated, parties, residence;
X agrees to sell to Y,
And Y, in turn, agrees to buy.

Description, survey, covenants
In prior deeds and instruments,
Building restrictions, party wall,
Easements claimed by one or all;
Areas, stoops and cellar stairs
Encroaching on the thoroughfares;
Tenancies, security
Transferred on indemnity.

Income seller represents;
Promise not to lower rents;
Leases shown and passed, in turn;
Coal at cost that will not burn.

Price, part cash or certified;
Amount of first and terms provide;
Reimburse installement paid;
Receipt should prove reduction made.

Purchase mortgage; usual lines,
By the buyer or assigns;
Seller draws at buyers' cost,
With saving clause if taxes lost,
Part or whole anticipation,
And, of course, subordination.

Contract then in terms accords
Bed of street and all awards.

Apportion taxes, water, rent,
Insurance (figured to the cent),
Interest, ranges, phone expense,
And janitor's cash recompense.

Seller then agrees to pay,
Should the tax law fail to stay,
Taxes twenty-two and three,
On demand accordingly.
Purchase mortgage so should read,
And this clause survive the deed.

Personality that seller owns
Ceded with the mud and stones.
Franchise taxes no objection,
Violations like protection.
Assessments deemed all due on closing,
A lien on premises imposing.

Unfixed meters paid pro rata,
Seller to supply the data.

Seller clears each violation;
Deed still leaves this obligation.
Buyer written right should take
Violation search to make.

Deed, short form, full warranty,
Free and clear conveying fee.

Cost of search, deposit paid,
Liens on premises are made.
Seller fire risk should bear.
Deed delivered when and where.

Then the pact should also bind
Those the parties leave behind.



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### PURCHASERS FOR PLANTS.

YOUNG ATTORNEY, 10 years' experience in abstract office, desires to purchase plant where someone will finance part of purchase or on payments or both. (1)

WANTS TO PURCHASE plant in Kansas or Missouri where there is either no competition or else where relations between rival companies are harmonious and conditions good. (2)

### EQUIPMENT FOR SALE.

5x8 card files for sale. Brown-Morse make. Will sell at sacrifice. Write to Musselshell County Abstract & Title Co., Roundup, Mont.

## "THE EVIDENCING OF LAND TITLES."

**—By E. J. Stason, of the Sioux City, Iowa Bar.**

(Note: Mr. Stason is a title authority, and a friend and supporter of the Iowa Association of Titlemen.

This paper presents a most valuable discourse on abstracts, title insurance, the Torrens System and various details of the systems now used.

It is worthy of careful study.

The original idea of the article was to present facts and arguments for title insurance when an attempt was made to have such legislation passed as to permit the operation of title insurance companies in Iowa.)

Hanging in my office is a small picture which should be of interest to all who have given thought to the matter of real estate title insurance. It shows the law office of an English solicitor. In it four men of advanced years are engaged in examining records, books and files in an effort to trace the title to a piece of real property. Evidently it was a laborious task. One of the men, judging from the look of satisfaction expresed by his face, has at last found the missing link in the chain of title. By it he is doubtless able to establish the ownership in his client of the property in question. This picture is illustrative of what might be considered the primitive method of preserving the title to real property, namely, by means of the original instruments by which the title to the property is evidenced and conveyed. It must have been a period of uncertainty. Records were not kept then as now. The original documents were preserved and handed down from grantor to grantee, and from ancestor to heir or devisee.

This method continued until it became impractical, on account of the multiplication of titles, and the increase in the number of links in the chain. This primitive method was changed by the effect of recording acts enacted in England and in this country.

### Origin of Abstracts.

Though the use of abstracts has now become universal, where free alienation of land is permitted and property rights are recognized, but little can be said as to the origin of the custom. The first English works on the subject, published during the first half of the last century, treat of the abstract as an established fact, but make no mention of the period at which it first began to be used. In this country, during the earlier years, but little attention was paid to title in purchases of real estate. Ordinarily the buyer was fully satisfied with a "warrantee" deed, the convenants being taken as conclusive evidence of all they recited. No inquiry was made into the past, possession being usually a sufficient guaranty of ownership, and no thought was taken as to the future. Transfers of land were frequently accompanied by the vendor's deeds and other muniments upon which the title was based. But increasing commercial activity and the removal of property disqualifications, and impediments to alienation, brought a vast accumulation of evidences of title, frequently involving complex interests that called for a high degree of skill to arrange and classify, as well as to interpret and adjust. Land, too, has acquired in many localities an almost fabulous value, and purchasers now part warily with their money and only on strong assurance of title. It is no longer practical, save in rare instances, to examine title by inspection of the original documents, were such always available, or to laboriously follow on the records the various mutations through which it has passed. For approximately 100 years the practice of obtaining from the record of title instruments the facts relating to title to real property has been followed. In order to have the information regarding titles in convenient form, those who were qualified went to the records and made "searches" for the information necessary to establish title, or rather the information required to satisfy one who was purchasing real estate, or loaning money upon it as security, that the vendor or mortgagor had title to the property, and that it was reasonably safe.

In early days the labor of examining the records was performed by attorneys. It was found, however, that this examination could be done better by men who made it a business. For the past fifty years, at least, the making of abstracts has been a profession, or at least a vocation, and the result of the labors of these experts appears in the form of the modern abstracts of title. But the abstractor is not ordinarily considered competent to pass upon many of the difficult questions of law presented by an abstract, and which must be passed upon before it can be determined that a vendor or a mortgagor has a safe title to real property. The duty of passing upon these questions has developed upon attorneys who are supposed to be skilled, and to have the requisite knowledge to enable them to express an opinion as to the character of the title to real property.

Today the question confronting the property owner, the abstractor, and the title examiner is, shall the assurance of real estate title continue to be effected by the abstract of title, and the opinion of the title examiner, or shall it be superseded by a more practical method, just as the abstract and opinion method of assuring titles superseded the method of assuring titles by means of the preservation and examination of the original documents?

In order properly to determine whether a law or a business custom should be changed, it is always advisable, first to consider the evils of the existing law or business custom. What, then, are the objections which fairly may be urged to the method of exhibiting and assuring title by means of the abstract and the opinion of a title examiner:

(1) Any method of transacting a certain line of business for 100 years without change comes to be considered, by the progressive mind, with a degree of suspicion. In other respects business methods have seen wonderful changes in the last century. If the method of exhibiting the title to real estate has not changed certainly the conditions relating to real property in other respects have changed remarkably. How rare it is today, to find an abstract of title showing the title still vested in the original government patentee. Fifty years ago that was a common thing. Instead of the abstract of title to a tract of land consisting of four items, the original entry, the patent, a mortgage and a tax statement, we have abstracts of 150 entries. It is so unusual to find an abstract which does not show the administration of an estate, the probate of a will, a judicial or a tax sale, that it is a matter for comment. These entries were rare a few years ago. Fifty years ago the average cost of making an abstract of title to farm lands did not exceed five dollars, and the average cost of an abstract to town property did not exceed ten dollars. Today, if title is shown from the government, the average cost of an abstract of title to farm land is probably fifty dollars and the average cost of an abstract of title to city and town property is probably seventy-five dollars.

(2) In addition to the rapid increase in the cost of the individual abstract, there has been a corresponding increase in other respects. While much is said at times about landlordism, and the increase in the number of tenant farmers, there is no decrease in the number of individual ownerships requiring separate abstracts of title. Whatever may be said with reference to the comparative number of abstracts of title to farm lands, there certainly has been a very rapid increase in the number of urban owners of real estate. Taking Sioux City as an illustration, I am informed by our assessor that there are approximately 40,000 real property ownerships in the city, requiring that number of abstracts of title. The legalizing act, the curative act, and the statute of limitation will never succeed in materially cutting down either the cost, or the size, of the abstract of title.

(3) The original cost of the abstract is not the only burden that must be borne by the property owner. Each transfer, or mortgage, requires the continuation of the abstract, at an added expense, and requires its examination by an attorney, and the longer the examination of the abstract, the longer the charge for the examination.

(4) If the cost of the abstract, with its continuations, and the cost of the opinion of the examiner resulted in completing protection of the property owner, and enabled him to

transfer or mortgage his property and close the transactions promptly, the situation would be different, but there is no such fortunate result. The abstractor epitomizes the history of the title as he finds it of record, and the examining attorney does the best he can with such light as is given him. But no two examiners view the abstract before them alike. Some are technical, and some are liberal, in their requirements; some call attention to parts of the abstracts, and conclude that the parts they call attention to are not defects after all, and in that way arouse the suspicions of the purchaser or mortgagee. Some are so afraid of their shadows that they imagine all sort of defects in the title. The result is exasperation and delay for the parties interested, and often a loss of opportunity and loss of money and endless confusion. This situation is well stated in an address by Mr. Ivan O. Ackley of Chicago, at the annual meeting of the American Association Title Men at Des Moines in 1921, in which he said:

"I have written letters all over the known world, from Mandalay to Timbucktu, to try to get affidavits and deeds from men living and dead, mostly dead; I have purchased property and had our lawyer, a man of national reputation, find thirty objections to the title, and, because we were offered a good profit, I have disregarded his objections and advice and resold the property and had the purchaser's lawyer raise thirty more entirely new objections. I have bought property and paid for the opinion of an attorney, and found when we sold the property that thirty-five pages in the bound part of the abstract were missing, and had never been there, and that attorney was a man who would not accept guarantee policies on the ground that title companies did not exercise proper care in their work."

This experience is a common one, and it clearly indicates that the abstract-opinion method of reducing, or eliminating, title risks does not meet the necessities of modern business.

(5) If all this expense and delay resulted in security to the purchaser, of the mortgagee, it would not be so bad, but after he has gotten an abstract and his attorney's opinion, he is still carrying the risk of human error, and human cupidity. The abstracter's eyesight, and the attorney's judgment may be both at fault. In any such event, the property owner is still far from being protected in what is in many instances his most valuable material possession. In other words, there are numerous defects against which the abstract and the opinion afford no protection, save such protection as is given him by convenants of warranty, if any are available to him:

One of the instruments in the chain of title may have been forged As against such a contingency he is not protected.

He is not protected against the dower right of the grantor or mortgagor, if the vendor or the mortgagor represents that he was unmarried, when as a matter of fact he was married, and his wife did not join.

He is not protected against the incompetency of the grantor or mortgagor on account of infancy or insanity.

He is not protected against the execution of an instrument under power of attorney, after its revocation by the death of the principal.

He is not protected against the claims of a child of a deceased parent, not mentioned in probate proceedings.

He is not protected against the liability for inheritance taxes.

He is not protected against the judical interpretation of wills, deeds and other instrument, different from that held by the examining attorney.

He is not protected against the losses occasioned by copyist's errors.

He is not protected against the claims of posthumous children not recognized in the probate of the parents' estate.

He is not protected against those claiming that instruments were improperly or permaturely delivered.

He is not protected against the claims of the rightful owner, where an instrument in the chain of title was delivered by one impersonating the true owner.

He is not protected against the effect of the judicial finding contrary to the opinion of the examiner, that an instrument purporting to be a deed was in fact an instrument testamentary in character, and not properly executed.

The foregoing are only a few of the many risks which the property owner and the mortgagee must himself carry, under present methods of transfering and mortgaging real property. It must, therefore, be apparent to any person who is experienced in the matter of titles to real property that the abstract-opinion method of insuring immunity from loss, is not only expensive, cumbersome, a fertile source of exasperating hindrances and delays, where expedition is often necessary, and a fruitful source of loss because of such delays, and that it is beset with many pitfalls. In other words it is far from perfect, and that its greatest failing is that is that it is not up with the times.

### The Torrens System.

For the last forty years efforts have been made to improve the method of insuring the safety of real estate titles so as to meet the requirements of modern business. In other words the thing desired is some method which will be less expensive, will insure the property owner against every defect, and at the same time make real property assets available for prompt conversion into cash, either by way of sale or as security for loans. Many have thought that this could best be accomplished by borrowing, and adapting to our requirements, the Torrens system of title registration. This plan seemed to be very popular for a time, but it has failed to maintain a favorable impression.

The object in adopting this system was to make the transfer of landed property as simple and as safe as that of personal property, and to do away with the necessity for repeated examinations. The system is operated through a bureau of registration, in charge of a registrar, and becomes effective on the first transfer of any tract of real estate after the adoption of the system. Before registry the title is fully investigated by the registrar, who receives from the owner all his documentary evidence of title. When the registrar is satisfied that the title is perfect, he files away the evidence thereof, and issues to the holder a certificate of ownership, a duplicate of which is filed in his office. Such certificate bears upon its face notice of all incumbrances on the property. If the certificate is issued for a lesser estate than one in fee simple, it is so indicated. This examination and registration of the title does not have to be repeated after a certificate has once been issued. The transfer of the certificate with the accompanying of that fact in the registrar's office completes the transaction. By this method the transfer of a land title becomes as simple as the transfer of a certificate of corporate stock, and the holder of the title is free from the usual dangers of land title transfers. Should a person suffer loss through misdescription, ommission, or any other error in the certificate issued by the registrar, he is indemnified by an insurance fund created for that purpose. The fund is provided for by the imposition of a tax of one-fourth of one per cent of the value of the land at the time the first certificate of title is granted. This tax is in addition to the registration fees.

Such in brief are the provisions of the original Torrens law. As adopted in the nineteen states where it is now provided for by statute, it has been modified in many respects. But in no state has it been put into general use.

In 1918, in the 19 states, 2795 persons applied for the registration of 9651 tracts.

In 1919, 4397 persons applied for the registration of 12,113 tracts.

In 1920, 1846 persons applied for the registration of 5,121 tracts.

In the first six months of 1921 but 431 persons applied for the registration of by 982 tracts.

The experience of some of the states adopting the Torrens system indicates that it has failed to meet with favorable reception.

In California, where it is optional with the counties to adopt the system, only 17 out of the 63 counties have taken advantage of the law, and in the counties which have adopted it, only about three-fourths of one per cent of the titles are registered, at an average cost of $57.00 for each title.

In Illinois the Torrens law was passed 23 years ago, but Cook county

is the only county which has taken advantage of it.

In Oregon, where the law has been in force since 1901, there have been 261 registrations, and 127 of these have been withdrawn. The average cost of registering is $93.87.

In Minnesota one and one-half per cent of all titles are registered, and nearly four per cent of the registered titles are in the cities of Minneapolis, St. Paul and Duluth.

In Colorado, 614 titles have been registered at an average cost of $154.-00 each.

In Washington the Torrens law was enacted in 1907. During the first 10 years 119 titles were registered. Since then only 80 additional titles have been registered. These registrations have cost on an average of $154.00 each.

In North Carolina the total registrations in seven years were 54 titles, at an average cost of $89.00 each.

In Ohio the law has been in force seven years. In all counties but four only 81 titles have been registered, at a cost which averaged $71.40 each.

In Mississippi the law has been in effect six years, and the counties have expended about $40,000 in preparing for registration. During the six year period only two titles have been offered for registration, and one of these was withdrawn.

In Massachusetts the law has been in force since 1898, and 31,000 certificates have been issued, at an average cost of $225.00 each.

In Nebraska the law was enacted in 1915, but there has been no movement to put it into effect.

In South Carolina the law was enacted in 1916, and only 41 titles have been registered.

In Virginia the law was enacted the same year, and less than 100 titles have been registered. The law as enacted in that state covers 67 pages of the Code.

In Utah the law was enacted in 1917. During the first two years but 90 titles were registered.

In North Dakota a Torrens law has been enacted, but it has not been put into effect, and the same is true in South Dakota.

In Tennessee the law was passed in 1917, and less than 100 titles were registered in the first three years.

In Georgia the law was passed in the same year, but has never been put into operation.

In fairness to the friends of the Torrens system I should state that the most of this information was compiled in the latter part of 1920, and includes only such data as could be obtained at that time.

**Objections to the Torrens System.**

The principal objections to the operation of the Torrens law are the following:

1. It does not satisfy the popular demand for the reason that the initial expense is too great. After the initial expense is paid, it is less expensive than the abstract-opinion method, but this initial expense has the effect of discouraging the property owner.

2. It is a proceeding fraught with the delays incident to every proceeding which is in the hands of government employees or appointees. The government service must become more effective and expeditious if it is to meet the requirements and necessities of modern business life, namely, prompt action with reference to every detail.

3. The Torrens system, being governmental, is necessarily rigid and inflexible in operation. A defect in the title remains a defect until removed in some way. No matter what indemnity or security the proposed seller or mortgagor may offer, nothing will aid him with the officers who are charged with the duties required of them. The system is not adjustable to conditions of title varying in the least from those contemplated by the statute. Unless the law is exactly complied with, the registrar's certificate cannot be obtained, and if the title is refused it stands discredited with business men.

4. Wherever adopted, its constitutionality has been put in question, for the reason that in order to perfect the title it is often necessary to institute a proceeding to bar all unknown claimants, and all persons interested in the property, save the party applying for registration. In some states the courts have held the act to be unconstitutional as enacted, and in some states the constitutional objections have been overcome by subsequent legislation.

5. The Torrens system is cumbersome in that it requires, before the certificate can be issued, the employment of three attorneys, one for the applicant, one as the examiner of the title, and one as guardian ad litem. This, in a way, explains the reason why less than 25,000 property owners had registered their titles prior to June 1, 1920.

The candid mind is forced to admit if the foregoing statement is substantially true, that the Torrens system of land registration does not solve the real estate title problem. It does not meet with popular demand, does not meet the requirements of modern commercial life, and it is too expensive.

(To Be Continued in Next Number)

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**PASSING OF W. E. ATKINSON.**

Word has been received of the death of William E. Atkinson, of Urbana, Ill. Mr. Atkinson was one of the staunch, public-spirited citizens of Champaign County. He had been in the abstract business for the past twenty years, heading the Champaign County Abstract Company.

He was also secretary of a building and loan association and as a member of the park board was instrumental in the starting of the city's excellent park system.


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## WHAT OF THE FUTURE?

**By Lock Davidson, Treasurer, The Guarantee Title & Trust Co., Wichita, Kans., and Past President of the Kansas Title Association.**

(This article is excerpts from the address of the president delivered at the last convention of the Kansas association.)

We have made some progress in membership and interest in the association, yet much is left to be accomplished. The past year has in general not been one of great business activity among the title men the country over. There have been a few bright spots, but in many offices the volume of title business has fallen off, due to conditions entirely beyond our control. Let me tell you. This is the time for the title men to join the association and for the association to bring them closer together and by discussion of the common problems show them the way to prosperity.

This country has passed through five panics: The panic of 1857 was preceded by the Mexican war at home and the Crimean war abroad; large consumption of capital in construction of canals and railroads; enormous expansion of business; great prosperity and much extravagance. Are these conditions much different from our present situation?

The panic of 1873 came after the Civil War at home and the Franco-Prussian war abroad. This panic extended over the entire world and was immediately preceded by railroad, industrial and other construction work all over the world on a scale previously unknown. Enormous increase in manufacturing and agricultural activity and output involving colossal absorption of capital; I ask you, how do these differ from our present day? The other three panics in 1884, 1893 and 1907 were free from destructive wars, but were preceded by great industrial development and enormous railroad construction.

Since the World War we have experienced a period of enormous industrial activity. Great building campaigns have been in progress. Labor has been in demand. Great prosperity has rested upon the shoulders of all classes, and with that, much extravagance. The difficulty is that whenever everybody is prosperous, when everybody is comfortable, then is the time when our old friend, Satan, steps in and helps along the evil cause; then is the time when we are apt to be inert and enjoy the things we have without looking forward in the future and seeing that the evils will grow and ultimately swamp us. Great prosperity is a matter to be feared. When a man or a nation is in a normal condition, there may be nothing to be anxious about, but when a man or a nation overworks or lives too high, or in any way becomes strained or careless, trouble is sure to follow.

I am not predicting any panic, neither am I a pessimist. I am an optimist first, last and always. I do not believe we are going to have a panic. Experience and legislation have made that impossible. We now have the elastic banking conditions brought about by the establishment of the Federal Reserve Bank and the Federal Land Banks. No panic is possible with these efficient systems operating.

Beginning with the death of the President of the United States in the early days of August, catastrophe succeeded catastrophe in the world's history. The Japanese earthquake followed later by a typhoon and death-dealing flood; the Greco-Italian disturbance; the near outbreak over Fiume; the revolution in Spain; these are outstanding events that prior to 1914 would have made the world shake and shiver. They seem to have had no worse effect than to set the people in all paths of life busy doing something about the trouble. The economic situation in this country has not suffered, indeed the business events of the past few months seem to have been entirely unaffected by the catastrophes and crises of the outer world. Some slowing up has been noticeable, but if we consider the situation as a whole it has been satisfactory.

The American people have learned through experience to be calm in times of catastrophe and depression and we will experience no panic, but it behooves each one of us to move with care and caution, planning not only for the present but for the future. All financial history has consisted of distinct cycles and although of different durations, each cycle has consisted of four periods, namely: A period of prosperity; a period of decline; a period of depression; a period of improvement.

Moreover, the laws of nature, commerce and industry determine that these cycles shall always consist of four different periods. The idea that reckless prosperity can ever become permanent and will not be followed by a business depression is false. The idea that there can be an unlimited period of depression without succeeding general activity and high market prices is likewise a mistaken notion. There must be a reaction to both abnormal conditions. There is no doubt but that we have been experiencing a period of prosperity and I believe we are now emerging into a period of decline after which will come depression and then improvement.

This, my friends, is the unpleasant situation in the business world we have to face. All over our country men in the same line of endeavor are banding themselves together in associations similar to this association, in order to show their members the correct road to success. At this convention, let us calmly and thoughtfully consider these questions that we may all be benefited thereby.

Most of the members of this association derive their business from the rural communities—the agricultural situation and the farmer's difficulties are their problems.

The existing depression in the agricultural avocation made its appearance in the latter part of the year 1920. The fall of agricultural prices was more sudden than that of industrial prices and this difference became more noticeable when there was a recovery of prices of industrial products, brought on largely by the necessity of post-war construction. This disparity in the prices of agricultural an industrial products still exists, due to th tenacity of labor organizations in main taining strategic positions gained in the period of prosperity, and further to the fact that our agricultural prices are subjected to the white heat of unrestricted competition. The chief cause of agricultural distress today is not low prices for agricultural products, most of which are above the pre-war level, neither is it the high price of union labor, but the disparity of the two prices. The advantages of group bargaining to the railroad employees and other labor organizations would be almost wholly lost if the compensation of all other workers, including farmers, was advanced at once. The prices which farmers pay for the service of union labor have been compiled by statisticians, showing why the labor organizations want to make the deal permanent and continue exchanging labor for food on the present basis; for instance, taking prices in July, 1923.

It takes sixty-three and one-half dozen, or 762 eggs, to pay a plasterer for one day of eight hours' work.

It takes seventeen and one-half bushels of corn, or a year's receipts from half an acre, to pay a bricklayer one day.

It takes twenty-three chickens weighing three pounds each to pay a painter for one day's work.

It requires forty-two pounds of butter, or the output from fourteen fed and milked cows for twenty-four hours, to pay a plumber fourteen dollars a day.

To pay a carpenter for one day's work it takes a hog weighing 175 pounds representing eight months feeding and care.

With these existing conditions, my friends, how is your customer, the real estate dealer, going to interest one with capital in purchasing farm land?

This question is vital to us as title men, just as much so as to the banker, the lawyer or the implement dealer. It is the duty of this association to attempt to solve this problem.

Then again, I want to call your attention to our membership. If this association is to accomplish good results and make itself useful to its members as I have mentioned, it is necessary that we have a full membership of all title men in the state. Do you realize why the Kansas Bankers' Association is such a strong organization and wields such tremendous influence in state affairs? Simply because every bank in the state belongs to and supports the association.

The secretary has started a catalogue of the members and has sent a copy to all real estate dealers, lawyers and public officials. I think this catalogue should be republished every few months and advertisements taken. This, if handled properly, can be used to induce every title man in the state to join the association.

I wish to call your attention to the program of the national association in co-operating with other associations in drafting uniform laws in each state with respect to land titles. In this connection, wouldn't it be well for us to co-operate with them and suggest some much needed changes in the present laws?

# THE MISCELLANEOUS INDEX

***Being a review of interesting matters presented to the Secretary's office***

The Barbour-Collinson Abstract Co., Winfield, Kansas, furnishes deed, mortgage and other blanks to customers and the public in general as an advertising campaign.

On the back of the deed record the following suggestions appear:

1. Never fail to have your deeds recorded.
2. Never depend upon Tax Receipts for correct descriptions.
3. Names of grantors and grantees should always be written in full and very legibly.
4. A Warranty Deed will not correct a bad title nor cure mistakes in former deeds.
5. Fifteen years possession does not always make the title good; there are many exceptions.
6. Descriptions of small, irregular tracts should refer to some recorded corner for a beginning.
7. Examine the title before making the contract, or provide that the title be clear and unincumbered.
8. Never accept a Deed, or pay any money, without an abstract certified to date of sale by a reliable abstracter.
9. The title to land does not pass until the Deed is delivered and accepted, and this must be done in the lifetime of the parties.
10. A Deed from the Court is no better than any other. Purchasers at judicial sales must look out for themselves that the title is good.
11. Inquiry should be made of any person in possession as to his interest. One in possession may have rights that the records do not disclose.
12. Taxes become a lien on real estate November 1, payable one-half December 20 and one-half June 20; in absence of agreements between grantor and grantee, land conveyed between November 1 and March 1, the grantor shall pay the taxes; conveyed between March 1 and November 1, the grantee shall pay the taxes.

This is certainly practical and valuable advice and adds to the worth of the medium.

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The Secretary recently received a letter from a good citizen who had a grievance against his local abstracter in particular and the whole system in general.

He stated that he had an abstract brought to date for some property he was buying; that it showed things all fine except for a known first mortgage, all taxes paid, etc. The deal was closed on the strength of it and he paid over the money.

Shortly afterward he was notified that a second mortgage in the sum of $1100 was due, also interest thereon. He investigated, found it had long been of record, that the circumstances as stated were so and that he would have to pay it as the party he had purchased from had departed for parts unknown.

He had taken it up with the abstracter who was unable to pay and could not assume any responsibility for it. She had no equipemnt of any kind, no plant of value, no personal responsibility and it was in a state where there is no bonding law. A judgment against her was of no force so he had resolved to take his medicine.

Quite naturally he was disgruntled, but why is it they are more so to our business than if the same kind of an error had been made by an attorney, doctor, or any other entrusted to responsibility? Anyhow they are, consolation about which might be had from thinking we should be proud for the great amount of responsibility placed upon us.

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Added profits make a business more pleasant.

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In any line of work or business there are some who go farther into it than the routine of doing. They delight in working out things, experimenting, telling of the past and setting a new mark for the future. They diagnose things and do much that makes for knowledge, advancement and benefit to those engaged in that particular business and the others using it.

There are many in the title business and we may well be proud of them. They have been leaders in their communities, they have taken steps of progress in the business and many have written valuable articles and stories on title law and title matters.

Such efforts are to be commended and the work encouraged. The more that is done not to take from, but give to the title business, the more will be profession advance and those engaged therein receive added profits.

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McCune Gill, of the Title Guaranty Co., St. Louis, and President of the Missouri Title Association, is ever busy writing of title matters. He maintains a court decision service for the Missouri Association and compiles a digest of all title matters.

He has written many stories, too, and they are most commendable.

He takes prosaic facts about a piece of ground around St. Louis and makes a romance of its history. Several of them have appeared in the St. Louis papers, in pamphlets gotten out by real estate companies and in house organs of banks, trusts and investment companies of the city.

W. G. Fink, of Fredonia, Kansas, might be said to be a "technecian" among abstracters. His abstracts are known for the little things here and there that bring out points, and make them easy to examine. Bill's work has a finesse to it that excites much comment.

His abstracts are full of references tying the chain to court proceedings, affidavits, etc., and one examining it has a feeling of confidence in the work.

A novel feature of them is a notation in the certificate as follows: "All interlineations, erasures or corrections are initialed 'W. G. F.'"

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Harry W. Schnell of the Commercial Abstract & Title Co., Kalispell, Mont., gives a very plausible thought in regard to the position of the abstracter. He quotes figures from a loan company where in many hundreds of abstracts examined for loans but one was really found to have a defect of such a nature that the owner or mortgagee might be disposed of his property; that the very great majority of them had been brought to date and had passed through the abstracters' hands from time to time and that by reason thereof the titles had been kept regular and in good form; that in doing this the abstracter by reason of his skill and work in continuing them, and by fixing the little things asked for from time to time by examiners, had been something of a traffic cop and kept things directed in the right channel.

The culmination of this thought was that abstracters should advocate that they are just as much preventers of things than being only engaged in curing defects.

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A Federal Land Bank official tells an interesting incident relative to recorders using books of printed form. The first Farm Loan Banks mortgages were written at five per cent interest, and many recorders had a book of forms printed for them.

Later the rate was increased or changed to five and one-half per cent and the banks forms changed accordingly. Some registers however did not know of the change, but went on recording the mortgages in the book without changing the interest rate with the result that the records of some of the mortgages of this particular bank at least were recording showing the old five per cent rate.

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Phil Carspecken, abstracter-poet, continues to pen his charming poems and they are to be seen in many publications and magazines. Phil is quite some Rotarian, too, and many of his works appear in the Rotarian. The December issue has one entitled "The Christmas Carol" which is in an appropriate picture setting and given an entire page.

It is a fine sentiment of the subject —a most commendable effort.