TITLE NEWS

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Program of 1924 Convention Practically Completed

The New Orleans meeting promises to be the best in the Association's history. Everything points to the success of the New Orleans Convention. Certain it is that no one of the title fraternity can afford to miss this, the Eighteenth Annual Convention of the Association. By everything pointing to its success is meant that every advance indication is that it will be the most successful and largest attended convention yet held.

Many are enthusiastic at the prospect of visiting New Orleans, America's most charming city and the home of Perry Bouslog, our host. The very name of New Orleans suggests something fascinating and arouses that feeling in everyone that he would like to go there. Nearly everyone in America has at sometime wanted to go to the South and to New Orleans and hoped for the opportunity.

Here that opportunity is—a chance to make a business trip one of pleasure. These conventions of various trades, crafts and professions are for the improvement and advancement of those in them and for the progress and development of the service rendered by those engaged therein, together with the fellowship and pleasure incident thereto. So the trip will be justified from a business standpoint, paid thereby, will be of real profit and value and in addition, be one of pleasure.

Full announcement will be made later of train routes and facilities. The best way, however, for those in the North is to go to St. Louis and then down on the Illinois Central, which road plans to run a special train from that point. Another way, and a most pleasant one for those in the North and East, is the boat trip on the Atlantic Coastwise steamers. The trip from New York is five and a half days but very much worth the time.

Profiting by the experience of the past years, those in charge have made every provision and given every consideration to make this meeting as near perfect as possible. The meeting will be of four days' duration, with two whole half days and the evening thereof devoted to pleasure and sightseeing.

The first day will be a general session, taking up the entire time, leaving the evening free to be used as desired by those attending. The second day will be devoted to a convention session in the morning with the afternoon and evening devoted to entertainment and pleasure as suggested by our hosts. This same idea will be carried out on the third day, while the fourth and last will be an entire day devoted to the business of the convention.

The morning sessions of the second and third day will open with general convention business of short duration, after which they will be turned over to the title insurance section, while the morning of the last will likewise be opened by a general session and then turned over to the Title Examiners' Section. Everyone should attend all of the sessions, whether they be devoted to the Abstracters, the Examiners or the Title Insurance Sections. Every abstracter should be interested in title insurance, in the examiners' viewpoints, and vice-versa. The problems and interests of one are of the others and should be mutually considered by each.

Briefly the program is outlined as follows:

Tuesday, October 21.

Morning.

Registration, Call to Order, and Usual Opening Ceremonies.

Reports of Secretary, Treasurer and Address of President.

Appointments of Committees, and Assembling of Nominating Committee.

Afternoon.

Reports of Executive, Judiciary and Co-Operative Committees.

Discussions.

Address, Henry Baldwin, Corpus Christi, Texas, "Sidelines for the Abstracter."

Wednesday, October 22.

Morning.

Report of Nominating Committee and Election of Officers.

Title Insurance Section.

President's Address.

Appointment of Committees.

Address by E. C. Oggel, Seattle, Washington, subject to be announced later.

Address by John E. Potter, Pittsburgh, Pa., "Ethics in Title Insurance."

Afternoon.

Devoted entirely to pleasure and sightseeing, with entertainment in evening.

Thursday, October 23.

Morning.

Title Insurance Section.

Report of Nominating Committee and Election of Officers of Section.

Address, Kenneth E. Rice, Chicago Title & Trust Co., "Building an Escrow Business."

Address, F. P. Condit, New York, "Guaranteed Mortgages and Other Side Lines and Departments."

General Convention.

Address, R. A. Cooper, Governor, Federal Farm Loan Board, Washington, D. C. Subject to be announced later.

Afternoon.

Devoted entirely to pleasure and sightseeing under direction of hosts.

Evening.

Annual Convention banquet, followed by dance and other entertainment.

Friday, October 24.

Morning.

Title Examiners' Section.

Address by President of Section, Henry J. Fehrman, Omaha, Neb.

Appointment of committees.

Address: to be announced later.

Address: to be announced later.

Report of Nominating Committee and Election of Officers.

General Convention.

Adress by one of the best known abstracters in the country. Name and topic to be announced later.

Afternoon.

Reports of Committees.

(Continued on page 8.)

TAXATION OF ABSTRACT PLANTS.

(Many inquiries are made each spring on this subject and in view of the fact that assessment time is near, the report of Henry C. Soucheray, chairman of the Judicial Committee, 1920-21, dealing with this subject and reported at the Des Moines convention is here reprinted.)

Abstract and title plants, being a collection of memoranda, and usually transcripts in manuscript form of the records in the office of registrar of deeds, derive their chief value, (a) by reason of their completeness and the accuracy with which they are indexed; (b) by reason of their reputation, being the reputation of the abstracter who got them up and who now operates the plant; (c) by the skillful combination of such memoranda in accurate and complete abstracts of title.

From which we insist that their value is not in itself, in each sheet, slip or book, but in the practical use to which they are put by the skillful handling of an abstracter. We will proceed to consider the various cases as they bear upon the above as follows:

Banker vs. Caldwell, 3 Minnesota Reports, Page 94. Holds Abstract Books May be Copyrighted.

(1) The right to publish these records is an intangible personal privilege not subject to sale on execution. On execution, the sheriff has no right to make or dispose of copies. He has only the right to sell it under execution in same condition as when levied on.

Dart vs. Woodhouse, 40 Mich. 399. Jan. 31, 1879.

(2) Controversy grows out of an execution levy made by Dart on set of manuscript abstract books, in possession of William Woodhouse, execution debtor, who had transferred them to Lemuel Woodhouse under transfer claimed invalid against creditors. Counsel on both sides found difficulties in the nature of the property, but did not plainly present the radical difficulty that the right in unpublished manuscripts is neither goods nor chattels subject to execution. The right of a proprietor of such a manuscript to publish it or to keep it back from publication is not only a property right, but one which is purely incorporeal (..... define) and attended with consideration of a nature entirely different from any involved in other rights. The law will not permit it to be interfered with except as he chooses to make it public, and the right is one which is entirely independent of locality and belongs essentially to the owner wherever he may be. The value when it is considered at all in a pecuniary sense depends on the information or interest of the composition or document and not on the particular bundle of paper which records it.

It is well settled, by decisions of the United States Supreme Court, that even after a work is published no creditor can reach the copyright. No law can compel a man to publish what he does not choose to publish. Quotes Banker vs. Caldwell, 3 Minn. 94. "It would be very absurd to hold that books could be seized and sold on execution which after sale the purchaser could not use."

Perry vs. City of Big Rapids, 34 N. W. 530, Michigan, Oct. 13, 1887.

(3) Court found that these abstract books have no intrinsic value. That they are valuable only for the information they contain by consultation or extracts. That a sale of a complete copy would practically destroy their value in plaintiff's hands. So a similar compilation by any one else would have a like result. The value of the books, except as used, is nothing. They resemble in nature, surveyors' notes, authors' memoranda, etc.

Follow Dart vs. Woodhouse. Any attempt to make value out of such a sale (writings) would be really a sale of *knowledge* and not of property.

Morse's dissenting opinion follows: Facts are, plaintiff kept and owned a set of manuscript abstract books. That plaintiff had purchased the books for $2,900, kept them written up, and to be of any value had to be kept up, and except for purpose of furnishing abstracts of title therefrom, they were of no value. That in 1883, plaintiff was assessed $300 which was raised by a board of review to $1,500.

The main issue to be determined is liability to taxation of these books. Therefore, they are subject to taxation the same as other personal property. They are not scientific discoveries. They are not like the manuscript of an author, the prescription of a druggist.

The work of compiling abstracts is a mere mechanical one. These books are as valuable in another's hands as in his, etc., who bought and paid for them.

Leon Loan & Abstract Co. vs. Equalization Board, Ia., 53 N. W. 94. Oct. 6, 1892.

(4) In this case we have a plant being the only record of ownership in Decatur County, Iowa, prior to April 1, 1874, due to the destruction, by fire, of registrar of deeds records. Also complete since that time. That the plant earned in 1888, $539.49. That the services of the abstracter who kept same up are worth $600 a year, a suitable office is worth $100 a year, and stationery about $50 a year. That said books and an interest therein have been sold at various times and that said books are worth $6,000. It is admitted that the books "can be used by anyone of ordinary intelligence and ability." They have an admitted value of $6,000 and have changed hands as articles of commerce; and their value consists chiefly in being correct compilations from public records, and not because their contents are emanations from the learning or genius of an individual.

The appellant urges that "These books being manuscripts, the law which applies to manuscripts would apply to these abstract books." Appellant relies largely on case of Perry vs. City of Big Rapids, 34 N.W. 530, by a divided court, and to the reasoning of the majority this court is opposed. The majority opinion takes for its support the holding in Dart vs. Woodhouse, 40 Mich. 399, in which the court held that "an execution levy made on a set of manuscript abstract books was of no validity, because the rights of the proprietor of such a manuscript to publish it, or to keep it back from publication, is not a property right, but one which is purely incorporeal and attended with considerations of a nature entirely different from any involved in other rights."

The Michigan cases attach great importance to the fact that the proprietor may control, whether or not the manuscript shall be published, and that without publication there is no value as a basis for an assessment or levy.

That a manuscript withheld from publication is merely a private memorandum, without significance except to the author. When the author places it upon the markets of the world for profit, a commercial value attaches and it becomes "property." They are the means (abstract books), the instruments, for carrying on a business. Court quotes Freeman on Executions, 110, referring to the Dart case, stating that the reasoning there does not seem irresistible. The rule as to copyrights, whereby they are not subject to seizure on execution, because incorporeal in their nature and without existence in any particular place, is not applicable, for the reason that books are tangible, have location, and are capable of seizure and delivery. Court holds they are property and taxable.

Booth & Hanford Abstract Co. vs. Phelps County Treasurer, 8 Wash. 549, March 30, 1894.

(5) The only question involved in this case is whether a set of abstract books is included in the term "personal property" for purpose of taxation. The proof shows that the information contained in the books is largely in the form of cipher peculiar to that particular set of books and only five persons understood them. It is contended that the books were of no value to the public nor to any one who did not understand them. Court holds that the property is subject to taxation. That the fact that an expert is required to obtain necessary information may detract from their value, but does not deprive them of all taxable value. Follows Leon Loan & Abstract Co. vs. Equalization Board.

Washington Bank of Walla Walla vs. Fidelity Abstract & Security Co. 46 Pac. 1083. Washington, Nov. 12, 1896.

(6) Action on a foreclosure of a chattel mortgage given by the abstract company to the bank. Defendant sets up an affirmative defense that the property described in the mortgage was a copy of the financial records of Walla Walla County, arranged in a peculiar manner by appellants, without which knowledge said property had no value. Appellant relies on Dart vs. Woodhouse.

This court cannot endorse the reasoning in this last case. It seems that abstract books are not so intangible that they cannot be subject to levy or sale and such was holding in Leon Loan & Abstract Company case where the Dart

case was reviewed. Confessedly they are property.

There is a conflict of authorities as to whether abstract books are subject to taxation. We think the better rule is that they are subject thereto, citing Leon Loan & Abstract Co. supra.

Loomis vs. City of Jackson, 90 N. W. 328. Michigan, May 19, 1902.

(7) Suit was brought to recover taxes paid under protest. The sole question is, are abstract books, used in furnishing abstracts to land, subject to assessment for taxation? The court held they were not. The holding is correct. The case is ruled against defendant by Perry vs. City of Big Rapids. It was held in Dart vs. Woodhouse that abstract books were not subject to levy and sale upon execution. In 1899 the legislature passed an act making these books liable to seizure and sale on execution. Making them subject to levy upon execution does not render it subject to taxation.

We have, to resume, considered seven cases. Cases 1, 2, 3 and 7, (Minn. and Michigan) state the rule that the right to manuscript is not subject to execution or to taxes. Cases 4, 5 and 6, (Iowa and Washington) refuse to follow this reasoning in the above cases and hold that the theory of manuscript right does not apply.

The writer is free to confess that in the light of present conditions, where abstract plants can be and are operated by many, when such plants are bought and sold as property, have location and are capable of seizure and delivery, it is rather difficult to insist that such plants are purely manuscript, in the sense of original composition, and that a tax thereon would be a tax on knowledge and not on property.

I am inclined to believe that the reasoning in the Iowa case is sounder, and that an abstracter whose abstract books would have no value if he made no abstracts, does given them a property character when he operates them, certifying abstracts therefrom. Can we say an abstract plant has no value, when such a value is often the whole capital of many abstract companies? It is true that the value of abstract plants is reduced if not nullified by the failure to keep the same up, or by the multiplication by copy of the number of plants in one locality. However, those are local conditions which might apply to particular cases, but cannot be urged as a general rule.

I believe that the courts in the future will lean to the side that abstract plants are taxable, and will waive aside the "manuscript" theory. Just what value may be arbitrarily placed on such a plant is a problem. There are no reported cases. Will the earnings of a plant be a factor, its position in the locality, its reputation? These questions may come up in the future, should assessors overstep the bounds of reason. In the meantime the abstracter may well cultivate taxing authorities, and pay the taxes levied, when such taxes are within reason, adding, if necessary, such tax to the cost of the abstract, passing the tax to the ultimate consumer, which seems to have grown from a popular idea into a national system.

Decision Adverse to Title Company Rendered in Minnesota Tax Case

A decision has been handed down by the Minnesota Supreme Court in the case of the State vs. St. Paul Abstract Co., and against the title company.

This case has been watched with interest and the opinion eagerly awaited as the assessments of title plants for taxation has become a most complex question of late. There is a tendency on the part of assessors in many places to increase the valuation, to have a grave misunderstanding as to the value and earning power of a title "plant" and in general to often times be unreasonable in their decisions.

The County Auditor assessed the company on a valuation of its plant, for taxes for the year 1921, the valuation being placed at $23,325 and the assessed value for taxation at $7,775, making a tax of $589.60.

The company contended and filed answer that its personal property was in certain equipment, etc., such as office furniture, fixtures, and that its so-called "plant" consisted of a collection of records of abstracts of title to all real estate in Ramsey County, collected and compiled and arranged by defendant and used by it in its business of compiling abstracts of titles; that it was the result of many years of research and work, combined with great effort, personal skill, care and learning, that such "plant" consisted of a large collection of paper cards, or slips, and indexes thereto, methodically arranged, and containing records and information appropriate to the compilation of abstracts and that such information was in notations in secret code or cipher, understandable only to the defendant and were meaningless, unintelligible to any one else. That said plant was useful only to defendant, and would continue to only be useful to it as long as continued and had no intrinsic, cash or market value and was therefore not subject to taxation.

A stipulation of facts was contained in the Record, whereby it was stated that the company had certain personal property in the form of equipment, etc., subject to taxation, but that the "plant" was not only as it had an assessable value of the nominal sum of the value of the physical materials used in the make up thereof. Further supporting this contention was the one that it must be kept up by those acquainted with it and its system and that its usefulness depended upon the reputation, learning, ability and accuracy of its compilers.

A supplemental stipulation was then filed with the additional statement that many other abstract "plants" of the same general nature had been in existence and privately owned throughout the state for a number of years, and generally speaking, such plants had not heretofor been assessed for taxation.

The lower court found the following and rendered the decision shown:

Findings of Fact.

This cause came on to be heard before the Court, without a jury, on the 8th day of January, 1923. H. H. Peterson, Assistant County Attorney, appeared for the plaintiff and Mitchell, Doherty, Rumble, Bunn & Butler appeared for the defendant.

From the admission and the stipulation of the parties herein, the Court finds as facts:

That the defendant is a Minnesota corporation engaged in the business of making and furnishing abstracts of title to property in Ramsey County.

That the true and full value of all the personal property owned by defendant on May 1, 1921, subject to taxation for the year 1921, exclusive of "moneys and credits" and exclusive of defendant's abstract "plant" hereinafter referred to, was the sum of $675. The assessable value thereof for such purpose was the sum of $225.

That defendant was on May 1, 1921, the owner of an abstract "plant" hereinafter described, used by the defendant in its business of compiling abstracts of title to real estate in Ramsey County, Minnesota. That the true and full value of said "plant" on May 1, 1921, was the sum of $23,325 and the assessable value thereof for the purpose of taxation $7,775. That the true and full value of all personal property of the defendant on May 1, 1921, exclusive of "moneys and credits" was the sum of $24,000 and its assessable value $8,000. That the amount of taxes legally assessed against said property for the year 1921 and now due and unpaid is the sum of $589.60.

That the abstract "plant" of the defendant herein referred to consists of a collection of digests or abstracts of records of title to all real estate of Ramsey County, Minnesota, collected, compiled and arranged by defendant and used by defendant in its business of compiling abstracts of title to said real estate and is the product and result of many years of research and continuous effort combined with personal skill, accuracy and learning. That such "plant" more particularly consists of a large collection of paper cards or slips and indices thereto, systematically and methodically arranged, containing a digest or abstract of all records of title to real estate on file in the office of the Register of Deeds for said county and notes of information of abstracts of title. That the information recorded on such cards or slips is in the form of notations and handwriting in a secret code or cipher, the key to which is known only to defendant, and to all others the notations on such slips are meaningless or unintelligible. That the said "plant" is useful only to the defendant, who alone is able to use the same, and it is useful to the defendant only for the purpose

aforesaid and will continue to be useful only so long as defendant shall continue to keep said "plant" accurate, up to date and complete. That the usefulness of any such plant depends upon the reputation, learning, ability and accuracy of its compilers. That the abstract "plant" has been in existence and owned by the defendant for a great many years. That many other abstract plants of the same general nature have been in existence and privately owned throughout the state of Minnesota for a great many years. That generally speaking such abstract plants have not heretofore been assessed for taxation in this state.

As Conclusions of Law, the Court finds that the defendant had on May 1, 1921, taxable personal property of the true and full value of $24,000, the assessable value of which was $8,000.

That the plaintiff is entitled to judgment against the defendant for the sum of $589.60, the amount of taxes levied thereon for the year 1921, with costs, penalties and interest as provided by law.

Let judgment be entered accordingly.

Entry of judgment is stayed for forty days.

Dated March 19, 1923.

JOHN B. SANBORN,
District Judge.

Memorandum.

The books and records of the St. Paul Abstract Company have all of the attributes of personal property and constitute its "plant," which is naturally its principal asset and the basis for its capitalization. The plant has a use value and a market value, it can pass by transfer, by insolvency or bankruptcy, there is nothing intangible or elusive about it, the books and records are nothing more nor less than complete indices and digests of public records of this county affecting land titles.

There is no doubt that they have a very considerable value, which can be measured partly by the earnings which can reasonably be made from their use and partly by the value of the time and labor which would be required to complete similar indices.

The skill and technical knowledge which went into their compilation, the keeping of the records in code, the likelihood of duplication and the necessity of their being kept up to date affects their market value but not their taxability.

In two former cases in this court they have been held to be exempt from taxation, (File 102894; File 66068) and I hesitate to overrule these decisions, but I am utterly unable to see the reason or justice of exempting this property. While it is true that abstract books have not generally been taxed in this state, there is at least one abstracter now paying taxes upon his "plant" at Preston, Minnesota, pursuant to the judgment of the district court for that district. The Attorney General, in an opinion given to the Tax Commission, some time within the last five years, as I recall it, adopted the view that these plants were subject to taxation.

The logic of the dissenting opinion of Judge Morse, in the case of Perry v. Big Rapids, 67 Mich. 146 (24 N. W. 530), holding that such records are taxable, is to my mind far more convincing than that of the majority opinion which holds that they are not. Iowa has decided the question in the affirmative in Leon Loan, etc., Co. v. Leon Equalization Board, 86 Iowa, 127 (53 N. W. 94). And Washington has so decided in Booth, etc., Abstract Co., v. Phelps, 8 Wash. 54 (36 Pac. 489).

The case of Banker v. Caldwell, 3 Minn. 94, holds that a person has sufficient property rights in a set of abstract books to prevent a sheriff under a levy from taking a copy of them. The case does not determine whether they are or are not subject to sale under execution, although there appeared to be nothing in the fact that they had actually been levied on in that case to excite any comment on the part of the Court.

The tendency of the courts of this state has properly been to hold things as taxable personal property which have all of the attributes thereof. State v. McPhail, 124 Minn. 398. The fact that plants of Abstract Companies have not been generally taxed is not persuasive of anything to my mind except possibly the intelligence and ability of those operating them. I can see no reason why this form of property should not bear its fair share of the ever-increasing public burden of taxation.

J. SANBORN.

The defendant appealed to the Supreme Court and based its case on two principal points, I—That the "abstract plant" of defendant in question is a subject of common law copyright as unpublished manuscript, and as such is exempt from taxation. II—That said "plant" has no inherent pecuniary or intrinsic value and does not partake of the nature of taxable property regardless of copyright.

Arguments and cases cited in support of No. 1 included that of "common law copyright" protection property in intellectual, literary and artistic productions prior to publication. Cases quoted in support were those of Harper & Bros. vs. Donohue & Co., 144 Fed. 491 and Palmer vs. DeWitt, 47 N. Y. 532.

Counsel further pointed that an abstract plant such as concerned in the case was a proper subject of common law copyright and settled in the state by the case of Banker vs. Caldwell, 3 Minn. 94, which states "the preparation of a set of abstract books which contain histories of all the titles in a county with indexes, not only involves all the legal learning requisite to the arrangement of a single abstract, but in addition, a great amount of skill in methodizing them into an harmonious whole, convenient of access, which skill alone, independent of the making of the abstracts is the proper subject of protection by copyright."

A similar holding is found in the other well known case of Dart vs. Woodhouse, 40 Mich. 399.

Further facts along the same line are found in case of Vernon Abstract Co. vs. Waggoner Title Co., 107 S. W., 919, stating "The contents of the manuscript need not be the product of the author's own brain. If he has merely gathered the material forming its contents and arranged same in a concrete form, the material as so arranged by him is his property and he is entitled to be protected in its exclusive use in that form until such time as he sees proper to publish it. Under the rule stated, the compiler from public records and other sources of data together forming an abstract of titles to lands, is entitled to the exclusive use of such an abstract and to all parts thereof, so long as he sees proper to withhold it and its parts from publication."

Counsel argued that abstracts or digests from the records such as here involved must be held to be the proper subject of common law copyright as is clear from analogy with other productions which have been uniformly held to be the subject of such copyright, including maps, charts, engravings, photos, indices, compilations from public documents, formulas, architectural plans, etc., citing cases of Taft vs. Smith, Gray & Co., 134 N. Y. S. 1011; Aronson vs. Baker, 43 N. J. Eq., 365, 12 Atl., 177; West Publishing Co. vs. Monroe, 73 Fed., 196, 51 L. R. A., 353; Banker vs. Caldwell, 3 Minn. 94; Hammer vs. Barnes, 26 How., Pr. 174 and others.

The Case of Harper vs. Donohue brings out the point that "such literary property is not subject either to taxation or execution, because this might include a forced sale, the very thing the owner has the right to prevent."

Warville on Abstracts in Section 12 says: "There is no dispute with respect to the general proposition that unpublished manuscripts are not subject to taxation, and this is emphasized in the Michigan case of Dart vs Woodhouse, and two later Michigan cases those of Perry vs City of Big Rapids, 34 N. W. 520 and Loomis vs City of Jackson, 90 N. W. 328 rest partially upon this former decision.

Attention was called to that fact that there was a scarcity of cases on the question of taxability based upon common law copyright because there had been few attempts to impose taxes upon title plants the inherent nature of the property being such as to in itself repel any thought on the part of the states to subject them to taxation.

The second point, that of the plant having no inherent pecuniary value was presented in such a thorough manner as to warrant its being shown in full as follows:

Point Two.

DEFENDANT'S "ABSTRACT PLANT" HAS NO INHERENT PECUNIARY OR INTRINSIC VALUE AND DOES NOT PARTAKE OF THE NATURE OF TAXABLE PROPERTY.

Knowledge is valuable but not taxable. It is not taxable when carried in the mind, and no more so when reduced to writing by the person who possesses it for consultation, future reference or use by him. If it were possible for an abstracter to glean from the public records and store in his mind the necessary knowledge of titles and therefrom produce abstracts, it would readily be conceded that neither that knowledge nor the ability to prepare abstracts therefrom would not be taxable property. Should he, as a precaution against lapses of memory, note down in writing for his own use and reference a digest or summary of the knowledge already carried in his mind, and thereafter refer to such notes in the preparation of abstracts, it would hardly be contended that such private notes were taxable property. But is not this essentially the process of compiling an abstract "plant?" The abstracter examines the records, gains a knowledge of their contents and by use of his technical skill and training analyzes the records, determines the material facts, the knowledge of which it is essential to preserve, and then makes private notes in writing of this knowledge. These private notes are his "abstract plant." Are they any more taxable than in the last case previously supposed? Is it any ground for differentiation that in one case the notes were made at a time considerably subsequent to the acquisition of the knowledge and in the other case immediately after such acquisition? If an abstracter's notes are taxable, where is the line of non-taxability to be drawn? Consider, for illustration, the notes which a scientist may make of his scientific observations, the formulas worked out by a chemist, the prescriptions collected by a druggist, the notes of surveys kept by a civil engineer for future reference, the notes of an author written down from time to time, preserving ideas borne in his own mind or gathered from reading the works of others, to be used as the material for a publication of his own, and the briefs of a lawyer. Similar illustrations might be multiplied indefinitely. They furnish analogies to the abstracter's notes or slips, which we call his "plant." They may be exceedingly valuable property, but it may be safely asserted that they have never been made the object of taxation and no one would contend that they should be taxed.

That the abstracter's notes are essentially the product of the personal knowledge, skill and ability of the abstracter, that they are in other words "the product of mental labor embodied in writing," was the early accepted view of this court. We quote from Banker vs Caldwell:

"That the making of a perfect abstract of title to a piece of land, with all the incumbrances which affect it, involves a great exercise of legal learning and careful research, I presume no lawyer will dispute. The person preparing such an abstract must understand fully all the laws of the subject of conveyancing, descents and inheritances, uses and trusts, devices, and in fact every branch of the law that can affect real estate in its various mutations from owner to owner, sometimes by operation of law, and again by act of the parties.

But the preparation of a set of abstract books which contain histories of all the titles in a county, with indexes, not only involves all the legal learning requisite to the arrangement of a single abstract, but in addition, a great amount of skill in methodizing them into an harmonious whole * * *."

Can any good reason be suggested why the written notes, the making of which calls for the exercise of personal talents, such as referred to by this language of the court, should not be entitled to as much respect and protection as the private manuscript of the author, the scientist or the artist, or why a tax upon the former should not be regarded as incongruous as a tax upon the latter?

To be taxable property must have some inherent intrinsic value. That it is useful or serviceable is not sufficient. With reference to the collection of cards or slips and indices which make up defendant's "plant" it is stipulated and found by the court:

"That the information recorded on such cards or slips is in the form of notes in handwriting in a secret code or cipher, the key to which is known only to defendant, and to all others the notations on such slips are meaningless and unintelligible. That the said "plant" is useful only to the defendant, who alone is able to use the same, and is useful to the defendant only for the purpose of aforesaid, and will continue to be useful only so long as defendant shall continue to keep said plant accurate, up to date and complete. That the usefulness of any such plant depends upon the reputation, learning, ability and accuracy of its compilers."

This simply makes clear what anyone familiar with such a plant understands —that value or usefulness does not inhere in **the plant itself, but** is the reflection of the reputation, learning and ability of its compilers and users.

From another consideration it is plain that **the value of such a** "plant" absolutely depends upon its character as private manuscript. Let the plant be duplicated by being copied by another able to use the copy, and its value may be reduced one-half or even more. A general publication would practically destroy its value entirely.

Let there be a failure even for a day to keep the plant complete and up to date, and it becomes utterly unfit for its purpose.

Its value also depends upon the plant's monopoly in its particular field. Should a number of such plants be compiled and put into use by equally efficient and skilled abstracters in the same county, the value of each will largely, if not wholly, disappear. This value, if it may be called such, it thus appears, is intangible and unstable. It depends in a large degree for its existence upon circumstances and conditions quite apart from the physical plant itself. These considerations emphasize the fact that there is no substantial value, inherent or intrinsic, in an "abstract plant," no element of value which can be properly classified as "goods, chattels, moneys or effects," or as "personal estate of moneyed corporations," or which is susceptible of being taxed according to "its full and true value," meaning "the usual selling price" at the place of the "plant's" location.

From the fact that the property has value, there is no necessary implication that it is taxable. This fact has already been illustrated. There are various species of property and property rights of great value which are yet in their very nature repugnant to the idea of their being made the object of taxation. Trade secrets may be of immense financial value to the owner, and are protected by law as such, and yet it is probably safe to say that they have never been taught to be a proper object of taxation. Hart vs Smith (Ind.), 64 N. E. 661, holds that although good-will of a business is a thing of value, it is not property and not taxable under the constitution and laws of that state providing for the taxation of all property, both real and personal. In Kentucky v. Distileries Company (Ky.), 116 S. W. 766, the court held that a trade-mark is not taxable under a constitutional provision requiring all property to be taxed, although, as the court in its opinion points out, it may be sold and assigned and equity will protect against infringement of the owner's property rights therein. The court based its decision upon the view that notwithstanding these characteristics a trademark in the abstract has no intrinsic value and cannot be considered property for the purposes of taxation. The court illustrated its view by referring to the example of good-will, with reference to which it said:

"The good-will of a business is often worth money, but sofar as we know and believe it has never been considered property for the purpose of taxation. It may, indeed, in real value be of far greater worth even in money than the business house to which it is attached."

The court also observed that the fact that no fiscal officer or agent had ever before sought to tax trade-marks as property was a persuasive argument in favor of the view that they were not taxable.

The decisions dealing directly with

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the taxation of "abstract plants" are four in number, as follows:

Perry v. City of Big Rapids (Mich.), 34 N. W. 530; Loomis v. City of Jackson (Mich.), 90 N. W. 328; Leon Loan & Abstract Co., v. Equalization Board (Ia.), 53 N. W. 94; Booth & Hannaford Abstract Co. v. Phelps (Wash.), 36 Pac. 488.

The first two of these cases hold that "abstract plants" are not taxable; the last two hold the contrary. As already mentioned, the Michigan line of decisions begins with Dart v. Woodhouse, 40 Mich. 399, which held that abstract records are not subject to execution. The two later Michigan cases holding that "abstract plants" are not taxable cite Dart v. Woodhouse as an authority. It is also of interest and significance to note that Dart v. Woodhouse cites the Minnesota case of Banker v. Caldwell as one of its supporting authorities.

After the decision of Perry v. City of Big Rapids, the legislature of Michigan passed a law expressly making Abstract books liable to seizure and sale upon execution. In the later case of Loomis v. City of Jackson, it was held that this statute did not render such abstract books subject to taxation. As expressing the view of the Michigan court, we quote the following at some length from the decision in the case of Perry v. City of Big Rapids:

"The constitution requires assessments to be made on property at its cash value. This means not only what may be put to valuable uses, but what has a recognizable pecuniary value inherent in itself and not enhanced or diminished according to the person who owns or uses it. The court below found expressly, and could not have found otherwise, that these abstract books have no intrinsic value. They are only valuable for the information they contain, and that information is conveyed by consultation or extracts. Their value is only kept up by their completeness and continued correction. The sale of a complete copy would practically destroy the value of the books in the hands of the plaintiff. So a similar compilation by any one else would have a like result. The value of the books, except as used, is nothing. They resemble in nature, if not precisely, the books which are consulted by any person who makes an income from his acquired knowledge, whether scientific or otherwise; as a surveyor's notes, an author's memoranda, a druggist's recipes, and many analogous things. They may be and are very serviceable, but they are not things that the law has made subject to seizure or assessment. * * * All civilized governments respect private manuscripts, and treat them as not partaking of the nature of property open to ordinary sale and disposal. The possession of them gives no right to the possessor to use them, or publish them, unless by the acquiescence of the originator. While it often has happened that trade secrets and other information, which has been noted down in writing, may furnish means of acquiring profit, it was never imagined or held that the writings themselves were subject to seizure and sale without consent. Any attempt to make value out of such a sale would be really a sale of knowledge, and not of property. Whether the tax laws do or do not include things resembling these books in their nature, we need not inquire, although none such have been pointed out. If they do, it is probably through inadvertence. It is very clear to us that this property does not come within the constitutional description, and we have found no intimation that the statute meant to include it."

As may be gathered from the memorandum of the trial court, this same "abstract plant" has been twice held to be exempt from taxation by the District Court of Ramsey County. If such a departure from the record may be permitted, it may be mentioned that a similar decision was arrived at by the District Court of Benton County and that it is believed that there is but one abstracter in the state who has ever paid taxes upon an "abstract plant," and that is a "plant' 'in Fillmore County, the taxation of which was attended by some rather unusual circumstances. It was taxed for the year 1919 and probably since that year.

Contrary to the above decision are:

(1) The Iowa decision in the case of Leon Loan & Abstract Company v. Equalization Board. The stipulated facts in that case are extremely favorable to the view of taxability as compared with the Michigan cases and the stipulated facts in the case at bar. The court appears to take the view that when the abstract books are placed before the public for use and profit to the extent of preparing therefrom abstracts of title offered to be furnished to the general public, the abstract books themselves are published, so as to deprive the owner of any copyright. The court erroneously fails to differentiate between the abstracter's notes and the abstracts of title which are prepared by reference to them and which are radically different in form and character from the notes themselves. The view of the Iowa court in this respect is contrary to that adopted by the Supreme Court of this state in Banker v. Caldwell.

(2) This Iowa decision was followed and used solely as the basis of the Washington decision in the case of Booth & Hannaford Abstract Co. v. Phelps. We submit that this case should not carry great weight as an authority and is without any particular value here from the standpoint of its reasoning or the citation of authorities in its support.

It is highly significant that although the laws of this state substantially as now existing have been in force for half a century, never prior to 1920, have taxes been levied upon an "abstract plant" and collected. The fact that during the entire history of the state practically no attempt has been made to assess or tax this class of property, furnishes a strong case of practical construction of the constitution and laws of the state against the claim of the state in the present proceeding. It is not to be readily supposed that the taxing authorities of the state have during all the previous history of the state been thus either in error in their judgment on this question or remiss in their duty, or that the taxability of a class of property, always state-wide in its existence, has always been heretofore overlooked and now for the first time discovered.

The case accordingly went to hearing and the following syllabus given by the Supreme Court of the State:

Syllabus.

A set of abstract books is personal property for purposes of taxation, although the information therein contained is largely in the form of abbreviations, with a secret code or cipher index.

Affirmed.

Opinion.

This is a proceeding for the collection of personal property taxes, assessed against the defendant in Ramsey County in May, 1921, upon a set of abstract books and the paraphernalia

used in connection therewith. It is stipulated that the personal property assessed against the defendant at $8,000 included its abstract plant, the assessable value of which was fixed at $7,775 in the assessment. The sole question presented by this appeal is whether the defendant's abstract plant is a proper object of taxation. The trial in the court below resulted in a judgment for the full amount claimed by the state. The appeal is from an order denying defendant's motion for a new trial.

The abstract plant consists of abstracts of title to real property in Ramsey County, taken from the official public records and assembled in books with copious indexes, together with the articles of equipment used in connection therewith. The matter contained in such books is collected from the public records, and in no manner partakes of scientific discoveries, nor are the like the manuscripts of an author, or a copyright, as contended for.

The general work of compiling these books is a mere copying of extracts from public records and assembling them in abstracts books for convenience in furnishing abstracts of title to land in Ramsey County, to such persons as are in need of the same and willing to pay therefor. The mere fact that there was kept an index, with a secret key thereto, changed the character of the property no more than would a Yale lock on the outer door of a dwelling, with a key in the pocket of the occupant, change the domicile. In other words the fact that information contained in the card index is in the form of a secret code or indicia, the key of which is known only to the members of the appellant, in no way changes the character of the property, in view of the situation. Nor does the fact that the owners keep the abstracts of title prompted to date, by taking extracts from instruments recorded in the office of the Registrar of Deeds and assembling them in the abstract books, change the situation, other than to enhance the value of the plant.

We are of the opinion and hold that books containing abstracts of land titles which have a recognized value and which are kept and used as the basis of a business for profit, constitutes taxable property. 26 R. C. L. 138, and cases therein cited.

Affirmed.

They have coined a new title out West for the abstracter and real estate man who has long been affectionately known as a "curbstoner." In that locality he is now known as a "wildcatter."

Mr. Frank W. Woolworth, head of the great Woolworth stores organization, declares his most important discovery was when he lost his conceit—that nobody could do anything as well as himself.

THE MISCELLANEOUS INDEX

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

One of the state organizations has just made a survey of the nature and amount of losses sustained by the various abstracters of the state.

This is with the view of making insurance against such available. Abstracters should welcome the opportunity of securing such insurance. It is not known as yet whether underwriters of such risks can be had, but several are interested.

The most common causes of losses are taxes and judgments, mechanics' liens, etc., with taxes in the majority. These losses are sometimes the abstracter's fault, while in others he is the victim of errors in the county books.

Along this line comes a most interesting story of a certain county where the abstracters are having much grief over the ways of a county treasurer now out of office.

This gentleman was most accommodating. Friends, prospective votes and most every one, it seems, would come in, pay their taxes and ask that he hold their check for a day, a week, a month, sometimes longer. This he would do, and some of the checks were held for over two years, with the receipt out and the rolls showing taxes paid.

Some of these checks were presented for payment and turned down and the accommodating treasurer after so long a time and so many attempts to clear the checks would cancel the receipts, enter the property on the delinquent roll, advertise and sell it.

In other cases checks would not be held, but were returned insufficient funds and the accommodating treasurer would not like to embarrass anyone by telling them that their check had been turned down but would try to clear it a few times, then failing, would cancel the receipt.

In other cases he would change the tax rolls by dividing property after taxes had been paid and show the payment all on one piece and not on the other and would otherwise change the record.

In many of these cases abstracts had been certified showing taxes paid and so accepted by subsequent and innocent purchasers. Later these abstracts would be continued and the changed records show back taxes.

The abstracters are having no end of grief with many such cases and have appealed to the county commissioners to refund, charge off or otherwise relieve the present owners. So far the commissioners do not think they can, but pass the buck by suggesting that the parties suffering damage take it up with the bonding company who bonded the treasurer.

In the meantime the abstracters are in hot water. While not liable, yet the interested parties think they are and look to them for relief or a solution of the matter.

The Kansas Association plans to issue another new directory of its members soon. The last one was given a big circulation among the loan companies, real estate dealers, etc., and was a very good thing.

These state directories, issued every year or so and given a state wide distribution to users of abstracts are very profitable and the members are given the value of their dues many times.

There seems to be three prevailing prices per entry charged throughout the country, namely fifty cents, seventy-five cents and one dollar per entry, with the price of seventy-five cents greatly in the majority.

The price of one dollar per entry is charged generally in those places where very full abstracts, with habendum clauses, acknowledgments, etc., set out, and this is a very reasonable fee for such type of work.

The second or seventy-five cent charge being in such a majority might be considered the average acceptable price and fair in most cases.

The man who gets only fifty cents however is either not getting any more than the "wolf" will stand or else conditions and circumstances are such that he can only charge that amount and give only such service as such a price behooves.

As the report of one state association said, "the firms charging fifty cents and believe they are getting enough, raise the standard of your work, lay more stress on service and make your charge commensurate. We believe that a seventy-five cent rate is none too large, if enough, for the work performed and liabilities assumed by the abstracter."

One of the best bits of advertising, propaganda, or whatever one might care to call it, for a title company to present its wares to its customers is a little folder, "Rates & Reasons for Title Insurance," prepared by the Contra Costa Abstract & Title Co., of Martinez and Richmond, California.

It tells in short form what title insurance is, what it does by showing examples of things that have happened, and a schedule of rates.

An interesting booklet has been used by The Stewart Title Guaranty Co., of Texas in popularizing title insurance.

It is entitled "Startling Facts" and tells of actual facts, and incidents show where title insurance would or had saved property owners from suffering damages.

The annual "Who's Who" among the organized Title Men in the State of Washington has made its appearance for 1925.

The Washington Association issued this booklet every year. It is a directory of its members and is a worth while enterprise. Every state association should get out some such a directory.

The Home Abstract Co., Lewis Fox company, of Fort Worth, Texas, announces that it has moved for the first time in fifteen years, but only a few doors east of the original location.

The move gives more room and provides better quarters to care for the increasing business of this most efficient title company which is recognized as one of the city's established business institutions.

Lewis Fox, its President, is not only a progressive title man but a real citizen and a factor in the city's life. He has always taken a leading part in all civic activities and is recognzed as one of the most efficient Rotary Club Secretaries in the country.

Charlie White, Title Officer of the Land Title Abstract & Trust Co., Cleveland, Ohio, calls attention to an interesting inference to title insurance, appearing in Volume 3, "Select Essays in Anglo-American History," in an article by Arthur Underhill of the English Bar on "Changes in the English Law of Real Property During the 19th Century."

On page 708 in discussing the idea that Torrens Title Registration obviates the necessity of repeated investigations of title, Mr. Underhill says:

"I am informed that in the U. S. (at all events in New York) the same thing has been effected in a different way by means of insurance companies. There, by payment of a small premium, a landowner can get his title investigated and guaranteed by an assignable policy, and this policy is accepted by purchasers and mortgagees in lieu of an investigation of his title. Some of us may think that this simple expedient might have been tried here; but whether owing to want of enterprise on the part of insurance companies, or what, I know not, I believe it has never been publicly suggested."

Thought this testimonial might be of some value to Title Insurance advocates, coming as it does from an eminent English barrister.

THE TORRENS SYSTEM IN HENNEPIN COUNTY, MINNESOTA.

A recent printed report giving statistics on the operation of the Torrens System in this county in Minnesota, of which Minneapolis is the county seat has been distributed and bears date of January 1, 1924. A glance at it should convince the most uninformed and untutored of the total failure of the system.

Minnesota has a peculiar Torrens Law in that it only applies to three counties, those of which Minneapolis, St. Paul and Duluth are the county seats.

This report for Hennepin County shows that the first application was filed on September 23, 1901, and the first certificate issued December 28 following. Imagine anyone waiting ninety days on a title company for a policy or an abstracter for an abstract, yet this first application took that length of time and there are a mass of instances to show that the average time required for an initial registration in any of the places where the Torrens System is in force is much longer than three months.

It shows that in 1923 there were 154 applications made for Registration (original) and a total of 2,730 certificates issued. In the twenty-one years the law has been in operation, there has been a total of 2,458 initial registration.

In this time since 1902, the mortgages filed under the Torrens System total an amount of $34,277,348.42. No figures are given as to the present outstanding amount of mortgages based on this system of title, but the amount added to the assurance (assurance, not insurance) fund last year was only $401.65, and the total of the fund accumulated in twenty-one years, which includes the accumulated interest too, IS BUT $6,467.92, certainly a ridiculous amount.

The report also fails to give any statistics as to the value of the property registered under the system the owners of which are so well protected.

One of the hardest things to understand is why a state will require a title company to have thousands of dollars of resources before it will permit a corporation to issue title insurance, and now critical the public is in knowing whether a title company is a sound institution or not and yet this same state and these same people will blindly confide and trust in a make shift state controlled system, slow, inefficient and cumbersome and with practically nothing for protection. This is true of every state where the Torrens Law is in effect. The officers have not paid expenses, the system is a white elephant and the "Assurance" fund is nothing in every case.

Thousands of dollars worth of property are registered under these certificates in Hennepin County, protected by an "assurance" fund of $6,467.92.

PROGRAM OF 1924 CONVENTION.

(Continued from page 1.)

Unfinished Business and New Business.

Choice of next convention city.

Introduction of new officers.

In addition to these convention sessions, noonday conferences for the various sections will be held each day so that the various sections may be together for presentation and discussion of problems. These conferences bid fair to be the most profitable part of the meeting. Much good will come from them and those attending should arrange to be present at each.

NORTH DAKOTA CONVENTION IN JULY.

The 1924 Convention of the North Dakota Association will be held in Bismarck on July 8 and 9. Secretary A. J. Arnot lives there and will be host to the gathering. A large crowd should attend.

This state association has been very active in the past few years especially in bringing about improvement and uniformity in the abstracts used throughout the state. Its convention programs have been very interesting and valuable and anyone attending one of the meeting will profit thereby.

IOWA ASSOCIATION TO MEET IN JUNE.

The Annual Convention of the Iowa Title Association will be held in Keokuk on June 12 and 13, with Ralph B. Smith as host. Mr. Smith has been a hard and faithful worker in matters concerning the title business in his state and appreciation of his efforts can be shown by a record breaking crowd at this convention in his home town.

Keokuk is an ideal place and the usual fine program of this association's meetings make an attractive interest to attend.

IDAHO MEETING, JUNE 6 AND 7.

The 1924 Convention of the Idaho Association will be held in Pocatello on the above dates with President Orval M. Fox acting as host.

Every abstracter in the state should journey to this southeastern city and attend the meeting. The abstracts made in Idaho are of a very high grade of work, the state will see prosperity and growth in the future and the titlemen should welcome this opportunity to meet together and exchange ideas.

LUNCHEON CLUB CLASSIFICATIONS FOR TITLE MEN.

Members of the Rotary, Kiwanis, Lions, Co-Operative, Optimists, Civitan and other similiar classification luncheon clubs should be interested in the classifications these organizations allow the title men.

The association is taking an interest in this and should have the support of every member of any of those clubs.

The three following classifications should be available in any of them to those in the title business: Abstracter of Land Titles, Title Insurance, and Title Examiner.

An effort is being made to secure these three, and to have them recognized and adopted by all classification clubs.