TITLE NEWS

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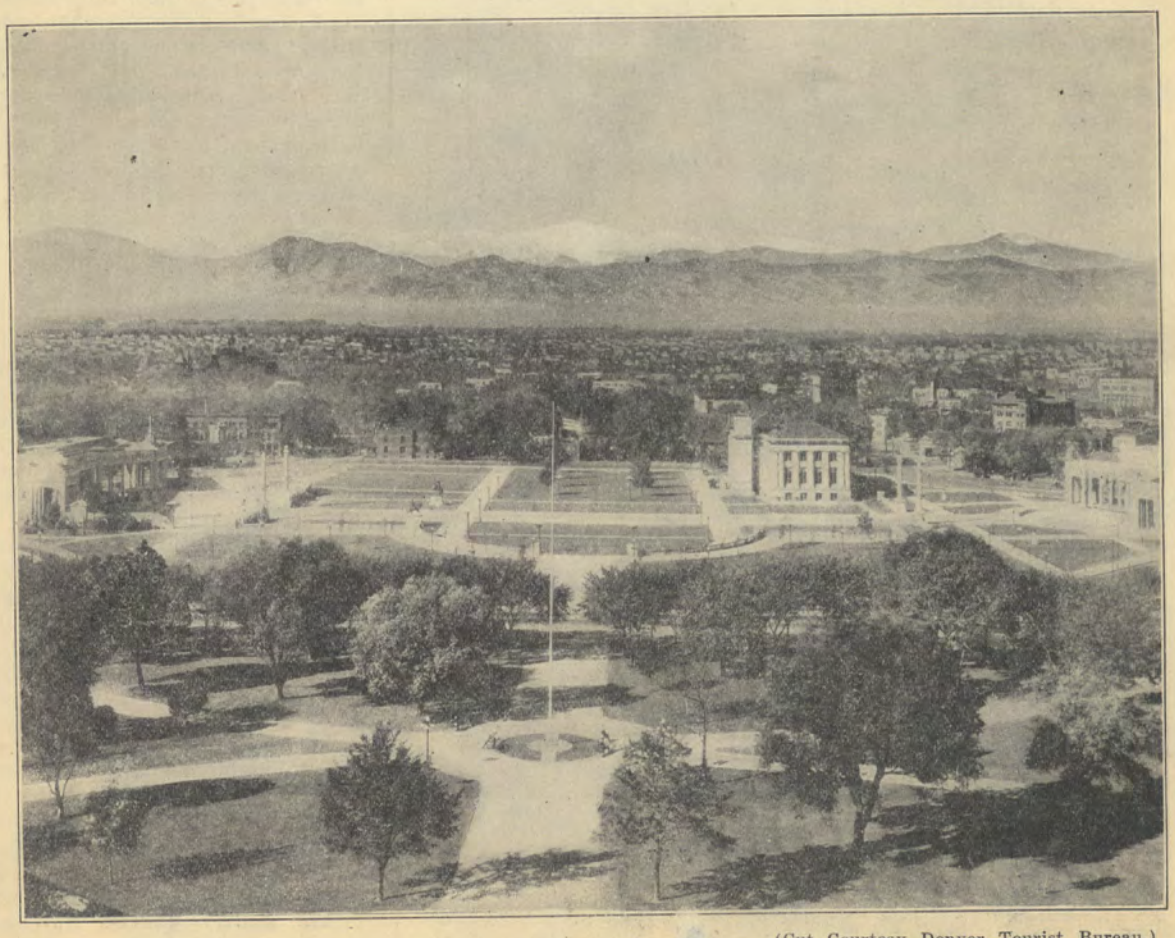
Title Men Will Mix Convention with Vacation Trips in Denver

By Warren E. Boyer, Director, Denver Tourist Bureau

Fishing, hiking, roughing it in camp life, or idling away the hours on the veranda of an up-to-date resort hotel nestling in pine-clad heights, are diversions within easy reach of Colorado's capital, which stands in the shadow of these snow-capped sentinels and boasts of short scenic trips almost without number.

And here, in the midst of cosmopolitan Denver, there is still a touch of early-day romance and history of the cowboy with his woolly chaps, the Indian day-dreaming in his skin tepee, and the pioneer with his overland schooner—a means of early-day transportation that has since been replaced in part by steel rails. Fancy and inspiration lead the way to Indian trails in Denver's Mountain Parks now widened into comfortable automobile roads, or to the ruins of a mining town where prospectors became rich overnight when the sunset's gold was reflected in the precious ore they took from the earth.



(Cut Courtesy Denver Tourist Bureau.)

Looking across Denver's Civic Center, with its green carpeted lawns, from the State Capitol steps, towards the snow-capped sentinels of the Colorado Rockies.

There is a tremendous overland travel to Colorado today, but in comfortable trains or easy-riding automobiles. And Colorado's popularity may be measured by the fact that its population is doubled temporarily by vacationists, and that in Overland Park, Denver's Municipal camp ground, 50,000 motorists are registered and as many as 5,000 visitors camp there some nights.

As for scenic thrills—

Clear Creek, Bear Creek, and South Platte River have delightful scenic attractions, Idaho Springs, the famous Georgetown rail loop, and Silver Plume are reached in a one-day return trip out of Denver. Nature has sculptured South Platte Canyon in a water-worn ravine until the visitor gasps in wonderment at the succession of scenic thrills in the one-day return trip to its headwaters.

Bear Creek is included in a part of the sixty-five mile circle trip by automobile through Denver's Mountain Parks, touching Golden, once a territorial capital and the seat of the Colorado School of Mines; the grave of Col. William F. Cody, better known as Buffalo Bill, on Lookout Mountain, and the old scout's Indian relics; municipal golf course at Evergreen, at an altitude of 7,000 feet; and the Park of the Red Rocks, gigantic sandstone formations near Morrison. This trip requires four hours. There is a return trip of 105 miles to Echo Lake by automobile that takes the traveler from an altitude of 5,280 feet in Denver to 10,600 feet, unsurpassed in that five peaks over 14,000 feet may be seen here; perhaps more than at any other spot in America. It is completed in eight and one-half hours.

There are four living glaciers in the Boulder region, fifty-five miles from Denver, one-day return trips to which are made by rail and auto. Two or three days are better than one in taking this side trip. Arapahoe Glacier moves about twenty-seven and a half feet a year. The ride is through Boulder Canyon, a picturesque water course, and forests to timberline.

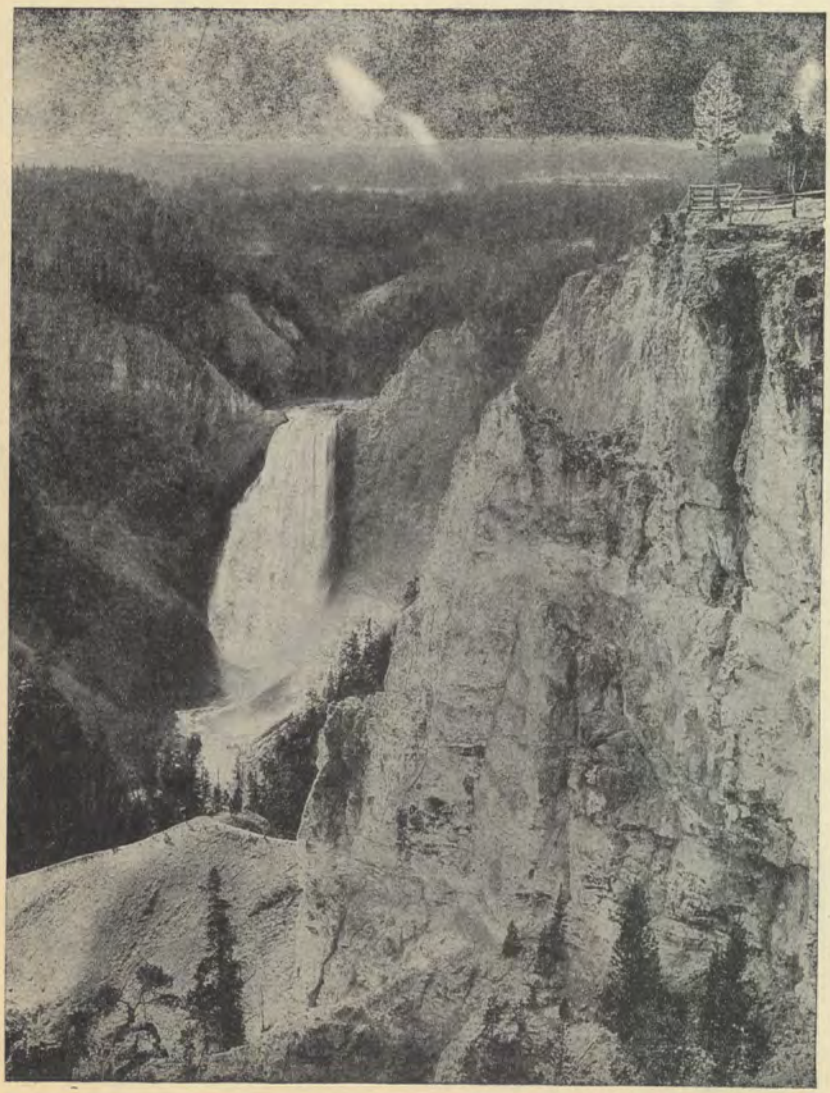
Estes Park Village, seventy-five miles north of Denver, is the eastern entrance to Rocky Mountain National Park. There is a rail connection to Boulder, Lyons, Longmont, Loveland, and Fort Collins, center of a new oil field, and from there by automobile, or one may arrange through the Rocky Mountain Parks Transportation Company in Denver for the two-or-three-day auto circle trip of 240 miles. This circle trip out of Denver is by way of Big Thompson Canyon, Estes Park, the Fall River road and crossing the Continental Divide in Rocky Mountain National Park, touching Grand Lake, the western entrance to the Park, Idaho Springs and the Denver Mountain Parks.

Prospectors with pack horses marched for days at a time through the heights of the Rockies in the '60s. These winding trails have been widened into automobile roads, one of the most unusual of which is the scenic Peak-to-Peak Highway. It is a great loop flung carelessly across the foothills, and is the means of an interesting and spectacular trip by automobile from Denver to Rocky Mountain National Park, to Colorado Springs and back to Denver. From Estes Park village to Manitou, just west of Colorado Springs, the way wends for 150 miles through mountain valleys and across the shoulders of high mountains, along trout streams and through wooded stretches that retain sheltered patches of winter snows. It is unusual in that nearly three days of the four required to make the trip are experienced in the fastness of the heights, just as the adventurer and prospector experienced, but in the comfort of inviting resort hotels, good meals, and a convenient means of travel.

Camps and cottages are available for those who want to live in the open, as it were, and break the humdrum of civilization's trend of routine life indoors. Of course there is every conceivable kind of accommodation, the daily tariff comparing favorably with the first-class metropolitan hotels.

Denver shows every courtesy to travelers. The City of Denver, and the business interests, through the Chamber of Commerce, maintain two free information bureaus—an up-town office of the Denver Tourist Bureau, and the Union Station Branch. Hotels and rooming houses are listed. Travelers arriving at any hour of the day or night are directed from the Union Station Branch to hotels through an impartial system based altogether on their preference and expressed need. Denver and Colorado literature will be sent free, by writing to the Denver Tourist Bureau, 505 Seventeenth Street, Denver. Prices of the various trips and accommodations in the hills will be cheerfully supplied by the Tourist Bureau.

So Denver calls to Title Men: "Come Up!"



(Courtesy Northern Pacific Ry.)

Great Falls of the Yellowstone, Yellowstone National Park

Muniments of Title

By Judge J. C. Ruppenthal, Russell, Kansas, Judge, Twenty-third Judicial District of Kansas; Former Judge Advocate, U. S. A.

Whether one takes Charles Darwin or W. J. Bryan as scientific authority on the question of evolution of organic life, he is little likely to question that in historic times there has been change in what we call property that may perhaps be called evolution. All research, whether in the most ancient and sacred writings of the older religions, or the traditions and histories of white or yellow man, or upon Egyptian temples and pyramids, or baked clay cylinders and cuneiform inscriptions of the Tigris and Euphrates valleys, alike fails to disclose the origin of the idea of property of any kind. Equally futile have been efforts to learn when man first thought to claim some part of earth's surface, whether sea or land, fresh water or desert, as his own, and to exclude at will any or all others therefrom.

Our present customs, practices, laws, statutes, as to ownership of land, are so new, compared with the age of this planet and human life upon it, as to be not far removed from the novel problems of rights in the air under aerial navigation. The common law jurists of England, whence law in the United States is chiefly derived, took for granted that title to land included rights upward indefinitely into space, and downward equally far; or (with those who accepted the theory that the earth is round), that the boundary lines of a tract compassed a wedge that came to a point at the center of the globe.

The oldest historical writings concern themselves largely with matters of religion, and only incidentally reveal except fitfully and in shadowy outlines the life and institutions of a people. From the Bible or Old Testament of the Jews, the Vedas of the Hindus, the Zend-Avesta of the Parsees, or even the much later New Testament of the Christians and Koran of the Moslems, we learn but little of property. The very name that we apply, with some uncertainty even now—real estate is quite a modern growth. Originally in its use, it was the thing, the article that could be perceived by the senses, that could be taken hold of and recognized as a body, as having dimensions. Whether a movable object or a part of the earth, that was "real" and other things that were chiefly in the mind, rights that could not be seen, felt, measured, weighed, were "personal." Gradually the term "real" was restricted to rights in land. If we turn to the more nearly indestructible records carved on stone along the Nile, in the jungles of India, the forests of Mexico, or the heights of Andean plateaus, we find that little has so far been deciphered to explain property rights.

Perhaps 1500 years before the Christian era, in Palestine, Abram said to Lot, when there seemed not enough room for the herds of both: "Is not the whole land before thee? * * * If thou wilt take the left hand, then I will go to the right; or if thou depart to the right hand, then I will go to the left. * * * Then Lot chose him all the Plain of Jordan, and Lot journeyed east."—Genesis, 13:9. Whether any formal record was made in writing of this division of pasture range, or any mark to show the separation line, we are not told. And later when Sarah died Abram bought the field of Machpelah before witnesses and paid 400 sheckels of silver for her burial place. —Gen: 23.

"MUNIMENTS OF TITLE,"

the feature article appearing in this number is one of the finest things ever prepared on a subject pertaining to titles.

Everyone should read and study it. Judge Ruppenthal has taken an extensive subject and presented it in an exhaustive manner. This paper is a valuable addition to the library of title topics.

It is indeed a rare privilege to have an opportunity of presenting such a treatise in print and the American Title Association is grateful to Judge Ruppenthal for his generous contribution.

The author of the article is at present Judge of the Twenty-third Judicial District of Kansas, having served there from 1907 until 1918 when he was Commissioned a Judge Advocate in the United States Army, serving 14 months in the Judge Advocate General's Office where his work consisted chiefly in reviewing court martial trials, clemency reports and editing the reports of court martial work. Upon his expiration of service in this capacity he was returned to the bench for his Judicial District and is now so serving.

But somewhat before this, perhaps 1900 to 2200 B. C., down the valley out of which Abram came, civilization was already advanced. The Code of Hammurabi, unearthed at the close of the 19th century and translated early in the 20th, has been pronounced "a masterpiece of legislation, * * * befitting a thriving and well organized nation; familiar with the security of written deeds drawn up with all the niceties and solemnities which clever jurists could desire." In this code from the great early law-giver of Babylon, sections 43 to 52 are devoted to relations between land-owner and the cultivator of the soil. Sections 165-174 define the rights of children, wives, concubines, temple girls, etc., as to inheritance.—7 Catholic Encyclopedia, 126.

Several centuries later, Jeremiah gives a graphic description of a real estate transaction: "And I bought the field that was in Anathoth of Hanamel mine uncle's son, and weighed him the money, even 17 shekels of silver. And I subscribed the deed, and sealed it, and called witnesses, and weighed him the money in the balances. So I took the deed of purchase, both that which was sealed according to the law and custom, [or containing the terms and conditions] and that which was open; and I delivered the deed of the purchase unto Baruch, in the presence of Hanamel, and in the presence of the witnesses that subscribed the deed of purchase before all the Jews that sat in the court of the guard. And I charged Baruch saying: 'Take these deeds; this deed of the purchase which is sealed, and this deed which is open, and put them in an earthen vessel that they may continue many days.' "—Jeremiah 32:9-14.—Cited, 5 International Enc., 223.

Here we have all the careful procedure of modern days—the purchase, signing, sealing, witnesses, delivery, payment, and finally hiding away in a fire-proof receptacle; all done while the Chaldeans were battering at the walls of Jerusalem in a mighty siege.

From all these ancient instances it is evident that long ago it was considered desirable to have evidences of ownership of land. Quite probably, mere possession was the earliest proof of right, but soon men wanted some assurance that when they returned to their accustomed cave after a foray in guest of game, they might have some assurance of finding open to them the same cave which they had left on the hunt, even if the mate and children went along.

When thousands of people raced down into Oklahoma in 1893 at the opening of the Strip to settlement, each one squatted upon a tract, and usually his first act was to drive a stake into the ground and write on it his name to show who claimed that quarter section. Before the general notion of deeds had developed, men must have done the same way. They put up a stake, or more likely a stone, or marked the living rock, or blazed a tree. This means of identifying landed possessions is conspicuous in the early Semitic history. At least six times in the Old Testament the value set upon such landmarks is shown:

"Thou shalt not remove thy neighbor's land-mark which they of old time have set in thine inheritance."—Deuteronomy, 19:14.

"Cursed be he that removeth his neighbor's land-mark."—Deut., 27:17.

"The princes of Judah are like them that remove the land-mark."—Hosea, 5:10.

"Remove not the ancient land-mark

which thy fathers have set."—Proverbs, 22:28.

"Remove not the old land-mark."—Proverbs, 23:10.

"Some remove the land-marks."—Job, 24:2.

From these primitive evidences of title, such as mere possession and then a stake or rock to mark the place or its bounds, men advanced to the point of changing possession and of transferring their rights. Here again Jewish history is instructive. Actual transfer was necessary, and this continued the rule with many peoples down to very recent times; and may yet prevail in some parts of the world. The purchase of land by Boaz is thus described in Ruth, 4:7. "Now, this was the custom in Israel in former times concerning redeeming and concerning exchanging, to confirm all things: A man drew off his shoe and gave it to his neighbor and this was the manner of attestation in Israel. * * * Naomi selleth the parcel of land which was our brother, Elimalech's." * * * "Buy it before them that sit here." So the near kinsmen said unto Boaz, "Buy it for thyself." And he drew off his shoe, and said unto the elders and all the people, "Ye are witnesses this day that I have bought all that was Elimalech's and all that was Chillon's and Mahlon's of the hand of Naomi. * * * Ye are witnesses this day." And all the people that were in the gate and the elders said: "We are the witnesses."—Cited, 5 International Encyclopedia, 223.

When 2,000 years later under the feudal system, the inhabitants of northern Europe went upon the land to carry out "livery of seizin," and publicly in the presence of a crowd the seller or donor handed over to the buyer or donee a twig, stone or clod from the land in token of transfer of title and ownership, they were imitating Naomi and Boaz of old.

But a time came early when complete change of ownership or title or even of possession was not always desired. Then it was no longer possible to carry out the purpose of both parties in the ancient way. Necessity, the mother of invention, led to a means to show rights less than complete title, such as a lease, or life estate, or a lien. This was done by a written statement of the terms of the agreement. It may have been on clay, or may have been on paper. The idea is the important part. From this developed all forms of written evidence of complete or partial or temporary ownership or right of use or of possession.

Whatever the nature of the means, whether a stake or stone on the land itself, or an inscription on granite, soft clay to be baked, parchment or paper the purpose was to protect the right of the holder. In a warlike era, the language adopted was military. The owner wished to fortify his position. The most common fortification was by great walls. Walls were called moenia in Latin. To fortify was munio; hence we got the word "Muniment," to include any deed, record or instrument by which title may be defended or evidenced.—Standard Dictionary. These "muniments of title" become the subject of this address.

Title includes three things: (1) Possession, with (2), right of possession, and (3), right of property.—16 Int. Encyc., 767.

Unless all three are united, title is not complete and absolute. It is said technically that all titles to real estate are either by descent or by purchase. This means that title comes either to an heir under the laws of inheritance and succession, or by some other means, whether by sale or devise under will or by adverse possession. But all these are called title by purchase. Under mere adverse possession it may be questioned whether there is an actual muniment of title until the decree of a court has been written out and entered of record, though possibly tax receipts may be a form of muniment. To compel another to take a title as good and sufficient, a court of equity will require the production of some sort of muniment.—See 16 Int. Enc., 767.

Not quite so difficult as tracing the origin of property and the developments of the muniments of landed estate, is the history of the preservation of such evidences. The Jews, as Jeremiah tells, placed deeds in earthen jars for safety. It was long before anyone thought that government should include among its functions, the care of a man's title. Indeed, this likely did not occur until after, largely perhaps through the feudal system, government was looked to as the source of title. Older systems and civilizations did not think in this way. But when from 800 to 1500 A. D., Europe accepted and developed in different degrees the notion that from the lowest slave and serf, step by step, up to the King or Pope, everybody owed obligation, fealty, allegiance to some other person higher up, and that each held his possessions, if not his very life by grace of such over-lord, it came about that the slavish supinely submitted, and the independent reluctantly bowed to the theory that title to his land came down to him. The hlaford or loafgiver among Anglo-Saxons, besides giving bread to his subjects, parceled out among them lands, too. In England by reason of the pinnacle of supremacy to which the Norman Conqueror raised the king above the nobles in power, the king was looked to as the owner of all land by whose grace each rank below successively held. We in the United States have carried over to the state, or the people organized into civil society, the English idea of the king as source of title to lands.—8 Britannica Encyc., 275.

While considering the matter of land titles, it may not be uninteresting to turn aside a moment to note that only in very recent time, in fact since Grotius, have mankind in general given up the idea of ownership of the sea, even as ownership of land is regarded. As late as the Tudors of England, men still argued strenuously against open seas or high seas, and contended that nations should occupy, claim, mark off and assert title to blocks and squares of the ocean just as they did and do for land surface. Perhaps two hundred years back will cover the period wherein all nations have regarded, the vast waste of "ocean's wide domains" as for use alike to all peoples without preference or prejudice. Even now the matter is still in dispute as to indentations into the land.

Muniments of title may perhaps be conveniently divided into about seven classes: 1. Patent by the executive; 2. Grant by legislature; 3. Deeds of conveyance; 4. Will; 5. Descent; 6. Possession; 7. Boundary stakes, stones, streams, trees, water, etc.

Kings and other monarchs, and free states as well, claim and have claimed title to lands by reason of conquest, or discovery or settlement, and by treaty. Accordingly they give these lands to individuals, usually citizens; and to evidence such gift, the executive, whether king, president or governor issues a letter, not secret, but open to all the world; that is patent. These letters patent we call simply patents.

Grant of title by a legislative body, whether English parliament, American congress or Texas legislature, is not widely different from patent by the executive. Each is regarded as a source of title, and each is based on acquisition of title by the nation in manner already mentioned. The difference comes from variations as to whether the legislature or executive is supreme.

Deeds of conveyance come most naturally and readily to mind as muniments of title. When the owner dies, title passes either by will or by law. Where there is a will, this is among the muniments. When there is no will, many people are perturbed because of their mode of thought to want some paper, like a deed, to prove their title. It is almost daily experience of any busy lawyer to have people ask him where or how they get a "deed" to show that property was left to them by will or comes to them under the law of descent and distribution. We may regard the statute law as a muniment, but unless this is such, perhaps an affidavit of relationship of the heir to the deceased or a finding by a probate court to that effect is desirable. When we come to possession as title, muniments are lacking, other than the very remote authority of the statutes and decisions of courts as precedent. The first definite instrument will perhaps be a decree of court, either quieting title in the occupant, or refusing some assailant the aid of the court to dispossess such occupant. Lastly all marks to delimit one's possessions are

in a way muniments, as they tend to fortify title, since there is some presumption that a stake or stone or tree with certain marks is probably a corner or division point or line. Navigable waters are almost certainly bounds to private ownership of earth's surface.

These objects to mark a claim come within the definitions that "Title is the means whereby the owner of lands has the just possession of his property," (28 Am. & Eng. Enc. Law, 232, Title) and also title is the instrument or document by which a right to something is proved.—(Ibid., note 3; Pratt vs. Fountain, 73 Georgia, 261.)

In early forms of land-holding, community ownership of some if not all the land is a prominent feature. In India there was no individual private owner, but title was vested in a petty corporation, the village, and the occupants held under leave of the community.—12 Ency. Brit, 769. This however changed long ago, and in western India, among the Mahrattas, the peasant "ryot" has absolute property in land so as to inherit, mortgage and sell it.—15 Ency. Brit., 289-290.

In ancient Rome, tradition puts it as far back as Romulus, each householder was assigned two jugera (about one and one-fourth acres) of land to be held as private property (heredium) in perpetuity. These parcels were taken from lands common to all the tribe. Another step was here taken, by establishing a register of lands in which each owner was required to enter his property. The register was revised each four years. In the time of Servius Tullius, sales were directed to be made in the presence of witnesses.—14 Ency. Brit., 260, Land.

It is thought that land was divided equally among citizens in early Greece. —1 Ency. Brit., 287. Division of land was well established among the Hebrews.—Numbers 33:54; also 34:16-18. A guard against monopolization of land was recorded in Leviticus 15:10, that perhaps has no counterpart in any other code in the world. In the year of jubilee, each fiftieth year, all lands, whether sold, or lost by debt, or in any way taken from a family or individual, were unconditionally restored to him or his family. No one could count on holding land longer than forty-nine years at most, except as it came down through family lines.

Julius Caesar in noting the customs of the Germans of the Rhine and vicinity, said: "No one has a fixed quantity of land. Each year the magistrates and chiefs assign to the communities and families who live together, as much land and in such spots as they think suitable, and require them in the following year to remove to another allotment." Probably no written record was made of such allotments.—14 Ency. Brit., 261, quoting Caesar, book 6, De Bello Gall.

The first master muniment of title is perhaps Domesday Book. When William of Normandy had made himself by force of arms king of England and therefore under the feudal system was the source of title to all lands, he directed a survey of all England to ascertain the land-holdings and who held them. This work was done from about 1080 to 1090 A. D., and still preserved in two volumes, a folio of 382 pages and a quarto of 450 pages—7 Ency. Brit., 349, ninth edition. The extreme northern part of what is now England was not included.

The list thus made included as landowner, the king, ecclesiastical and temporal holders, smaller owners, etc., as it was contended that they were at the time of Edward the confessor. Numerous disputed claims or "clamores" were added. The listing was done by sub-divisions called hundreds, and somewhat smaller than a county. Beneath these, the arrangement was by manors. In each county there were commissioners and juries to do this work. They took the name of the owner and of the manor. The number of hides of land was noted, a hide being an old Germanic measurement of an allotment for a family; also woods, pasture, meadow, plows, mills, ponds; also tenants, villains, slaves and cattle. The conquered Saxons gave bitter testimony of the thoroughness of the survey. But thenceforth Domesday Book was a register of appeals for centuries to those whose titles might be disputed. —7 Ency. Brit., 349. No older country, in fact no nation outside of the new world, has such a final, definitive authority as to source of land titles as this. "It starts the history of modern conveyancing," says Maitland in his prologue to select Essays in Anglo-American Legal History, vol. 1, pages 22-23. Upon this rock are built grants, patents, charters, as early deeds were called. The curious may see in the library of the University of Kansas two of the ancient black letter "Charters" or deeds in law Latin, dated A. D. 1316, which have recently been secured for the students of the law school.

Here we have perhaps the first unequivocal step toward making government the source and the custodian of title, an idea that has been much extended since; especially in those lands to which Great Britain gave a system of law and administration. The germ of the idea had already existed, however, in all Germanic lands; Anglo-Saxon England had had a "land book," though it is improbable that Alfred the Great made a Roll of Winchester, as sometimes claimed, to have been a prototype of Domesday Book. This land book was of Italian origin. But England had no formulary books as were compiled in Frankland.—Maitland ib., 23. In a degree these things were influenced by Roman law, for Roman law and German law had advanced toward each other perhaps between 500 and 1000 A. D. Roman law sank and became low Roman law, (ib. 22-23) and blended with the law of the Germanic peoples of northern Europe.

Although land-holding after the Norman conquest is well understood, our knowledge as to the earlier Anglo-Saxon holding is still imperfectly known.—Pollock, Anglo-Saxon law, 1 Select Essays etc., 104. But there were a considerable number of free men who held lands in various amounts in England down to the Conquest.—(1 ibid. 105.) Of these some in eastern counties were very small, though free holdings. Of the rule under which free men held "folk land," that is, estates or lands governed by the old customary law, we know next to nothing—1 ibid., 105. But there was likely little buying and selling of folk-land.

Nor is there reason to suppose that alienation of land was easier than in other archaic societies. Local customs are found surviving long after the Conquest; pointing to a conclusion that often the consent of the village as well as the family was a necessary condition of a sale of folk-land, if indeed it developed that folk-land could be sold at all.—Pollock Anglo-Saxon Law, 1 Select Essays, etc., 105.

Soon after the conversion of the south of England to Christianity, English kings began to grant the lordship and revenues of lands, often of extensive districts, to churches by written Charters, framed in imitation of continental models.—Pollock, 1 ibid., 106. Land held under these grants by charters or "book," was called "bocland" or "bookland." The extraordinary powers of the king with the witness and advice of his witan or parliament, could confer disposing capacities unknown to customary law. Holders of book-land thus might grant or let or will.—ib., 106. These "wills" were rather postponed grants. To hold book-land was the ambition before the Conquest.—ib., 107. Land acquired by boc (bocland, book-land) was alienated and transferred by delivery of the original title deed. (Brunner, Sources of English Law, 2 Select Essays, etc., 15.) This was widely different from the later feudalism expressing itself through land-holding, wherein military service was rewarded with land grants, (Jenks, Teutonic Law; 1 Select Essays, etc., 44) all held from the sovereign on condition of suit and service, and where in turn each tenant of the king subinfeudated his possession in the same way (ib. 14 Ency. Brit. 261,) so as to suggest the couplet: "These fleas have smaller fleas to bite 'em, and so on downward ad infinitum." Through six or seven centuries feudalism developed. Then subinfeudation was abolished. Rights to rent, sell, inherit and devise grew up.—14 Ency. Brit., 2611.

Alienation is a modern right in land. —1 International Ency., 347. Property has existed without the right to alienate, although now void as to fee simple ownership.—ibid 347. But we have vestiges of the ancient restrictions even in the Kansas statutes, as that lessees for less than two years or at

will cannot assign the lease without consent of the landlord.—Gen. Stat., 1915; sec. 5966.

In Rome a distinction was long made, and not abolished until Justinian's times between property, whether lands or goods, that could be transferred to another as owner only with a ceremony (as was at first the case with all property,) and that property not needing such formality.—5 Int. Ency., 223. The deed which "was open," as above mentioned in the book of Jeremiah, suggests the same idea among the Israelites.

Somewhat akin to this was the early English common law whereby freehold interests in land were created and conveyed by livery of seizin already mentioned. Interests less than freehold were created by parole, whether orally or by simple writing. Only incorporeal interests, such as easements, future interests in land, etc., were conveyed by the solemnities of deed, duly sealed and delivered.—5 Inter. Ency., 739,740.

In the United States we have the notion of grant by government in place of the older Aryan idea of absolute, unqualified title. This grows out of the feudal conception of land tenure from the king.—16 Int. Ency., 593. Nor has any civilized people returned to the ancient freedom of ownership, since the right of the state under eminent domain, either for itself or for specially favored private beneficiaries, is universally recognized. — 16 Int. Ency., 594.

As freedom of alienation of title advanced, there developed side by side the "secret" and the open or public conveyance of title. By secret is meant merely such as need not necessarily be known to others than the parties to the instrument. When all was done formally and openly in the presence of witnesses, everyone could take notice of all that might affect his rights or claims. But when a deed might be made by the grantor and delivered to the grantee with no knowledge of this coming to others, injustice and fraud was possible to those who relied on the older order of things. To cure this, in England Parliament made the Statute of Uses, (27 Henry VIII) for the purposes (1,) to put an end to secret conveyances of lands, and (2,) to put an end to bequests of land by will.—Jenks' Teutonic Law, 1 Select Essays, etc., 66. This made a written instrument effectual to create an estate without livery of seizin.—24 Amer. & Eng. Ency. Law, 76. At the same time to assure the publicity which otherwise might not be given, the Statute of Enrollments was passed. (27 Henry VIII) whereby it was part of the transaction of alienation or conveyance that the instrument be recorded. —21 Ency. Brit., 206. Next the Statute of Frauds, which we still retain, made writing necessary for all contracts for the sale of real estate.—21 Ency. Brit., 206.

The Statute of Enrollments was the first step toward publicly recording all instruments of conveyance. But at once it was evaded because it did not specifically mention leases. It was therefore inoperative almost from the first. The practice was established of evading the law by making a lease for a period of years. The lessee then took possession. After possession was gained, the title holder "released" to his lessee the rest of the title and thus the lessee acquired full title. A few local statutes were passed, beginning for Middlesex (7 Anne) but no general requirement to record has ever been passed. England, therefore, continues to have the "secret" system of land transfer.—14 int. Ency., 877-8.

In the United States on the other hand from earliest times statutes have provided for recording conveyances of real estate. ib. 878. Usually these are permissive, but in some instances, as in Philadelphia, a deed has no force as to strangers unless recorded. The general rule is that an instrument when filed for record with the proper official, at once becomes effective and imparts constructive notice of title, lien, etc., to all the public. In modern German law there is no land title without registration.—14 Int. Enc., 570. But discrimination must be carefully made between registration of instruments and registration of titles.

Before the Conquest, transfer of land was sometimes made public by entry on the shire book or church book. —20 Enc. Brit., 342. But in general then and thereafter, conveyance under usual forms was "notorious" and for this reason, such open public act might pass the full title in fee to a stranger from one who held less than fee title. Such conveyance would be defeasible if taken in time, but because of the publicity of the proceeding, the presumptions were against the real owner in legal action because his rights had not been protected at the time of the open and public forms of transfer.—5 Int. Enc., 222. Deeds now are called "innocent" because of conveying no more of title than the grantor has.—ib.

Passing from the older forms of title, we may consider descent and succession. It is agreed that these, like rights of children by adoption, are entirely creatures of law. Bigelow, Rise of English Will, 3 Select Essays, etc., 770-773. The idea of the descent of rights from ancestors at their death to descendants is very old. That of transfer of title by will of the testator does not run far back except in a very imperfect form. The will as we know that instrument is of Roman origin or greatly influenced thereby. Even in the ancient civilization of India, with all its philosophic study, wills were probably unknown until the English came. In Athens and in the Mosaic law, wills were at most rudimentary. But they were recognized by Rabbinical law and by Mohammedan.—24 Enc. Brit., 570. Up to A. D. 439 a Roman will had to be written in Latin, though Greek might be used. Upon the introduction of Christianity, the church had a great effect on wills, and very often took a share of the property.—ib.

The right to make a will is "coeval with civilization itself and so close in fact upon the origin of property rights as to be not essentially separate in point of antiquity."—Schouler, Wills, sec. 13, 2nd ed. quoted in 30 Am. & Eng. Enc. Law, 549. There were wills among the Hebrews.—2 Blackstone Commentaries, 490. They were introduced into Greece by Solon.—ib., 491; 30 Am. Eng. Enc. Law, 549. Before the Romans knew the use of letters, they knew how to will.—Castro vs. Castro, 6 California, 158.

Manu, a Hindu law-giver, about 500 A. D., expresses an opinion on inheritance.—21 Enc., Brit. 288. Among the Anglo-Saxons of this period, great folks made wills, but it is not sure that the lands mentioned in such wills were held as ordinary folk-lands. Nor is there reason to believe that among them, ordinary free land-holders could dispose of land by will, or were in the habit of making wills for any purpose. —1 Select Essays, 105.

The right to will land was evidently making headway among them but slowly, for we hear of heirs disputing even gifts to great churches. (ibid, 105.) Meantime primogeniture was least usual and junior right was common in some parts. Usually sons were equal, but not daughters, though at times daughters were preferred where there were no sons.—1 Select Essays, 107.

Whenever the right to will appeared in England, as early as Henry II, 1154-1189, bequest of personal property had been restricted by common law to "reasonable parts." Children and wife had to receive aliquot parts equal to that retained by the testator.—(2 Blackstone Com., 492, 492; 30 Am. & Eng. Enc. Law, 549.) Such power as existed before the Conquest to will lands was so changed by the feudal system that lands could not be devised. The Statutes of Uses directly affected this. Within five years of this act, another, the Statute of Wills, (32 Henry VIII) partly authorized devises, but it was not until 1660, after the Restoration, that the right to will land became free and universal. In the United States, on the other hand, there has always been general freedom to make wills.—30 A & E Enc. L., 549.

In tracing titles, land-books in England contain not only royal grants, but also a few wills, usually in vague terms. About 100 grants, not all genuine, are from the seventh century; about 200 more from the eighth. The grants are in Latin, but often give boundaries in English, while the wills are usually in English. (Maitland: Materials for History, 2 Select Essays, etc., 64, 65.) Sometime after this intestacy became disgraceful. The good man before he died was expected not only to make his peace with his Maker, but also to dispose of his property,

usually remembering the church. (3 Select Essays, etc., 723.) Feudalism stood stubbornly in the way of ready alienation of land. But by 1290 restrictions were largely swept away as to freeholders by the Statute Quia Emptores. (18 Edward I,) and the rest by the abolition of royal fines in 1660. Meantime Parliament conceded the right to alienate lands by will in 1527.—1 Int. Enc., 347.

It may be mentioned that in the early years of the Christian era, Tacitus, describing the Germans, said: "The right of succession is recognized for children; but there was no right of making a will."—14 Enc. Brit., 261.

While England appears to have led in the modern practice of recording conveyances, the French were the first to keep judicial records, which have come to be of great importance as muniments of title. The Normans carried this idea into England, where it is perhaps most highly developed, except in the United States.—14 Enc. Brit., 878.

Judicial records under Anglo-American jurisprudence are important as showing judgments and decrees, the steps leading to executions, and orders of sale whether upon levy, or in foreclosure; or in partition among joint owners under statute or will or purchase from such. There are the liens of judgment or for labor and materials, the improvements in good faith by an occupying claimant, for purchase price, for the debts of a decedent, as well as of mortgage. A decree may directly vest title in one who ought to hold the legal title, or the court may direct the sheriff to execute a deed to carry out the conveyance that a defendant neglected to make. Or it may sustain or overthrow a will.

Then, too, judicial decree as affecting title, or becoming a muniment thereof, is important in actions of divorce, alimony, quieting title, and specific performances of contract, as well as in partition. In Kansas, for example, not only are the records of the district court of value, but those too of the probate court in estates of decedents, whether testate or intestate; in adoptions of minors, in guardianship of minors, insane, feeble-minded, drunkards, drug addicts, and all other kinds of incompetents. Nor may the convict who has been deprived of civil rights be over-looked in this list.

As the other offices are not judicial, we may not call their records decrees, yet among the muniments may be included not only what the register of deeds files in Kansas, but also various entries of the county clerk, county treasurer, and surveyor. Taxes, tax titles, and boundary lines or monuments are noted and recorded by these officials.

Where no written instrument has been executed, perhaps we may call the statute law, or even decisions of the supreme court, muniments of title, as in inheritance; and in what with us take the place of the old dower and curtesy of wife and husband. As has been suggested, letters testamentary and letters of administration, and orders of adoption, are to be found in the probate court. But many other papers of muniment may not be filed or recorded in any public office when first sought. Such are marriage settlements that are made to secure property to the wife and to the children if any, after marriage, and sometimes to secure property to the husband. (Standard Dictionary.) Also ante-nuptial agreements, especially such as are made in contemplation of marriage especially by persons who have property or children, or both, from a former spouse. Less frequently there are post-nuptial agreements which may include property settlements made when a couple can no longer agree.

Assignments for the benefit of creditors; both voluntary and involuntary bankruptcy need be noted. The written waiver of a spouse or consent to the making and terms of a will by the other spouse, whether entered upon the will or made in a separate instrument, is at first not a court document, but later when presented may become such. The widow's election to take property under the law or under the will becomes a paper of the probate court. The judgments and decrees of the federal courts within the state need also be regarded. In most features they are the same as similar acts of district courts of the state. If this paper is to a degree a comparative study of such instruments, it does not purport to be exhaustive. There may be other papers and records not here mentioned that are also muniments. Perhaps the ordinary affidavits attached to an abstract of title for supplying some omission in an instrument, or the correction of an error of a name, date, etc., may be so classed. Since the abstract of title very briefly sets out the vital features of the several instruments, it too by serving as a check fortifies title and thus becomes literally a muniment.

More definitely, an abstract of title is a brief and orderly statement of the original grant and all subsequent conveyances and encumbrances relating to the title and ownership of real estate. (Standard Dictionary.) Usually these instruments are publicly recorded, but another definition is: "A brief and orderly statement in writing of the successive conveyances and other events through which a person claiming to own a parcel of land derives his title." (1 Int. Enc., 47.) This definition needs be explained by including all instruments that assail, encumber, cloud, question or weaken the title of claimant. An abstract shows chiefly the record, but is not so limited. —1 Int. Enc., 47.

In England it is the custom to deliver to the buyer of real estate all previous deeds of conveyance. (14 Int. Enc., 878.) The law there requires an abstract to be supplied to the purchaser or mortgagee before closing the transaction. In the United States less care is taken to turn over former deeds, since usually they are already recorded; and the furnishing of an abstract is optional, except as directly agreed upon, but is customary and dictated by prudence always. (1 Int. Enc., 47.) Even on the plains we find persons from the eastern slope who want not only all prior deeds but who would like an "abstract deed," as they say, meaning an instrument of conveyance that within itself becomes an abstract of title and traces each successive step of conveyance from the most ancient grant down to the present deed. It describes the land much as generations are traced in the Scriptures, and recites that the tract is one patented by the State to A, and by him conveyed to B, by him to C, and so on, giving names of all parties, with dates, etc. It may have been the length of such deeds that led pioneers of the Mississippi Valley into simpler forms, as when an inquisitive visitor, perhaps a lawyer, asked a back-woodsman what his title was, and leisurely stepping to the fireplace in the log cabin, the settler took down a long rifle from the antlers, said laconically, "This is my title. Have you a better one?"

One form of title peculiar to the United States should be mentioned. It is title by estoppel. Where a deed warrants title which the grantor at the time does not possess, but which he subsequently acquires, the grantor cannot thereafter claim under his later title as against his grantee. (6 Int. Enc., 878. American Digest System, Estoppel, 35.) Then, too, additions and accessions to land, alluvion deposits and accretions from streams and waters become part of the adjacent lands and go with the original body. So with buildings and improvements or other structures erected.

Finally we come to the newest features as to title, namely, registration and insurance. Registration of deeds has for centuries facilitated search for encumbrances. Registration of titles which arose as a practical plan in Australia nearly a century ago aims to abolish search as making it unnecessary. (20 Enc. Brit., 342.) Whether it does so or can do so, is outside the scope of this paper. In Hesse-Darmstadt and Zurich all titles are registered. (Maine, Early Law and Custom, 353; 20 Enc. Brit., 342.) However, several English acts as early as Charles II required older deeds to be registered so that priority of right depended on order of registration. (20 Enc. Brit., 343.) Germany has a system under which a sort of ledger account of title is kept; perhaps a kind of double entry, with debits for all encumbrances, and clouds, and credits for all instruments that confer or strengthen title.—16 Int. Enc., 768.

Title insurance is very recent. The first company was organized in Philadelphia in 1876. Since 1885 this form of risk has developed rapidly. It

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Editorial Entries

THE MODERN TITLE COMPANY—IT'S PLACE IN BUSINESS LIFE.

No one ever has or does now, own a lot, a farm or any descriptive part of real estate as an actual piece of ground. It is only dirt worth so many dollars a load. If you dig a hole you would not own the lot, the ground, you would merely own a hole.

What one really does own and possess, and what he buys when he purchases real estate, and the real thing back of a real estate mortgage security—the actual security thereof is not the dirt itself, but the title to it, the right to use, own, possess and profit therefrom as the law prescribes. The title is the whole thing and has been throughout the history of the ages.

In olden times, when knights were bold, the right of ownership was acquired and the title to property maintained by force of might and the clash of arms. As civilization progressed, however, and since the advancement of mankind has been greatly influenced by the real property rights of man, this matter of title to real estate was one of the first things to receive consideration and be cared for by governmental agencies. A system of keeping record of the various changes and things altering the title to real estate was inaugurated, and we have in the United States to-day our public recording system, the best in the world, and which augmented by our present mediums of evidencing of title, the abstract and title insurance, it is possible for the people of this country as in no other to quickly and independently use their real estate as an asset.

Development of communities, the desire of everyone to own his own home, the breaking up of the large tracts which made more property owners and the general trend of modern life in these United States, together with the strenuousness of commercial life and requirements, brought about the necessity for the evidencing of the information of these records so that the prospective purchaser of real estate, or the investor in Real Estate Mortgage Loans could know the validity and security of the title to the land involved.

"A good man does not always mean a good title." Likewise an "honest man may have a bad title through no fault of his own." When real estate is bought, the purchaser should be more interested in the title than the land itself. The title represents the right to occupy without molestation, and the right to sell, alienate and devise by will, in short the right to possession and enjoyment.

The Court in a Texas case said, "If the purchaser will not look to the character of title by virtue of which he enters and improves land, but will close his eye and recklessly act on the presumption that anyone who will sign a deed has valid title, he has no one to blame but himself," and in Broom's Legal Maxims we find, "If the buyer buys land whereunto another has title, yet ignorance will not excuse him."

A few years ago the evidencing of titles was done almost entirely by a piece of handwork with which we are all familiar and known as the abstract. With this as evidence and the opinion of an attorney that the various transactions involved in the particular piece of real estate were regular and in due form, therefore being considered as safe and good, reliance was placed upon it. This is still the system used in many places and it has been efficiently developed. But advancement called for something more and title insurance is used now in practically every large city and entirely in some of the states. Title insurance is the ultimate for convenience and safety in the evidencing of titles, and has done the desired in making real estate a liquid asset.

The progress and advancement of anything, improvements and better schemes are always hampered and being intermingled with restrictions, rules and regulations forced upon them, or incurred by custom, habit and the sometimes welcome, more often unwelcome limitations placed upon everything by legislative and governmental bodies and agencies.

Real estate titles have been no exception, and they have had more or less of their share of entanglements and technicalities thrown into them by the aforesaid mediums.

This is particularly true in regard to laws because ever since the beginning of mankind, even before civilization there has been a distinction drawn between real and personal property, and the rights thereto. This was even recognized by the uncivilized man in barbaric times. It was further realized as a good thing and fostered through the different periods of advancement of mankind. Intelligence and knowledge has brought an increased realization upon us that people should be protected in their real property rights, real property meaning the immovable, the hard to get rid of, and personal meaning one's chattels or things easy to dispose of or sell.

One can sell and dispose of his loose things, stocks, bonds, moneys, by the mere signing of a name or throw of the dice, if so disposed, and the purchaser take away with him at the time, but it is harder to pass title to a piece of real property. And it will be ever thus, despite the wish of some today that real estate could be made a more liquid asset and the barter thereof expedited. Such would be a mistake, because the stability and character of real estate is the stabilizing influence in our economic life and the basis of sound investment.

On the contrary more and more restrictions will be placed upon it as time passes. This is because as said before, real estate has always been considered and distinguished as something to be kept more or less immobile, because society owes it to widows, minors, incompetents, unborn children and those suffering from some kind of disability to give them protection in their rights to property that might be left to them in order that some provision will be made for the preservation of their estates and care thereby provided for them.

So with these things bringing about a complexity of the title system it has also made a necessity for a way out of the labyrinth that the title might be evidenced and so handled as to make it easy and possible to use one's real estate. This has produced the modern title man, skilled in titles and all phases of them, who must not only have the mental preparedness, but the tools with which to work, which are represented by the equipment and records of the modern title company, which equipment, or plant, is a key to the public records, and all things pertaining to the history of land titles. In the building and maintaining of these records, the modern title company is a public servant and benefactor.

It is a well known fact that anything maintained and operated by politics and government is more or less, mostly more, inefficient, and this is particularly true in connection with anything as intricate and complicated as the public record offices. Those working in them and keeping them up are elected officials who know nothing about the work before going into office as a rule, and whose office force consists of politically favored, who know more or less, principally less, of the work at hand.

Here the title man, and title company of today, by having an efficient privately maintained system of records acts not only as the public's bookkeeper to their most valuable possession, real estate, but auditor thereof as well, finding errors, rectifying them, reducing them to a minimum all for the benefit of the property owner. The average person has no idea of the value of this. No title company in existence could rely upon the public records alone, and assume lasting responsibility for the work done through them as a medium of information alone. The public could not either.

All wealth is finally found to be directly or indirectly based upon real estate. Practically every business transaction is concerned in some way and emulates from something based upon real property security. This has made reliable and efficient evidencing of titles an imperative service in the commercial and business life of today. You can start a deal either to buy or sell a piece of real estate, to get a loan upon real estate security, to build a building, the foundation of which does not rest upon the land but the title thereto, to float a bond issue, to finance the operation of an enterprise, to take oil or minerals from the ground, and you get no further than the preliminary details in any of them until the title to the property involved is determined.

The deal is never closed until the title company has done its part, and here is where the modern title company has fulfilled a need and does a measure of service not fully realized by anyone outside of the title business.

They have been keeping the books to the records, and now they go a step further. They have found that they must disseminate that information, find ways to eliminate the mass of detail, pass upon the weight of technicalities, be skilled in knowledge and judgment to overcome little things appearing that might cause the deal to fail, and like the doctor, they must be speedy and direct and perform a successful operation.

This has brought about other departments, not only of direct bearing on title matters themselves, but for the convenience of the deal and the parties thereto. The modern title company in the larger cities has closing departments where men skilled in the knowledge of all of the details of any kind of a real estate transaction and the legal aspect of each will prepare the papers, act as a third party, and care for the mutual interests of the buyer and seller. These title companies take the responsibility of seeing that everything is all right—that all taxes, liens and claims of anyone against the premises are cared for. They settle disputes, many times bring buyer and seller together enabling the deal to be closed, find and suggest ways out and settlements of matters which otherwise would cause the deal to fail. They have escrow departments where papers, money and all other things may be left in trust, or paid out when without them there would be delay in the distribution of the funds. All details are handled by a responsible and disinterested agency, thereby eliminating the danger of mistakes, fraud and unscrupulous practices. They are sound financial institutions and very often can help in the financing of the project. The guaranteed mortgage is a protege and product of the initiative and efficiency of the modern title company.

In other words, progress and commerce decreed a necessity for an agency to show, interpret and manage the mass of details, technicalities, right of parties to real property, as shown by an evidence of title in order that business might proceed and be carried on, and the title companies were a response and fulfillment of this need.

Our present title system sometimes seems slow of motion and hampered by technicalities. It is the best in the world however, the only trouble and thing the matter with it being that it is abused and not used right. Its elasticity and privileges make it subject to misuse by incompetents and as long as any public stenographer, office girl or any one else in the world is free and can draw any kind of a document, even wills, contracts and other things juggling the title to real estate, and law makers will constantly pass more laws affecting titles to real estate, it cannot be free from some impediments.

However title companies can overcome these things if one will place his title problems in the hands of title experts, go to a title expert for things title, the same as he does to the doctor when sick, or to the watch-maker and not the blacksmith when his watch needs fixing, then title troubles will be eliminated. The title man of today is not only the evidencer of titles, but the corrector and doctor of them as well. The title man and title company of today have made it possible to make real estate as near a liquid asset as possible and devised the ways and means of expediting real estate transactions by methods to evidence title, cure defects, overcome technicalities and generally to do all things necessary to make it possible for the seller to turn his property to the purchaser, or borrow money upon it as security by seeing him through all the steps and things necessary to make the title pass.

Wherever a community has a competent and efficient abstracter or title company with the mental skill and record equipment to furnish service in title matters as demanded by business today not only in the mere evidencing of the title but to meet and overcome objections and requirements of examiners, to solve the technicalities, restrictions and impediments commonly thought of when one has a real estate transaction, real estate will be found to be a liquid asset and a commodity easy of barter.

Likewise the public has a needed service and friend. In places where the abstracters and title companies are operating on a plane of high efficiency and skill, there is very little complaint and "crabbing" about titles and the title system.

Title companies have therefore responded to the call of modern business, and are really ahead of the ordinary demand in facilities and service offered. They have enabled business to proceed in its strenuous ways of the present and are not just title companies but public agencies of benefit in many ways.

MUNIMENTS OF TITLE.

(Continued from page 7.)

is similar to other kinds of insurance. The contract undertakes to indemnify the insured in a specified amount against loss or damage by defect in title of real estate in which the insured has an insurable interest. Such insurance is unlimited in time, covers defects in the chain of title and also encumbrances. (16 Int. Enc., 768.) The policy is a sort of muniment of title. Such insurance results in an examination of title that is thorough. In a way it may be compared to the certificate of an abstracter in this state in the event he has failed to find or enter a defect or encumbrance. However, our courts have held that such liability of an abstracter is not that of a written instrument, and that all liability ceases at the end of three years from date of the certificate.—Provident Loan Trust Co. vs. Wolcott, 5 Kansas Appeals, 473.

Lastly, a tribute is due to the remarkable simplicity and brevity of one muniment as prescribed by the laws of Kansas since 1887, and never used. All that is necessary for a warranty deed is, "A. B. conveys and warrants to C. D. (describe the land) for the sum of (state amount.)" Add date, signature of grantor and acknowledgment. (Gen. Stat. 1915, Sec. 2050.) This does all that the most elaborate form can do. Probably its simplicity makes us all skeptical, since we have associated mystery and verbiage with legal documents.

Abstracts of Land Titles—Their Use and Preparation

This is the thirteenth of a series of articles or courses of instruction on the use and preparation of abstracts.

We will now consider and study what is probably the most important, at least the most used muniment and conveyance in titles—the deed. Deeds are the most used, the most useful, the most mis-used, the most abused kind of a conveyance. Improperly drawn deeds are probably the most common cause of the exasperating technicalities found in titles.

The dictionary definition of a deed is a written instrument used to convey land. Deeds are used for that but a numberless amount of other things too. A straight ordinarily drawn and intended Warranty Deed is a pure conveyance of a title—a transfer and warranty of the fee simple. However, deeds are used to do many other things —to correct title, to temporarily or permanently place property in the hands of a trustee for special uses; to serve as a mortgage evidenced by the explanation "This conveyance made for the purpose of securing indebtedness;" to put the ownership of the land in the name of a party for any special purpose as might be mentioned; to serve as a will by having a "life estate" clause in it—or in other words where one makes the conveyance to a certain grantee, but reserves the rents, profits and income therefrom during the life of the grantor.

A Warranty Deed is an actual conveyance of the title to another grantee, either without any "strings to it" or by any kind of a stated restriction.

No. 6.	William Johnson, Maggie Johnson, wife,	Instrument,	Warranty Deed.
		Dated,	Mar. 1-1915.
	to	Filed,	Mar. 2-1915.
		Acknowledged,	Mar. 1-1915.
	George S.Jones,	Before,	Carl A.Richardson,N.P.Lyon Co.Kas.
		Consideration,	$1.00
		Book 152, Page 27.	

Conveys:
the North West ¼ of Section 12, Township 23, Range 6, West, 6th.P.M.

Except: One certain mortgage of $2500.00 to The Fidelity Mortgage Co., which Second Party assumes as a part of the purchase price.

This illustrates the showing of a simple Warranty Deed with a plain statement relative to a mortgage. ALL EXCEPTIONS ARE SET OUT IN FULL.

No. 7.	George S.Jones, (status not given)	Instrument,	Warranty Deed.
		Dated,	Sep.12-1915.
	to	Filed,	Sep.21-1915.
		Acknowledged,	Sep.11-1915.
	Franklin B.Wellington,	Before,	E.W.Murphy, N.P.Reno Co.Kas.
		Consideration,	$10,000.00
		Book 159, Page 28.	

Conveys:
the North West ¼ of Section 12, Township 23, Range 6, West; 6th.P.M.

"Subject to a balance of $1100.00 upon a mortgage in the original sum of $2500.00, giveb to The Fidelity Mortgage Co., also interest and taxes now due at this date, all of which sums second party assumes."

(See Affidavit relative to status of grantor at No.8 hereof.)

This illustrates the showing of a Warranty Deed, where the status of the grantor is not given in the instrument, but an affidavit has been obtained correcting this, the affidavit being SHOWN IN FULL at the following entry, and reference made in this entry to it.

Likewise there is a discrepancy in the dates of the instrument, and the acknowledgment, attention being called to it by underlining them.

This also shows a proper explanation of an exception of a balance on an existing mortgage. As explained above, those drawing an instrument in such a case will sometimes refer to "a mortgage of $1,100.00" when they mean only the balance of a mortgage of an original larger amount. Such a reference will sometime cause trouble.

A Quit Claim Deed simply is a release of that individual grantor's right, title, claim or interest in the premises. Quit claim deeds are usually given to correct or perfect the title as to some specific thing, though in many cases they are actual conveyances but without any warranty from the grantor.

We are going to set out a few rules or very definite recommendations relative to the abstracting and showing of deeds:

1. THE GRANTING, WARRANTY AND HABENDUM CLAUSES ARE NOT GOING TO BE SET OUT IN FULL. The reasons for this are very obvious. Most deeds now are drawn on printed forms and conform to the statutes of the various states, and practically every deed used within the respective states fulfills the requirements and laws of that state. IT CAN AND SHOULD THEREFORE BE TAKEN FOR GRANTED THAT IT IS ALL IN DUE FORM UNLESS OTHERWISE NOTED. If not regular and sufficient, then the abstracter should call attention to the defects, but it is certainly better to only call attention to the few deeds having irregularities than to clutter and fill up an abstract by virtually setting out half of every conveyance.

2. ACKNOWLEDGMENTS WILL NOT BE COPIED IN FULL. This for the same reason as above. There is no use in doing that much work. Rather any irregularities will be noted. It will be taken for granted that they were sufficient and regular unless noted. The noting that the notaries seal was affixed will likewise not be mentioned, because a statement will be made in the certificate that "All acknowledgments are in due form, regular and acknowledging officers seal affixed as shown by record UNLESS OTHERWISE NOTED."

3. ALL EXCEPTIONS IN THE DEED, ALL SPECIAL RESTRICTIONS, CLAUSES, NOTATIONS, AND OTHER THINGS SET OUT WILL BE SET OUT IN FULL AND VERBATIM IN THE ENTRY IN THE ABSTRACT.

4. THE HOUR OF FILING WILL NOT BE NOTED. Unless, however, there is special reason for doing so, such as a number of instruments on the same land having been filed on the same day. Even this makes no material difference since in most states the law of "after acquired title" really holds.

5. ALL IRREGULARITIES AND DIFFERENCES IN THE SPELLING OF THE NAMES OF THE GRANTORS IN THE SEVERAL PLACES IN THE DEED WILL BE NOTED. In abstracting the deed, the abstracter in his form will use the way of signature in showing from whom the deed is—the grantor. This will follow with marital status shown as given in the body. Then if there is any difference in the spelling or mentioning of the

No. 8

State of Oklahoma,
Texas County, SS. Mark S.Vermillion, of lawful age, being first duly sworn deposes and says: that he was well acquainted with George S.Jones, grantor in a certain deed dated Sep.12-1915, recorded in Book 159, Page 28, records of Reno County, Kansas, conveying the North West ¼ of Section 12, Township 23, Range 6, West, Reno County, Kansas, to Franklin B.Wellington and affiant knows that the said George S.Jones was single and unmarried at the date of the execution and acknowledgment of said deed.

Mark S.Vermillion,

Subscribed and sworn to before Francis Williams, N.P.Texas Co.Okla., June 15-1920.

Filed, June 20-1920, recorded in Missc.17, Page 62.

This illustrates the showing of an affidavit relative to grantor being single. ALL AFFIDAVITS WILL ALWAYS BE SHOWN IN FULL. It will be noted that the affiant refers to both the date of the instrument itself and the acknowledgment. This is essential, because the acknowledgment might have been taken sometime after the date given the deed, and since the acknowledgment is construed in court decisions to hold, it is also necessary for such an instance to state that he was also single at that date.

No. 9.

* Frank B.Wellington,
Mamie Wellington, wife,

to

Arthur Stewart,

Instrument,	Warranty Deed.
Dated,	Apr. 2-1916.
Filed,	Apr. 4-1916.
Acknowledged,	Apr. 3-1916.
Before,	C.H.Bailey, N.P. Reno Co.Kas.
Consideration,	$1.00
Book 162, Page 24.	

Conveys:
the North West ¼ of Section 12, Township 23, Range 6, West, 6th.P.M.

* Signed, Frank B.Wellington, Mamie Wellington.
Body says, "Franklin B.Wellington and Mamie Wellington, parties of the first part," but does not state marital status.
Acknowledgment says, "came Frank B.Wellington and Mamie Wellington, husband and wife,"

(See affidavit at No.10.)

This illustrates the showing where the grantor's name appeared different ways in the signature, body and acknowledgment, and other discrepancies, such as the status not being given in the body.

As the grantor's name is also different from that when he was grantee, an affidavit was secured, and reference is made to it appearing at the next entry.

No. 10

AFFIDAVIT of IDENTITY.

State of Kansas,
County of Reno, SS:
Ed M.Moore, of lawful age, being first duly sworn, deposes and says: that he was well acquainted with Franklin B.Wellington, to whom George S.Jones conveyed the North West ¼ of Section 12, Township 23, Range 6, West, Reno County, Kansas, by Warranty Deed dated, the 12th day of Sept. 1915, recorded in Book 159, Page 28,and with Frank B.Wellington who conveyed said above described property to Arthur Stewart, by Warranty Deed dated the 2nd day of April 1916, recorded in Book 162, Page 24, and affiant knows that the said Franklin B.Wellington and the said Frank B. Wellington is one and the same person, notwithstanding the discrepancy in the names.

Ed M.Moore,

Subscribed and sworn to before G.W.Gregory, N.P.Reno County, Kansas, Apr. 10-1916.

Filed, Apr.20-1916,recorded in Miss.8, Page 336.

This is an example of an affidavit of identity, one of the most called for and essential instruments of correction in titles.

grantors in either the body and acknowledgment or both, the abstracter will so note.

6. THE DESCRIPTION WILL BE WRITTEN OUT IN EVERY DEED—AND IN EVERY OTHER CONVEYANCE OR INSTRUMENT IN FACT. The surest sign of poor and lazy abstracting is to make a notation where the description of the land to be conveyed is mentioned, merely saying "CONVEYS: Same land as shown at No. 13 hereof." Never do such a thing—write it out in every case. Describe the land in each entry.

A simple, regular deed is the easiest of all to show on the abstract. But then also comes the one full of exceptions and restrictions, notations, explanations, and maybe signed by a large number of persons, with several acknowledgments, and with the names never mentioned the same in any two places in the deed.

Such complicated deeds require skill and dispatch to show properly.

Before setting out the various things found in deeds, it might be well to first consider the many common things not done properly in deeds. One often found is where the marital status of the grantors is not stated. If but one, then the statement should be made, "single," "widow," "unmarried," or whichever applicable. If by a man and wife, then by saying, "husband and wife." So many deeds are drawn where the status of the grantor or grantors is not mentioned. This is very necessary in practically every state.

Most states have women's dower rights, and it is absolutely necessary that in any conveyance—either deed, lease or mortgage—that the consort join. There are a few states however where each has their separate property rights, and can convey without the other. Conveyancers in those states however should remember that such is not the case but in a very few states—that in the majority both husband and wife should join, and that in drawing deeds, mortgages, etc., the laws of the state wherein the property is located governs—not the laws where the deed is drawn or executed. It is nothing for a man temporarily in a state where each has separate property rights to have a notary public, public stenographer, real estate agent or other "expert" draw a conveyance for land in Kansas or some of the other states where both must sign and later find it was invalid because both did not.

No one should draw a conveyance for land in another state without knowing the form of deed necessary, and the structure of acknowledgment required.

Another common carelessness, and the one making so many affidavits of identity necessary is for someone to draw a deed from one to another, without having found out and posted himself on how the grantor's name appeared in his deed. Thus, if it is deeded to William R. Jones, and the one drawing the deed from him to the new purchaser does not acquaint himself with this fact but merely has his name appear for grantor as Wm. Robert Jones, an affidavit will sometime be necessary. This is happening more every day, because in this day of high pressure, the average real estate broker will get the name on the preliminary sale contract, draw all the papers and have the deal nearly closed before the abstract is brought to date and the actual status of the title learned, much less the mere

knowledge of how the seller's name appeared in his deed.

Another thing in this respect to watch is to see that the parties sign their name as mentioned in the body and acknowledgment of the new deed, which should after all be the way it should be and was deeded to them. People will sign their name any old way but the right one and the one they are told to. You can tell them to sign it "as in the top of the deed—Mary R. Jones" and unless you watch her (or him) they will sign it some other way —Ruth Mary Jones, or Mrs. Wm. R. Jones.

No woman should sign her name to any document as "Mrs. George R. Jones." She should sign by her given and surname names, with a middle initial if desired.

Another cause—and one of the hardest of the technicalities often found to cure—is a mis-reference or statement about exceptions to mortgages. Sometimes there will be two mortgages against a property—one for $200.00 and another for $800.00 and the reference and exception in the deed will read "Except a mortgage of $1000.00." Or other times there will have been a mortgage in the amount of $1800.00, and some has been paid until the remaining unpaid balance is say $1240.00. The exception will read "Except mortgage in the sum of $1240.00 which second party assumes as part of purchase price."

The courts have held that mention of a mortgage of an amount is notice, and puts the purchaser upon his guard. It is very hard—mostly impossible in later years—to find anyone acquainted with the facts to explain such a thing.

Therefore be sure of the record—be sure of what you want to say. Identify and tie up, recognize the desired thing. Reference should be made to "Except a certain mortgage of record in the sum of $1000.00 recorded in Book 156, Page 201, which party of the second part assumes as part of purchase price." Or, "Except unpaid balance of $1240.00 on a mortgage in the original amount of $1800.00 which second party, etc." Or, "Except two certain mortgages, one for $200.00 and another of $800.00 upon said premises, etc."

It might also be well to call attention to the fact that many times a reference will be made to a mortgage "to such and such a mortgage or loan company." One should get the name right. It is a common mistake to make reference to a certain mortgage given to some loan company, mentioning the name of the loan company's local agent, when the record of the mortgage may show it to run to some life insurance company or the company for whom the local company is agent.

Another common cause of mistake is in wrong and erroneous descriptions. This is especially true where some one is trying to divide a larger tract, selling off a part, and an inexperienced and incompetent person will figure out and make the new description.

These many little and common place mistakes and irregularities can be and are usually "cured" or explained satisfactorily by affidavits. Therefore we will show examples of the setting out of deeds in an abstract, with irregularities as mentioned above, and the various ways of explaining them.

A reference should be made in every instrument, i. e. at the entry on the abstract, to the affidavit following, explaining or curing the defect.

Another rule for good abstracting will be mentioned here in advance, ALL AFFIDAVITS, AND OTHER SPECIAL AND MISCELLANEOUS INSTRUMENTS SHOULD ALWAYS BE COPIED OUT AND SHOWN IN FULL.

No 11 (1) Arthur Stewart,
(2) Rose Stewart, wife,

to

Sarah J. Pennock, and
Sam R. Pennock, husband and wife,

Instrument, Warranty Deed. (Life Estate)
Dated, Aug. 5-1918.
Filed, Aug. 28-1918.
Acknowledged, (1) Aug. 5-1918.
(2) Aug. 10-1918.
Before, (1) Robt. M. Brehm N.P. Reno Co. Kas.
(2) T.E. Arbuckle, N.P. Reno Co. Kas
Consideration, $1.00

Book 164, Page 28.

Conveys:
the North West ¼ of Section 12, Township 23, Range 6, West, 6th P.M.
(and other land)

Except mortgage of $700.00 appearing of record.

Abstracter's Note: There is no mortgage in the amount of $700.00 appearing of record at the date of this instrument. However, this conveyance includes other land than that in caption hereof, described above, and upon which there appears a mortgage of $700.00 at the date hereof.)

"The parties of the first part hereby expressly reserve and retain all the rents, issues and profits from said land during their lifetimes."

The showing of this deed illustrates several points, any and all of which mark good abstracting.

First it is a deed containing a Life Estate Clause, and the abstracter has given warning of it when stating the nature of the instrument.

It likewise has more than one acknowledgment, and gives a good method of showing the different acknowledgments for their respective grantors.

The Life Estate Clause is set out verbatim.

The exception is this particular instrument refers to a mortgage of $700.00, and the abstracter notices that there is no mortgage of this amount appearing of record, against this particular piece of land. However, the deed conveys another tract of land, and the abstracter states this fact by saying "and other land." As this exception to a $700 mortgage is likely to cause trouble, the abstracter looks up the record of the other land included in this deed, discovers that there was a mortgage of that amount upon it at that time, and so states, thereby explaining the matter.

TEXAS MEETING, JUNE 29-30.

The 1925 Convention of the Texas Abstracters' Association will be held in Houston, on the dates mentioned at the Rice Hotel. The Texas Association always has a good program and every member should be there.

J. W. Woodford, Treasurer of the American Title Association, will attend as its representative, and Perry Bouslog of New Orleans, Member of the Executive Committee of the American Title Association, will be a guest of the organization and take part in the program.

WISCONSIN MEETING ON JULY 13.

President Emil Lenicheck announces the above as the date of the 1925 Convention of the Wisconsin Title Association. It will be held in Milwaukee, and this being the second convention since the reorganization of this state association, there should be a large attendance.

The initial meeting held last year was marked by a fine program and a mighty enthusiastic crowd.

The Executive Secretary will attend as the representative of the American Title Association.

NORTH DAKOTA MEETING IN FARGO.

The 1925 Convention of the North Dakota Title Association will be held in Fargo on July 15th and 16th. This Association always has a good attendance at its meetings and a mighty fine program. The abstract contest is one of the features. Richard B. Hall, Executive Secretary of the American Title Association will attend as its representative.

NEW YORK STATE TITLE ASSOCIATION MEETING, JUNE 26-27.

The Annual Convention of this State Association will be held on the above dates, and at either Lake George or Coppers Town.

Invitations have been sent to the members of the Pennsylvania, New Jersey and Connecticut Associations to attend.