Title News

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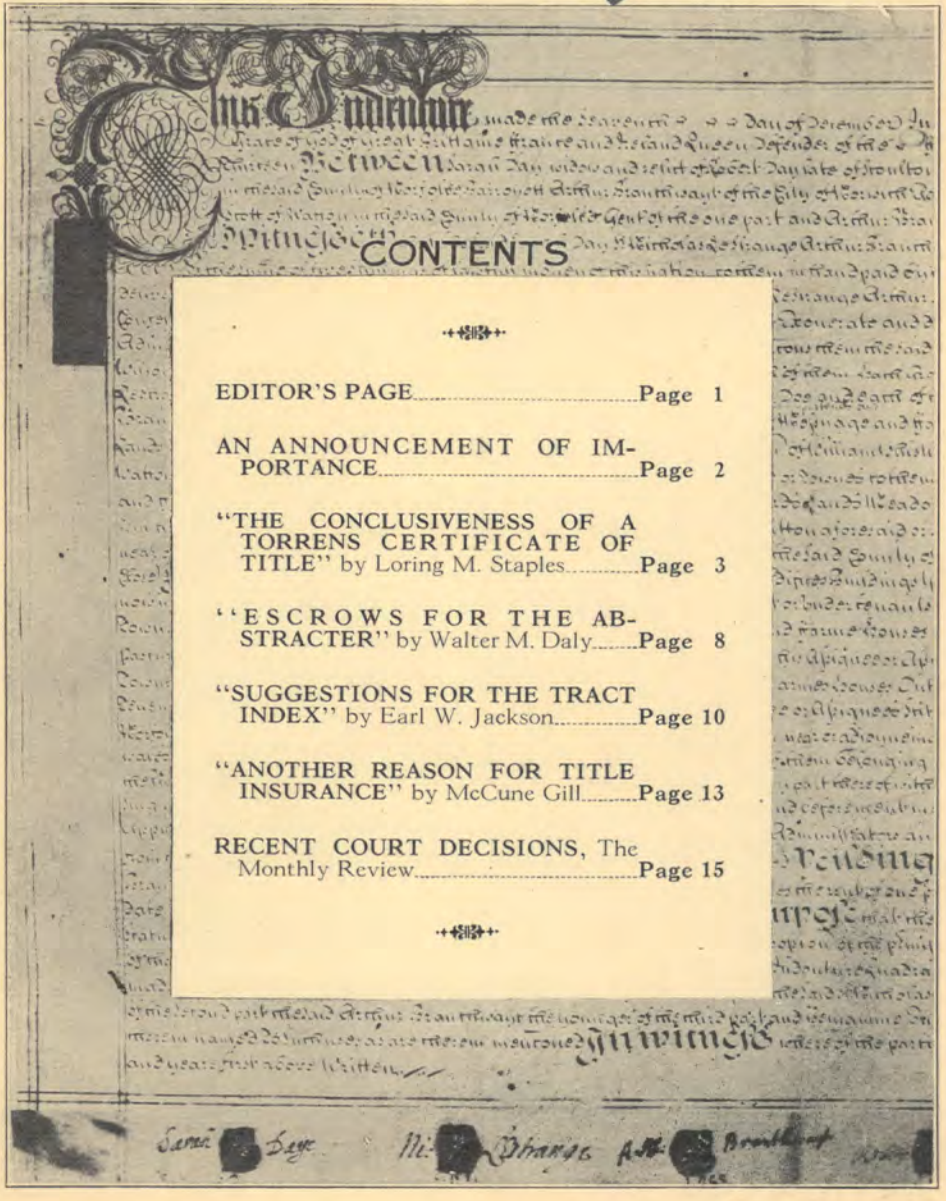
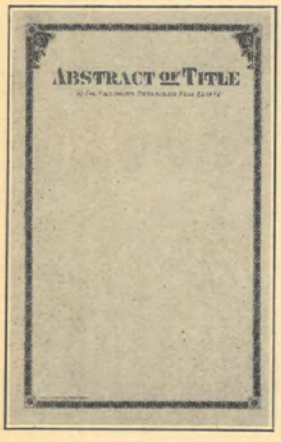


CONTENTS

NEW DESIGNS

in Abstract Covers, Caption Sheets, Index Sheets and Certificates



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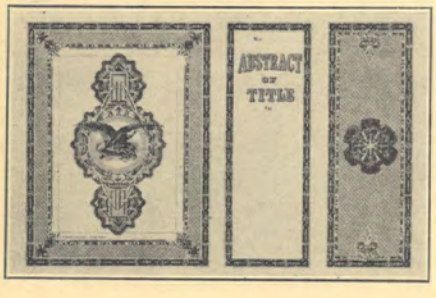

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TITLE NEWS

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Vol. 7 OCTOBER, 1928 No. 10

Editor's Page

MANY words of commendation and enthusiastic expressions were received over the Proceedings of the Seattle Convention. This tickles Ye Editor because he can now say "I told you so."

It was the most constructive and practical program ever presented. Every paper or talk was by an authority and they all dealt with things title folks should hear about. No one in the business can afford not to read and study the September TITLE NEWS. It's great stuff—every word of it.

IT WILL only be a short time now until the Mid Winter Meeting. This will be an event of great importance. The association is working on a number of things—is well along in the conduct of a definite program of events that will materially change the welfare and efficiency of the business.

To accomplish this, it is absolutely essential that there be great support from every member and united effort and cooperation between the national and every state association. Every member of the association is urged to be there. Every state association official should be there.

THERE is some little pride in being able to present to you in this issue, the feature article on the fallacies of the Torrens System as presented by Mr. Staples. This gives an authentic, authoritative and unbiased explanation, which with the citations makes available a wealth of material and references.

Mr. Staples is of the Minneapolis Bar and associated with the firm of Cobb, Wheelwright, Hoke & Benson. The editor wishes to express to the author, his thanks and appreciation of the generous consideration shown by him in connection with the permission to print it here.

IT IS surprising to note the keen interest abstracters are showing in the matter of escrows. The discussion of this subject at the Seattle meeting and the comments received on the article of Mr. Dart that appeared in the Proceedings show it is a timely subject.

Here is another and of such a nature and treatment of the subject as to make it unusually appropriate to follow the other. It is by one who knows and all the more interesting because written by a former president of his state association and the present president of the national association, Walter Daly.

ABSTRACTERS are always interested in suggestions for the plant, abstract books or indexes. Earl W. Jackson, of the Indiana Title & Loan Co., South Bend, explains how they do it, and gives valuable information and suggestions.

QUITE some time ago there appeared in TITLE NEWS, an interesting story of wills, and excerpts from some of the "funny" ones. It was prepared by William A. Gretzinger, title officer of the Republic Trust Co., Philadelphia.

He has compiled another and it appears in this issue. Enjoyable reading.

WE HAVE come to anticipate—really wait for articles by McCune Gill. He takes us into the unusual and rarely trodden phases and places, such as one unusually equipped can do.

He knows the actual law, as well as the theory and its history, and enjoys observing its whims and fancies. He has on other occasions referred to the different roads traveled by the courts in their deliberations and their reversals. Here is shown how these differences make for a title insurance argument.

THE ABSTRACT MAN

My books are always up to date
From back when time began,
What they show is true as fate
I'm the Abstract Man.

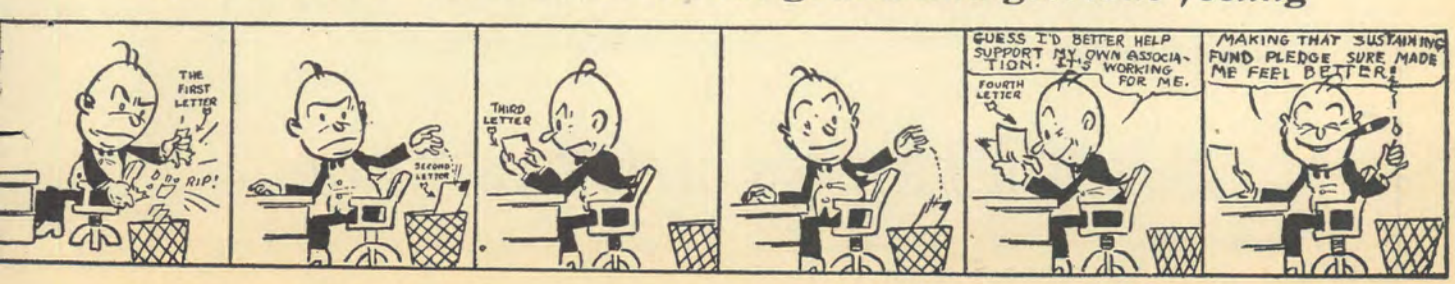
I read your loves and hates and fears,
As thru my books I scan,
I read of smiles and scowls and jeers,
I'm the Abstract Man.

There may be errors in my plant,
Find them if you can,
I'll lay a little bet you can't
I'm the Abstract Man.

By Heck.

(Hugh Ricketts in "Oklahoma Titlegram.")

Do it NOW! Then observe that grand and glorious feeling



The Annual Mid-Winter Business Meeting and Joint Conference

Of State and National Association Officials

Held by

The American Title Association

Will Convene in Chicago, Ill.

January 18-19, 1929

Headquarters - - Bismarck Hotel

The purposes of this meeting are to increase the efficiency and advance the welfare of the title business by considering its needs and problems, and to promote interest in and increase the power and practical endeavors of the state and national title associations. With these things done, a plan of procedure can be determined, the means provided and such an impetus given the work as will accomplish the necessary and desired results.

The subjects included in the tentative program indicate this will be a most interesting and practical meeting and the results from it will be most beneficial to the business and the service it renders.

Everyone interested in the problems, affairs and welfare of the abstract and title insurance business is asked to attend, and come prepared to take part.

Special consideration will be given to things that will make the state and national title associations of more value and use. Everyone interested in their existence, activities and possibilities is invited. State officials are particularly urged to make every possible effort to be present.

This is an important event. Such meetings influence and direct the advancement and destiny of the title industry—your business. You should have a voice and take a part in its undertakings.

Representatives of the title business from nearly every state in the country will be present.

YOUR PRESENCE IS DESIRED!

The Conclusiveness of a Torrens Certificate of Title*

By Loring M. Staples, Minneapolis, Minn.

THE primary purpose of the so-called "Torrens System" of registering title to real estate has been defined to be the "creation of an indefeasible title in the registered owner, and the simplification of the transfer of land."[1] An indefeasible title, represented by a certificate conclusive of the owner's rights as against the world, and upon which purchasers could conclusively rely, would be an ideal well worthy of accomplishment, and examination of the various Torrens titles act in force in this country and the British colonies leaves no doubt but that the framers had such a purpose in mind.[2] The Minnesota act,[3] for example,[4] provides that after the expiration of a period of six months[5] from the date of granting the decree of registration, the decree:

"Shall bind the land described therein and shall forever quiet the title thereto, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the summons, or included in the phrase, 'all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein,' and such decree shall not be reopened, vacated or set aside, by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding at law or in equity for opening, vacating, setting aside or reversing judgments and decrees, except as herein especially provided."[6]

And the certificate of title, or the owner's duplicate thereof:

"Shall be received in evidence in all the courts of the state, and shall be conclusive evidence of all the matters and things contained therein."[7]

The original act[8] went no further. It provided no method of preserving the rights of those of whom no jurisdiction had been obtained, or of those deprived of their interests through fraud, Minnesota being almost alone among all the states and British and American colonies which have adopted the Torrens system in omitting all mention of fraud.[9] Apparently, then, the purpose of the Minnesota statute was to make the decree and certificate of registration absolutely indefeasible upon the expiration of a short statute of limitation, and to relegate the unjustly deprived to consolation from an "assurance fund."[10] This statute was declared constitutional by the unanimous opinion of the supreme court of Minnesota within a year after its passage,[11] and, with one exception, a similar conclusion has been reached by the courts of other states where Torrens Acts have been enacted.[12] Yet it was pointed out by the Minnesota court in rendering its opinion at that time that the statute could not operate to divest the rights of claimants in possession not personally served with notice of the registration proceedings,[13] and a few years later the same court held that as long as the title remained registered in the name of one guilty of fraud in procuring registration his decree and certificate might be set aside in an action brought by the defrauded party, the latter being only required to act within a "reasonable time."[14] Subsequent to this decision, the Minnesota statute was amended to provide for the impeachment of titles fraudulently registered.[15]

Lack of jurisdiction and fraud, therefore, are two possible defects that may prevent a Torrens certificate from being conclusive. It is obvious, also, that the aura of indefeasibility which surrounds a Torrens certificate will constantly tempt the unscrupulous to employ the system for turning bad titles into good ones, and the presence of an examiner of titles,[16] whose business it is to prevent such occurrences, has not, and probably will not, in the future,

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*Reprinted by permission of the Author and the Minnesota Law Review. This article originally appeared in the February, 1924, issue of that publication.

[1]Baart v. Martin, (1906) 99 Minn. 204, 207, 108 N. W. 945, 116 A.S.R. 394. "The purpose of this statute is to create a judgment in rem perpetually conclusive. Other proceedings in rem may determine the status of a ship or other chattel that is transient; this legislation provides for a decree that shall conclude the title to an interest that is to be as lasting as the land itself." Smith v. Martin, (1910) 69 Misc. 108, 111, 124 N.Y.S. 1064. "Besides clearing and registering the title and facilitating its transfer, the Torrens System practically guarantees, in behalf of the state, that the holder of a registered certificate of title has an absolute and indefeasible interest which can never be questioned on any ground whatever." A. H. Robbins, The Torrens System of Land Registration, (1902) 54 Cent. L. Jour. 282, 290.

[2]Torrens acts are in force in the following states: California, Stats. 1897, p. 138, amended and redrafted, Stats. 1905, p. 1932, Henning's Gen. Laws, Cal., (1920) Act 5194; Colorado, Laws, 1903, ch. 139, Mills Ann. Stats., secs. 856-957; Georgia, Acts, 1917, p. 108, Park's Ann. Code, (1922 Supp..) Title 2, ch. 8; Illinois, Laws, 1897, p. 141, R.S. 1921, ch. 30; Massachusetts, Gen. Laws, 1921, ch. 185; Minnesota, Laws, 1905, ch. 305, G.S. 1913, secs. 6868-6950; Nebraska, Laws, 1915, ch. 225; New York, Laws, 1908, ch. 444, Real Prop. Law, 1909 art. 12; North Carolina, Laws, 1913, ch. 90, C.S. 1919, vol. I, ch. 47; North Dakota, Laws, 1917, ch. 235; Ohio, Gen. Code, 1921, secs. 8572-1, 8572-118; Oregon, Laws, 1901, p. 438, C.L. 1920, secs. 9940-10052; South Dakota, Laws, 1917, ch. 368, R.C. 1919, secs. 3060-3143; Tennessee, Acts, 1917, ch. 63, Ann. Code, 1917, secs. 3793a3-3793a96; Utah, Laws, 1917, p. 51, C.L. 1917, secs. 4920-5008; Virginia, Laws, 1916, ch. 62; Washington, Laws, 1907, p. 693, C.S. 1922, secs. 10622-10726. Some of these, however, only provide for the registration of land in certain designated counties. Practically all of the British colonies have Torrens Title acts. A modified type is in force in England itself. See J. E. Hogg, Australian Torrens System, (London, 1905); Registration of Title to Land throughout the Empire, (London, 1920).

[3]The original act is found in Minn.. Laws, 1901, ch. 237; amended, Laws, 1903, ch. 234. The act was redrawn in 1905 (Laws, 1905, ch. 305) and has been retained in practically this form in Minn., G.S., 1913, secs. 6868-6950. Land in any county may now be registered: Laws, 1909, ch. 183, sec. 2.

[4]For obvious reasons, the Minnesota Torrens act has been used as an example throughout this article. Unless otherwise stated, statutory references in subsequent notes are to the Minnsota statute.

[5]It was sixty days in the original statute. Minn., Laws, 1901, ch. 237, sec. 29.

[6]Minn., G.S., 1913, sec. 6889.

[7]Minn., G.S., 1913, sec. 6903.

[8]Minn., Laws, 1901, ch. 237.

[9]Baart v. Martin, (1906) 99 Minn. 204, 108 N.W. 945, 116 A.S.R. 394. "An examination of the Torrens laws of the different states and colonies discloses the fact that those of Minnesota and the Fiji Islands only contain no express exception in cases of fraud"—per Elliott, J., p. 207. But it appears that there are provisions even in the Fiji Islands for protecting the interests of the defrauded. See W. C. Niblack, An Analysis of the Torrens System of Conveying Land, (Chicago, 1912) p. 217, citing section 14 of the Fiji Act.

[10]"Assurance Fund—Investment—All money received by the registrar under the provisions of the preceding section shall immediately be paid by him to the county treasurer as an assurance fund. . .

"Damages Through Erroneous Registration—Action—Any person who, without negligence on his part, sustains any loss or damage by reason of any omission, mistake or misfeasance of the registrar or his deputy, or of any examiner, or of any clerk of court, or of his deputy, in the performance of their respective duties under this law, and any person, who, without negligence on his part, is wrongfully deprived of any land or of any interest therein by the registration thereof, or by reason of the registration of any other person, as the owner of such land, or by reason of any mistake, omission or misdescription in any certificate of title, or in any entry or memorial, or by any cancellation, in the register of titles, and who, by the provisions of this law, is precluded from bringing an action for the recovery of such land, or of any interest therein, or from enforcing any claim or lien upon the same, may institute an action in the district court to recover compensation out of the assurance fund for such loss or damage." Minn.. G.S., 1913. secs. 6942, 6943.

[11]State ex rel. Douglas v. Westfall, (1902) 85 Minn. 437, 89 N.W. 175. 57 L.R.A. 297, 89 A.S.R. 57, 54 Cent. L. Jour. 290.

[12]Robinson v. Kerrigan, (1907) 151 Cal. 40, 90 Pac. 129, 121 A.S.R. 90, 12 Ann. Cas. 829; White v. Ainsworth, (1917) 62 Colo. 513, 163 Pac. 959, Ann. Cas. 1918E 179; People ex rel. Deneen v. Simon, (1898) 176 Ill. 165, 52 N.E. 910, 44 L.R.A. 801, 68 A.S.R. 175; Tyler v. Judges of Registration, (1900) 175 Mass. 71, 55 N.E. 812, 51 L.R.A. 433, writ of error dismissed on jurisdictional grounds only, (1900) 179 U.S. 405, 21 S.C.R. 206, 45 L.Ed. 252; Drake v. Frazer, (1920) 105 Nebr. 162, 179 N.W. 393, 11 A.L.R. 766; Ashton-Jenkins Co. v. Bramel, (1920) 56 Utah 587, 192 Pac. 375, 11 A.L.R. 752. Contra: People ex rel. Kern v. Chase, (1895) 165 Ill. 527, 46 N.E. 454, 36 L.R.A. 105 (old act); State ex rel. Monnett v. Guilbert, (1897) 56 Oh. St. 575, 47 N.E. 551, 38 L.R.A. 519, 60 A.S.R. 756 (old act).

[13]State ex rel. Douglas v. Westfall, (1902) 85 Minn. 437, 445, 89 N.W. 175. 57 L.R.A. 297, 89 A.S.R. 57, 54 Cent. L. Jour. 290.

[14]Baart v. Martin, (1906) 99 Minn. 204, 108 N.W. 945, 116 A.S.R. 394.

[15]The last line of sec. 49, Minn., Laws, 1905, (Minn., G.S., 1913, sec. 6918) provides: "In all cases of registration which are procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title." Although found in a section dealing with the transfer of registered land, this presumably also applies to initial registration.

[16]Minn., G.S., 1913, sec. 6879. His duties are set forth in the subsequent section.

entirely eliminate such a practice.[17] Sooner or later, by some hook or crook, a bad title will be registered, and the decree of registration, will, in turn, be attacked by the rightful owner of the land.

It is possible, although improbable, (as the Minnesota court has pointed out[18]), that want of jurisdiction may exist alone, without the presence of fraud. The Minnesota statute contains the following provisions relative to jurisdiction for registration proceedings:

"The summons . . . . shall be served in the manner now provided by law for the service of a summons in civil actions in the district court, except as herein otherwise provided . . . . . It shall be served upon all persons who are not residents of the state, and upon all other persons or parties unknown claiming any right, title, estate or interest in the real estate described in the application herein by publishing the same in a newspaper printed and published in the county wherein the application is filed, once each week for three consecutive weeks.

"The clerk shall also, within twenty (20) days after the first publication of the summons, send a copy thereof by mail to all defendants who are not residents of the state and whose place of address is known to applicant . . . . . Other or further notice of the application for registration may be given in such maner, and to such persons as the court or any jury thereof may direct.[19]"

It is to be observed that only *known, resident* claimants need be personally served, and that it has been held perfectly constitutional to obtain jurisdiction of *unknown resident* and *known or unknown non-resident* claimants by publication.[20] Consequently, if we exclude fraud from our consideration, there are few possible border line situations where want of jurisdiction may operate by itself to invalidate a decree; as, for example, where an unknown claimant in possession of the land to be registered is not served personally with notice. In such a case, the possessor's rights are not conclusively terminated by the decree.[21] An equally rare case would be where the certificate, through error, described more land than was sought to be registered. Such a certificate could hardly be conclusive.[22]

Where an initial decree of registration is concerned, the questions of fraud and want of jurisdiction are usually present together. For example, A wishes to register his title to Blackacre. He fears that B, a resident claimant, may have a superior title, and consequently by fraudulent means prevents B from being a party to the proceedings and no personal service of notice of them is made upon him. A obtains a certificate of title. In such a situation the law is clear that B may attack A's title and have it vacated, if he acts within a reasonable time;[23] he may even attack it collaterally, if the want of jurisdiction appears affirmatively upon the face of the records in the office of the registrar of titles.[24] Inasmuch as want of jurisdiction is in itself a fatal defect to the validity of registration proceedings, it is unnecessary at this time to entertain the question of what acts constitute fraud.

The third, and most involved situation is where no question of want of jurisdiction is involved, but fraud is present. For example, A wishes to register his title to Blackacre. B also has an interest in the premises, but A persuades him not to appear in the proceedings, although he has been served with notice of them, and promises to see to it that B's interest, let us say that of a partner, appears on the certificate of registration. A then obtains a decree and certificate naming him (A) as the owner in fee without mention of B. This is obvious fraud, and A cannot rely on his certificate of title as indefeasible as against B.[25] Registration is no defense, likewise, where land has been transferred in fraud of creditors.[26] But, on the other hand, if there is jurisdiction of B, and B loses his rights in the land because of mistake or negligence on his own part, and not because of any influence A has brought to bear, A's title is indefeasible.[27]

It is necessary at this point to define what is meant by the term "fraud." We have seen that jurisdiction for the purpose of registration proceedings can constitutionally be obtained as to unknown residents or known non-residents by publication. Suppose A, who wishes to register his title, has no actual notice of B, who is a resident and claims an interest in the land, but could have been aware of his existence by the exercise of reasonable diligence, or was with notice of facts that should have put him on inquiry that would have disclosed B's interest. Or assume a much commoner situation: that A is aware of B and his interest and is also aware that B is residing in another jurisdiction at an unknown address and who, it is safe to assume, will never read the notice published in some local newspaper of limited circulation that would inform him that the land is being registered. Is A tainted with fraud in case he registers the land to the exclusion of B under either of the above sets of circumstances? It is apparent that if a duty of diligent inquiry is to be imposed upon the applicant for registration, and if notice by itself, actual or constructive, of outstanding claims can taint him with fraud, decrees of registration will be subject to constant danger of attack and will be no more conclusive than judgments in actions to quiet title. Needless to say, such a result would clearly be at cross purposes with the obvious intent of the Torrens System to have the decree of registration as conclusive as possible, and this intent should have strong weight with the courts. The Privy Council has settled this question, as far as the British colonies are concerned, in what would appear to be a most logical way, holding that the fraud necessary to permit impeachment of a registered title must be actual fraud; that is, conduct amounting to actual dishonesty in obtaining registration; not what is called constructive or equitable fraud. It must be "brought home" to the party whose title it is sought to impeach.[28] An abstract definition of this sort has not as yet been given by any American court,[29] as lack of jurisdiction is generally coupled with fraud in American cases and the decision turns upon this.

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[17]"Unfortunately, the act has been advertised, and is being advertised by some attorneys seeking employment, as a means of making bad titles good, all of which has reflected upon this system of registering titles." Petition of Sherman, (1919) 106 Misc. 244, 246, 175 N.Y.S. 627.

[18]State ex rel. Douglas v. Westfall, (1902) 85 Minn. 437, 89 N.W. 175, 57 L.R.A. 297, 89 A.S.R. 57, 54 Cent. L. Jour. 290.

[19]Minn., G.S., 1913, sec. 6883.

[20]American Land Co. v. Zeiss, (1911) 219 U.S. 47, 31 S.C.R. 200, 55 L.Ed. 82; Mills v. Denver & R. G. Ry. Co., (1912) 198 Fed. 137; State ex rel. Douglas v. Westfall, (1902) 85 Minn. 437, 89 N.W. 175, 57 L.R.A. 297, 89 A.S.R. 57, 54 Cent. L. Jour. 290; Hunt v. Hay, (1915) 214 N.Y. 578, 108 N.E. 851. See also cases cited in note 12, supra, all dealing with this question.

[21]State ex rel. Douglas v. Westfall, (1902) 85 Minn. 437, 89 N.W. 175, 57 L.R.A. 297, 89 A.S.R. 57, 54 Cent. L. Jour. 290 (semble). Contra: Alba v. de la Cruz, (1910) 17 Philippine 49.

[22]Petition of Furness et al., (Cal. App. 1923) 218 Pac. 61; Marsden v. McAlister, (1887) 8 N.S.W.L. Rep. 300; Hay v. Solling, (1894) 16 N.S.W.L. Rep. 60; Hogg, Australian Torrens System 828.

[23]Follette v. Pacific Light & Power Corp., (1922) 189 Cal. 193, 208 Pac. 295, 23 A.L.R. 965; Rock Run Iron Co. v. Miller, (Ga. 1923) 118 S.E. 670; Dewey v. Kimball et al., (1903) 89 Minn. 454, 95 N.W. 317, 895, 96 N.W. 704; Baart v. Martin, (1906) 99 Minn. 204, 108 N.W. 945, 116 A.S.R. 394; Riley v. Pearson, (1913) 120 Minn. 210, 139 N.W. 361, L.R.A. 1916D 7; Arnold v. Smith, (1913) 121 Minn. 116, 140 N.W. 748; Henry v. White, (1913) 123 Minn. 182, 143 N.W. 324, L.R.A. 1916D 4 (semble); Hawes v. Clark, (1913) 159 App. Div. 65, 144 N.Y.S. 11; Kirk v. Mullen, (1921) 100 Ore. 563, 197 Pac. 300.

[24]Petition of Furness et al., (Cal. App., 1923) 218 Pac. 61; Riley v. Pearson, (1913) 120 Minn. 210, 139 N.W. 361, L.R.A. 1916D 7; Arnold v. Smith, (1913) 121 Minn. 116, 140 N.W. 748 (semble); Henry v. White, (1913) 123 Minn. 182, 143 N.W. 324, L.R.A. 1916D 4 (semble). Conversely, there can be no collateral attack unless the error or want of jurisdiction appears affirmatively on the face of the record. State ex rel. Coburn v. Ries, (1913) 123 Minn. 397, 143 N.W. 981, L.R.A. 1916D 1; Jones v. Wellcome, (1916) 141 Minn. 352, 170 N.W. 224. See also Mooney v. Valentynovicz, (1912) 255 Ill. 118, 99 N.E. 344.

[25]Hamel v. Feigh, (1919) 143 Minn. 115, 173 N.W. 570; Henry v. White, (1913) 123 Minn. 182, 143 N.W. 324, L.R.A. 1916D 4 (semble); Lake Yew v. Port Swettenham Rubber Co., (1913) A.C. 491, 82 L.J.P.C. 89. A purchaser for value, relying on the certificate, of course, gets a good title. See White v. Ainsworth, (1917) 62 Colo. 513, 163 Pac. 959, Ann. Cas. 1918E 179.

[26]Morris v. Small, (1908) 160 Fed. 142; Cunningham v. Bright, (1919) 228 Mass. 385, 117 N.E. 909. Contra: Pick & Co. v. Natalby, (1918) 211 Ill. App. 486.

[27]Cooper et al. v. Buxton, (1921) 186 Cal. 330, 199 Pac. 6; Mooney v. Valentynovicz, (1912) 255 Ill. 118, 99 N.E. 344; Mooney v. Valentynovicz, (1914) 262 Ill. 355, 104 N.E. 645; Rasch v. Rasch, (1917) 278 Ill. 261, 115 N.E. 871; Studley v. Kip et al., (Mass. 1923) 139 N.E. 485; Doyle v. Wagner, (1909) 108 Minn. 443, 122 N.W. 316; State ex rel. Coburn v. Ries, (1913) 123 Minn. 397, 143 N.W. 981, L.R.A. 1916D 1; Murphy v. Borgen, (1921) 148 Minn. 375, 182 N.W. 449.

Fraud of third persons in which the registered owner did not participate and of which he had no knowledge, is not sufficient to avoid a register. Coleman v. Riria Puwhanga, (1886) 4 N.Z.S.C. 230.

[28]Assets Co. v. Mere Roihi, [1905] A.C. 176, 74 L.J.P.C. 49. "But if it be known that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him"—per Lord Lindley, p. 210.

[29]In Dewey v. Kimball et al., (1903) 89 Minn. 454, 95 N.W. 317, 895, 96 N.W. 704, the court implied, obiter dicta, that the applicant for registration is bound to follow upon notice sufficient to put on inquiry and investigation. The supreme court of California has implied to the contrary. See Hoffman v. Superior Court, etc., (1907) 151 Cal. 386, 90 Pac. 939.

Questions of fraud arise most frequently in connection with land already registered. For example, A is the registered owner of land. He mortgages it to B, but neglects to entrust B with his duplicate certificate of title and B is unable to obtain a memorial of the mortgage on A's certificate filed with the registrar of titles.[30] But until this memorial is entered, the mortgage operates only as a contract between the parties and does not in any way affect the land.[31] A now deeds the land to C, who pays full value for it, but knows of B's mortgage. C nevertheless obtains A's duplicate certificate of title and with the aid of it procures a new certificate in his own name as owner in fee. Under the old recording acts, of course, inasmuch as C is not a bona fide purchaser, he would hold the title subject to B's mortgage.[32] The Torrens acts, however, usually provide that unless a certificate is obtained by fraud, it is conclusive of the holder's rights, and it has been generally held that obtaining title with mere knowledge of the existence of an unregistered interest is not fraud, although conduct amounting to dishonesty in obtaining a deed and registering it for the express purpose of shutting out unregistered interest may be. This is the situation in several of the British colonies, where "fraud" is not defined in the statute itself.[33] Most of the Torrens acts, particularly in this country, expressly declare that actual or constructive notice of any unregistered interest shall not "of itself" be imputed as fraud,[34] and where such a statute is in force, a certificate of registration obtained with knowledge of interests not apparent on the face of the certificate of the vendor cannot be questioned on that score alone.[35] Of course, registering so as to exclude such interests may, under certain circumstances, amount to fraud, as where there is collusion with the vendor.[36] In other words, unregistered interests in registered land are void not only as against subsequent registering bona fide purchasers of the land, as is the case under the recording acts, but also as against subsequent registering purchasers not guilty of downright intentional dishonesty. This result, although it may seem harsh, is quite in accord with the Torrens idea: to have the cerificate so conclusive of the title to land that purchasers need only scan its face to see what they are getting.

Some of the Torrens title acts, however, in providing for the transfer of registered land, make the title of the transferee, once registered, indefeasible only in case the transferee is a bona fide purchaser, and not if he is merely free from fraud. Strangely enough, the Minnesota act, which attempted to make the initial decree of registration so conclusive, is of this group.[37] Needless to say, this is hardly in accord with the Torrens idea of making the certificate conclusive as against the world, and, it is submitted, amounts to a reversion to the theory of the recording acts. It requires the would-be purchaser to look beyond the owner's certificate, which was the very thing the Torrens System was devised to make unnecessary. In Minnesota, it would seem, a purchaser from a registered owner would not be protected if he had notice, actual or constructive, at the time he made his purchase that an unregistered interest was outstanding. He is not permitted to shut his eyes and rely on the vendor's certificate alone. From analogy to decisions under the recording acts, it would seem to follow that notice of prior unregistered interests obtained after completion of the purchase, but before registering, would prevent the purchaser from being bona fide, since under the Torrens statute he does not obtain any title at all until he registers.[38]

But even in jurisdictions where the Minnesota statute is not followed the purchaser of registered land is not permitted to rely conclusively on the owner's certificate under all circumstances. Where this certificate has been procured by fraud, all of the Torrens acts apparently require the presence of a *bona fide purchaser* to remove the stigma. For example: A procures registration of Blackacre, defrauding B. A then deeds to C, who obtains a new certificate in his own name. In order that C's title be indefeasible, C must not merely be a purchaser free from fraud, but bona fide as well.[39] C must have no notice of B, actual or constructive; he cannot shut his eyes and rely on A's certificate. This is probably a bit out of line with the Torrens ideal, but likewise probably necessary. A recent California case, *Follette v. Pacific Light and Power Corporation*[40] presented the following situation: B purchased an easement over A's land and erected a power transmission line on it. A obtained registration of his land as owner in fee without mention of the easement, and fraudulently prevented notice of the registration proceedings from being served on B. A then sold the land to C, who had no notice of B, and relied on A's cerificate. It was held that B's easement was still valid, even as against C. The California statute provided that:

"In case of fraud, any person defrauded shall have all rights and remedies that he would have had if the land were not under the provisions of this act; provided, that nothing contained in this section shall affect the title of a registered owner *who has taken bona fide for a valuable consideration*, or of any person claiming through or under him . . . .[41]

". . . No unregistered estate, interest, power, right, claim contract or trust shall prevail against the title of a registered owner *taking bona fide for a valuable consideration*, or of any person claiming through or under him."[42]

There was also the usual provision as to the conclusive nature of a certificate of title.[43] Inasmuch as B was in possession of the land at the time of A's sale to C, C was held not to be a bona fide purchaser; adverse possession being, of course, always constructive notice.[44]

Another type of constructive notice that might be in-

[30]"No new certificate of title shall be entered or issued, and no memorial shall be made upon any certificate of title in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate is presented therewith, except in cases provided for in this law or upon the order of the court. . . ." Minn., G.S., 1913, sec. 6918.

[31]" . . . No voluntary instrument of conveyance purporting to convey or affect registered land, except a will, and a lease for a term not exceeding three years, shall take effect as a conveyance, or bind or affect the land, but shall operate only as a contract between the parties, and as authority to the registrar to make registration. The act of registration shall be the operative act to convey or affect the land." Minn., G.S., 1913, sec. 6914.

[32]"Every conveyance of real estate shall be recorded in the office of the register of deeds of the county where such real estate is situated; and every conveyance not so recorded shall be void, as against any subsequent purchaser *in good faith and for a valuable consideration* of the same real estate or any part thereof whose conveyance is first duly recorded." Minn., G.S., 1913, sec. 6844 (recording act).

[33]Assets Co. v. Mere Roihi, [1905] A.C. 176, 74 L.J.P.C. 49; Hogg, Registration of Title to Land throughout the Empire, 120-124; Niblack, An Analysis of the Torrens System of Conveying Land, 226.

[34]For example, the Illinois statute provides (R.S. 1921, ch. 30, sec. 84): par. 42. "Except in case of fraud, and except as herein otherwise provided, no person taking a transfer of registered land, or any estate or interest therein, or of any charge upon the same, from the registered owner shall be held to inquire into the circumstances under which or the consideration for which such owner or any previously registered owner was registered, *or be affected with notice, actual or constructive of any unregistered trust, lien, claim, demand, or interest; and the knowledge that an unregistered trust, lien, claim, demand or interest is in existence shall not of itself be imputed as fraud.*"

[35]Bjornberg v. Meyers et al., (1918) 212 Ill. App. 257. See also Brace v. Superior Land Co. et al., (1911) 65 Wash. 681, 118 Pac. 910; Gauder v. Dassenaike et al., [1897] A.C. 547, 66 L.J.P.C. 103, 77 L.T. 321.

[36]Turner v. Clark, (1909) 2 Sask. L. R. 200.

[37]"Every person receiving a certificate of title pursuant to a decree of registration, and every subsequent purchaser of registered land who receives a certificate of title *in good faith and for a valuable consideration*, shall hold the same free from all incumbrances and adverse claims. . . ." Minn., G.S., 1913, sec. 6892.

" . . . Whenever any voluntary instrument is presented for registration, the production of the owner's duplicate certificate shall authorize the registrar to enter a new certificate, or to make a memorial of registration in accordance with such instrument, and the new certificate or memorial shall be binding upon the registered owner, and upon all persons claiming under him *in favor of every purchaser for value and in good faith*. . . ." Minn., G.S., 1913, sec. 6918.

[38]The rule in Minnesota under the recording act is that notice, obtained before the purchase is complete, prevents the purchaser from being bona fide. Minor v. Willoughby et al., (1359) 3 Minn. 225, (154); Marsh v. Armstrong, (1873) 20 Minn. 81, (66). Inasmuch as recording the deed acts merely as notice to future purchasers, notice obtained between completion of the purchase and recording has no effect whatsoever. Long v. Wright, (1921) 70 Colo. 173, 197 Pac. 1016. But under the Torrens statute the purchase is not complete until the deed is registered, even though the money has all been paid and the deed taken. Minn., G.S., 1913, sec. 6914, note 31, supra. Accordingly, it would seem to follow that notice acquired prior to registering prevents the purchaser from being bona fide.

[39]The Illinois act provides as follows, (Ill., R.S. 1921, ch. 30, sec. 84), par. 40: "The registered owner of any estate or interest in land brought under this act shall, except in cases of fraud to which he is a party, *or of the person through whom he claims without valuable consideration paid in good faith*, hold the same subject to the charges hereinbefore set forth and also only to such estate, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office, and free of all others."

[40](1922) 189 Cal. 193, 208 Pac. 295, 23 A.L.R. 965.

[41]Henning's Cal. Gen. Laws, 1920, Act 5194, sec. 37.

[42]Henning's Cal. Gen. Laws, 1920, Act 5194, sec. 39.

[43]See Henning's Cal. Gen. Laws, 1920, Act 5194, secs. 16, 34.

[44]For a recent example of the limits to which this doctrine is sometimes carried, see the recent case of Hauger v. J. P. Rodgers Land Co., et al., (Minn. 1923) 194 N.W. 95.

voked to upset the title of purchasers of registered land has been suggested in several Minnesota cases; that where an examination of the proceedings to register the land in question would disclose error or want of jurisdiction, the purchaser is not bona fide, at least where the error or want of jurisdiction appears affirmatively.[45]

Likewise, if by chance the memorial of an encumbrance on registered land is entered on the certificate of title on file with the Registrar of Titles, but not entered on the duplicate certificate of the owner thereof, a subsequent purchaser is charged with notice of this encumbrance, although he may have no actual notice of it.[46] It is worth noting here that conveyances of, and all instruments affecting the title to registered land that have been filed with the registrar are indexed and retained by him.[47] Is the purchaser of registered land affected with constructive notice of the possible invalidity or legal effect of these instruments? Assume, for example, that A is the owner of registered land. A deed is drawn up in which B is named as grantee, but which is incorrectly acknowledged, or signed, or improperly witnessed. Nevertheless, on the strength of this instrument, a new certificate of title is issued in B's name. C now wishes to buy the land. Is C charged with constructive notice of the defect in the A to B deed on file with the registrar? The statute permits him to rely conclusively on the certificate only if he acts in good faith,[48] and the invalid deed is certainly open to his inspection.[49] So far, a question of this sort has never been raised in the courts. If it should be held that the purchaser is affected with notice of instruments on file with the registrar, a long step back to the old "chain of title" system will have been taken. Arguments to the contrary would be based on the conclusive effect given the issuance of a new certificate by the registrar. But the registrar is not a judicial officer, and it is hard to see how an act done in the course of his ministerial duties could validate an imperfect deed, or give a deed a legal effect which it did not actually have.[50]

The California court, in *Follette v. Pacific Light and Power Corporation*,[51] did not rest its conclusions solely on bona fides, however. No jurisdiction had been obtained of the party defrauded in the registration proceedings in that case, which raised the question of the protection given property interests by the "due process" clauses of federal and state constitutions. Can the Torrens system constitutionally sweep away a property interest without ever having obtained jurisdiction of the owner, even where it purports to vest the title in a purchaser for value without notice? The California court answered this as follows:

"The provisions of the land title law which purport to entitle the purchaser of a registered title to the premises in the actual possession and occupancy of another to hold the same superior to the prior rights and interests of such possessor, notwithstanding that such registered title is subject to the infirmities shown to exist in the instant case, are obnoxious to the provision of the federal constitution, which provides that persons shall not be deprived of their property without due process of law."[52]

The supreme court of Minnesota tends toward a similar conclusion:

"It may be correct, though we do not so decide, that a decree that is void and subject to collateral attack would not be invalidated by a transfer of title to a purchaser, though he paid a valuable consideration and had no actual knowledge of the facts which made the decree void."[53]

If this proposition is sound, as it appears to be, then the rights of those of whom no jurisdiction has been obtained are not terminated no matter who it is that holds the certificate of title to the land in question, or how much of a "bona fide purchaser" he may have been. Likewise, if the original certificate described, through error, not only the land sought to be registered but also land belonging to one over whom no jurisdiction had been obtained, it is probable that a future purchaser for value without notice relying on it would not be entitled to keep all that he thought he was getting. In the absence of constitutional protection, the opposite result seems to have been reached in the British colonies.[54]

Although at common law a forged deed was an absolute nullity, and the transferee had no power to convey a good title to a bona fide purchaser,[55] under the Torrens system the forged deed, if registered, may become the root of a good title in the bona fide purchaser.[56] B entrusts A with his duplicate certificate; A forges a deed to himself, has himself registered as the owner and mortgages or sells to C, a purchaser for value, who registers his interest in good faith. C's rights are superior to B's.[57] If, on the other hand, the forged deed runs to a fictitious person, in whom title is registered, and C relies on such a certificate, the wrongdoer representing himself as the agent of the fictitious party, C is not protected.[58] The opposite result might well be reached in this country, in view of the provisions in most of the Torrens acts making the owner's duplicate certificate conclusive evidence of title.[59] A would have to procure this to enable C to register, and if it once got into his hands C would probably be protected,

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[45]Dicta to this effect are found in the following cases: Riley v. Pearson, (1913) 120 Minn. 210, 139 N.W. 361, L.R.A. 1916D 7; Henry v. White, (1913) 123 Minn. 182, 143 N.W. 324, L.R.A. 1916D 4; Jones v. Wellcome, (1919) 141 Minn. 352, 170 N.W. 224.

[46]Christenson v. Christenson, (Ore. 1923) 219 Pac. 615; Niblack, Torrens System, sec. 63. See also, Minn., G.S., 1913, sec. 6915.

[47]Minn., G. S., 1913, sec. 6905.

[48]Minn., G.S., 1913, sec. 6892.

[49]See Minn., G.S., 1913, sec. 6905.

[50]The fact that the registrar of titles is given the incidental power to pass on the validity of instruments affecting registered land filed with him for registration has been generally held not to be such a delegation of the judicial power as to render Torrens statutes unconstitutional. Robinson v. Kerrigan, (1907) 151 Cal. 40, 90 Pac. 129, 121 A.S.R. 90, 12 Ann. Cas. 829; People ex rel. Deneen v. Simon, (1898) 176 Ill. 165, 52 N.E. 910, 44 L.R.A. 801, 68 A.S.R. 175; Drake v. Frazer, (1920) 105 Neb. 162, 179 N.W. 393, 11 A.L.R. 766. Contra: State ex rel. Monnett v. Guilbert, (1897) 56 Oh. St. 575, 47 N.E. 551, 38 L.R.A. 519, 60 A.S.R. 756.

[51](1922) 189 Cal. 193, 208 Pac. 295, 23 A.L.R. 965.

[52]Follette v. Pacific Light and Power Corp., (1922) 189 Cal. 193, 208 Pac. 295, 23 A.L.R. 965.

[53]Henry v. White, (1913) 123 Minn. 182, 185, 143 N.W. 324, L.R.A. 1916D 4. Although the meaning of this statement is obvious, it is submitted that the language used is a bit confusing. One cannot be a bona fide purchaser if he has notice of defects in the title, yet decrees are only subject to collateral attack if the want of jurisdiction appears affirmatively on the face of the registration proceedings.

The courts of Illinois and New York have made similar implications: "Objection is also made that by section 26 any person who has any interest in the land, whether personally served, notified by publication, or not served at all, must, within two years after the entry of the decree, appear and file an answer, and that after the expiration of that term of two years the decree shall (with certain exceptions) be 'forever binding and conclusive upon all persons.' This provision seems to attempt to make a decree binding upon persons not parties to the suit, and if given effect literally, would deprive persons of vested rights without due process of law. A limitation may be placed upon the time within which a person who has a mere right of action shall bring it, but limitation laws cannot compel a resort to legal proceedings by one who is already in the complete enjoyment of all he claims. (Cooley, Const. Lims., p. 366.) To the extent that the act attempts to transfer property without due process of law, it cannot be upheld."—People ex rel. Deneen v. Simon, (1898) 176 Ill. 165, 177-178, 52 N.E. 910, 44 L.R.A. 801, 68 A.S.R. 175.

"A judgment of a court having jurisdiction of the subject matter is of course binding and conclusive upon all persons of whom the court obtains jurisdiction. It is not binding and controlling upon them. . . ." Partenfelder et al. v. People of the State of New York, et al., (1914) 211 N.Y. 355, 357-358, 105 N.E. 675.

See also, American Land Co. v. Zeiss, (1911) 219 U.S. 47, 31 S.C.R. 200, 55 L.Ed. 82. White v. Ainsworth, (1917) 62 Colo. 513, 163 Pac. 959, Ann. Cas. 1918E 179 seems to take the opposite view, however.

[54]Hay v. Solling, (1894) 16 N.S.W. L.Rep. 60, (semble); Hogg, Australian Torrens System 828.

[55]Cole v. Long, (1872) 44 Ga. 579; Sapp v. Cline, (1908) 131 Ga. 433, 62 S.E. 529; D'Wolf v. Haydn, (1860) 24 Ill. 525; Andre v. Hoffman, (1918) 81 W.Va. 620, 95 S.E. 84.

[56]"A forged transfer or mortgage, which is void at common law, will, when duly entered on the register, become the root of a valid title." Gibbs v. Messer, [1891] A.C. 248, 257, 60 L.J.P.C. 20, 64 L.T. 237. It was through fear of this that the landlords of England refused to register their lands under the original English Torrens Act. Even Sir Robert Richard Torrens, who devised the system bearing his name, is said to have been of this class. The English Act was later amended to provide that a forged deed could not be the basis of a good title even though registered. See Niblack, The Torrens System, its Cost and Complexity, 16, 19. The danger is, of course, much diminished under a constitutional form of government where property rights are jealously protected. However, at least one of the states where Torrens statutes have been enacted contains a provision that a forged deed can never become the basis of a good title through registration. See Virginia, Laws, 1916, ch. 62, sec. 74.

[57]Gibbs v. Messer, [1891] A.C. 248, 60 L.J.P.C. 20, 64 L.T. 237, (semble); M'Vity v. Tranouth, [1908] A.C. 60, 77 L.J.P.C. 37, 97 L.T. 853, 24 T.L.R. 165; Brown v. Broughton, (1915) 25 Man. Rep. 489. The dictum to the contrary in Baart v. Martin, (1906) 99 Minn. 204, 206, 108 N.W. 945, 116 A.S.R. 394, is obviously based upon a misreading of Gibbs v. Messer, supra. The rightful owner has even been denied reimbursement from the "assurance fund." Fawkes v. Attorney General, (1903) 6 Ont. L. R. 490.

The purchaser, however, must be bona fide; he cannot rely conclusively on the wrongdoer's certificate. Robinson v. Ford, (1914) 7 Sask. L. Rep. 443, 31 West. Rep. 13.

[58]Gibbs v. Messer, [1891] A.C. 248, 60 L.J.P.C. 20, 64 L.T. 237. The reason for this distinction is explained by the court in Assets Co. v. Mere Roihi, [1905] A.C. 176, 204, 74 L.J.P.C. 49 to rest on the fact that where the forged deed runs to a fictitious person, there has been no transfer away from the original owner and no transfer upon which the subsequent registration could operate.

[59]See Minn., G. S., 1913, sec. 6903.

at least if B was negligent in letting it slip out of his own possession.

One more situation—where land is registered and it is later discovered that an earlier certificate of registration is in existence. Incredible as it may appear, this situation has nevertheless arisen several times in various British colonies. The courts have held that the earlier certificate took precedence over the later.[60]

Discussion of the conclusiveness of a Torrens certificate would be incomplete without mention of certain interests in the land which may not appear upon the face of the certificate, in addition to the possibilities of fraud or want of jurisdiction considered above. Most of these are mentioned in the statute itself.[61]

Mechanic's Liens. The Minnesota statute provides that all liens, trusts, mortgages, and the like shall be filed with the Registrar of Titles to be binding upon registered land.[62] But inasmuch as mechanic's liens may be filed within ninety days after the completion of work or the furnishing of the last item of the account,[63] it is quite possible for such a lien to be outstanding and not shown upon the certificate of title. A purchaser during this time could not rely conclusively upon the face of the certificate and would probably take subject to the lien.[64] But recording the lien with the registrar of deeds is not notice to him.[65]

Taxes and Assessments. Needless to say, unpaid taxes and assessments do not appear on the face of the certificate. Moreover, they survive registration. The state is not bound by a decree which omits to mention them.[66]

Rights in Public Highways. These also survive registration.[67]

Leases. Leases of three years' duration or less, where there is actual occupancy, need not be registered, and consequently survive registration.[68]

Rights of the United States. A decree of registration does not bind the United States.[69] Its rights survive and inure to its vendees.[70]

Right of Appeal. A decree of registration cannot be conclusive, of course, pending appeal or as long as the right to appeal from it is still open.[71]

Adverse Possession. The Minnesota statute provides:

"No title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession."[72]

In the absence of such a provision, there is a split of authority as to whether title to land already registered can be acquired by adverse possession.[73] The Nebraska act now expressly provides that ten years adverse possession will deprive a registered owner of his title.[74]

In conclusion, it is apparent that a Torrens certificate is not as conclusive as an examination of the statute under which it is created would lead one to believe. It is regrettable, perhaps, but probably unavoidable under a constitutional form of government where property rights are carefully guarded. To sum up: There are certain interests which the Torrens statutes themselves provide shall survive registration, such as rights of the United States. Where there has been fraud or forgery, the registration is not conclusive until the title gets into the hands of a bona fide purchaser for value. Where there has been lack of jurisdiction of necessary parties in the proceedings incident to a decree of registration, it is an open question whether the rights of such parties do not survive even as against a bona fide purchaser; they certainly do as against anyone else. Lastly, where land has been validly registered, a purchaser of it takes free and clear, in the absence of actual fraud, of all unregistered interests, except probably in Minnesota and a few other jurisdictions, where he must be a purchaser free from notice and not merely free from actual dishonesty.

[60]Oelkers v. Merry, (1872) 2 Q.S.C.R. 193; Miller v. Davy, (1889) 7 N.Z.L.R. 515. The earlier prevails as far as it goes, even if it only partly comprises the land comprised in the later certificates. Stevens v. Williams, (1886) 12 Vict. L. R. 152. For a discussion of the subject, see Hogg, Australian Torrens System 823; Niblack. An Analysis of the Torrens System of Conveying Land, sec. 153, p. 237.

[61]See Minn., G.S., 1913, sec. 6892.

[62]Minn., G.S., 1913, sec. 6914.

[63]Minn., G.S., 1913, sec. 7026.

[64]Hacken v. Isenberg, (1918) 210 Ill. App. 120 (semble).

[65]Application of Brickel, (1922) 301 Ill. 484, 134 N.E. 76; Hacken v. Isenberg, (1918) 210 Ill. App. 120; McMullen & Co. v. Croft, (1917) 96 Wash. 275, 164 Pac. 930. But compare, Chicago and Riverside Lumber Co. v. Vellanga, (1922) 305 Ill. 415, 137 N.E. 212, (where registration of owner's deed not made at time lien filed).

[66]Minn., G.S., 1913, sec. 6892 (2); National Bond & Security Co. v. Daskam, (1903) 91 Minn., 81, 97 N.W. 458. See also, Canada Permanent Mortgage Corp. v. Martin, et al., (1909) 2 Sask.L.R. 472; Sutherland v. Spruce Grove, (1918) 14 Alta.L.R. 284, 1 W.W.R. 274. The state cannot be made a party to Torrens proceedings without its consent. National Bond & Security Co. v. Daskam, (1903) 91 Minn. 81, 97 N.W. 458. The Registrar cannot voluntarily enter memorials of taxes and assessments due on the certificate, and memorials so entered may be expunged. Curtis v. Haas, (1921) 298 Ill. 485, 131 N.E. 701.

[67]Minn., G.S., 1913, sec. 6892 (4).

[68]Minn., G.S., 1913, sec. 6892 (3).

[69]Minn., G.S., 1913, sec. 6892 (1).

[70]Shevlin-Mathieu Lumber Co. v. Fogarty, (1915) 130 Minn. 456, 153 N.W. 871.

[71]Minn., G.S., 1913, sec. 6892 (5); Dewey v. Kimball et al., (1903) 89 Minn. 454, 95 N.W. 317, 895, 96 N.W. 704.

[72]Minn., G.S., 1913, 6869.

[73]Title to registered land can be acquired by adverse possession, Belize Estate and Produce Co. v. Quilter, [1897] A.C. 367, 66 L.J.P.C. 53, 76 L.T.R. 361; Harris v. Keith, (1911) 3 Alta.L.R. 222; Wallace v. Potter, (1913) 6 Alta.L.R. 83, 10 D.L.R. 544. See also, Hogg, Registration of Title to Land throughout the Empire 84-90.

[74]Nebr., C.S. 1922, sec. 5735.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912.

Of Title News, published monthly at Mount Morris, Illinois, for October, 1928.

State of Missouri } ss.
County of Jackson }

Before me, a notary public in and for the State and county aforesaid, personally appeared Richard B. Hall, who, having been duly sworn according to law, deposes and says that he is the Editor of the Title News and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher, American Title Association, Kansas City, Mo.; Editor, Richard B. Hall, Kansas City, Mo.; Managing Editor, Richard B. Hall, Kansas City, Mo.; Business Manager, Richard B. Hall, Kansas City, Mo.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.)

American Title Association.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date shown above is (This information is required from daily publications only.)

RICHARD B. HALL.

Sworn to and subscribed before me this 17th day of October, 1928.

HARRIET C. OSMOND,
[Seal] Notary Public.
(My commission expires Oct. 28, 1931.)

OUTBURSTS FROM THE VAULT RAT.

If those who dictate the fashions for women are not careful, the first thing they know, they'll be out of a job.

We would like to know what becomes of all the buttons the laundries pull off.

The battle-cry of the average flapper: "Make up or dry up."

Flappers are all "Good Indians" when it comes to making up.

Often after getting across the street safely, we feel so triumphant and jubilant that we forget what we came across for.

A shark is a big fish; so is the person who thinks he's one.

What we call bad luck often is the result of poor judgment.

Escrows for the Abstracter

By Walter M. Daly, Portland, Ore.

Have you ever had anyone ask you the question, "What is an escrow"? If so, you have probably attempted to think of a definition only to find that a simple one was not readily available. You may perhaps have taken down a dictionary, only to find that the definition given there was not such that the ordinary layman could understand, and then you have probably told him that about the best way to convey to him an idea of what an escrow is, was to give him an example. You then took the case of a simple escrow, explaining the various steps in the transaction.

In Webster's Dictionary an escrow is described as "A deed or other instrument delivered to a third party to be by him delivered to the grantee upon the fulfillment of a specified condition."

Black's Law Dictionary gives three definitions:

1. A scroll; a writing; a deed. Particularly a deed delivered by the grantor into the hands of a third person to be held until the happening of a contingency or performance of a condition, and then by him delivered to the grantee.

2. A grant may be deposited by a grantor with a third person to be delivered upon the performance of a condition, and on delivery by the depositary it will take effect. While in the possession of the third person, and subject to a condition, it is called an escrow.

3. The state or condition of a deed which is conditionally held by a third person, or the possession and retention of a deed by a third person pending a condition; as when an instrument is said to be delivered "in escrow." This use of the term, however, is a perversion of its meaning.

Is it any wonder then that an escrow is a difficult thing to explain, and I believe that it is only because escrows have become popular for the handling of certain transactions that the word has come into general use; otherwise it would be the same as certain law phrases which are used only by lawyers in the preparation of court documents.

Escrows may be generally divided into two main classes:

1. Those that cover personal property;

2. Those that cover real property.

Escrows that cover personal property have been handled, to a small degree, for a long number of years by banks and trust companies, and in the main cover the deposit of bonds, stocks, notes and securities of various kinds to be delivered to a third party upon the payment of a specified amount of money or the delivery of other property. Usually those were simple escrows, consequently the records of the banks and trust companies were not such that they were able to keep a detailed account of the transaction. Sometimes an escrow book was kept in which the escrow was described, and when the escrow was closed a receipt was taken signifying that all matters had been handled properly and releasing the escrow agent from liability. In cities sometimes these escrows became very involved, such as in the case of re-financing large corporations, where, perhaps, there were different classes of stocks, different grades of bonds, all to be held by the escrow agent pending the reorganization. This has been true in the past in the reorganization of railroads and large industrials. Cases of this kind, however, require a carefully selected organization and are not handled in the ordinary course of business. Therefore, I shall discuss only what we may term as the ordinary escrow.

In the past, escrows covering personal property have been handled either as: First. Closed escrows; or, Second. Open Escrows.

Under the term of closed escrows certain documents or securities are left with the escrow agent in a sealed envelope or package, to be delivered sealed to a third party on the fulfillment of certain conditions. While in many cases banks have thought this to be the safest way to handle an escrow, yet it seems to me that there are liabilities attached thereto which are probably as great as if the escrow were handled as an open escrow. There is always the question as to whether all the papers in the envelope remain intact until the time of delivery, or whether the articles have been left untouched. In as much as the esgrow agent has no way of listing these papers, it is customary to make the delivery and take a release in full from the third party. But even this, though it may relieve the escrow agent of liability, cannot avoid misunderstandings and disputes should any question arise as to whether all of the papers were included in the envelope, and I believe it is a safe conclusion that it is not the best policy to handle escrows of this kind.

An open escrow differs from a closed escrow only in the fact that whatever papers or securities are to be delivered are taken by the escrow agent as separate items. They are listed in the escrow agreement by a full description and are delivered to the third party as separate items, and releases or waivers may or may not be taken according to the ideas of the escrow holder. In this manner the papers may be carefully checked and described minutely and might save the embarrassment of the delivery of some hidden article, concerning which the escrow agent has no knowledge.

The second main classification under which escrows are ordinarily handled, are those pertaining to real estate. You will note from the above definitions that it was the delivery of deeds or other conveyances that the writers seemed to have in mind when they prepared them, and it is a fact that while escrows are generally handled by banks and trust companies for the delivery of personal property, yet the greater number of escrows pertain to real estate, and particularly in the closing of real estate transactions. One of the reasons for escrows of this kind is that there are so many kinds of liens which may be incumbrances upon real estate, and which must be released from the funds derived from the sale of the property, or from the placing thereon of a mortgage, and there are so many things which may happen to a title between the time that the search is made and the time of recording the deeds in the recorder's office that some means must be provided so that when the money is paid to the seller that the purchaser will have an absolute assurance that there are no judgments, attachments, stray instruments, taxes, city liens, merchanics' liens, federal liens, or in fact liens of any nature have been filed against the property between the time of the search and the time of closing, which might affect his ownership.

Those of you that come from the smaller cities are perhaps familiar with the banking business as carried on in these communities. If you are, you will recall that when a bank acquires checks of other banks it is the custom to give them to a messenger, who will go from bank to bank exchanging items and collecting cash. In the larger cities, however, clearing houses have been established so that all of the banks may take their checks to a common place, exchanging their items for items of other banks, and by striking a balance do in a few minutes what would require hours each day to do. I have used this illustration, as the same may be applied to the closing of real estate transactions. By the depositing of the papers in a real estate deal with a bank or title company much time is saved. Under the ordinary procedure of closing a deal it is probably necessary for the parties to go to a mortgage company to pay off a loan—perhaps to the office of the building material company for the release of mechanics' liens, to the court house for the payment of taxes, to the city hall for the payment of city liens—perhaps even to the U. S. Court for the release of federal liens, to the

office of the fire insurance company for the transfer of fire insurance policies, while if all of these papers were deposited at various times with an escrow agent the closing of the transaction is a simple matter.

Another thought in this connection is that the more people that are brought together in a real estate transaction, the more chance there is of losing the deal. Relatives are brought in, advisors sometimes, and the petty parts of the transaction are enlarged to the extent that the main transaction is lost sight of. Under the escrow system it is not necessary to get the parties to the transaction together at all. If a sale of a piece of property is made the buyer leaves his funds with the escrow agent, the seller leaves his deed, the mortgagee leaves his releases, tax statements, city lien statements are obtained, mechanics' liens and releases are left with their demand, so that when all of the various angles of the deal have been completed the rest is merely a matter of accounting and disbursing of funds.

While escrows of this kind are handled by banks and trust companies throughout the country, yet I believe that the larger volume of them are handled in the offices of the title companies. These companies have title plants where the filing of instruments can be checked and searches made to the very minute of closing. If they handle title insurance they have their own examiners, who examine the instruments to see that they are in order, and inasmuch as they are responsible for the title, make their searches and file their instruments so that no liens may attach affecting the title of the purchaser or mortgagee. If such a company maintains an up-to-date plant all of the instruments filed with the Clerk, or with any other officer authorized to accept instruments, are in the office of the title company by 8 o'clock the following morning. The title company usually has searchers at the court house, city hall and other places so that tax statements and city lien statements may be obtained by telephone on a moment's notice, and in this way are able to give better service than banks or trust companies which are not so equipped.

There is another classification into which real estate escrows may be divided, based upon the manner in which they are handled: First—The perfect escrow; and, Second—For want of a better name we will call an imperfect escrow.

Under the perfect escrow the funds of the purchaser or mortgagee and the deed of the seller, or the mortgage of the mortgagor are deposited with the escrow agent under a binding contract for a certain specified time, and under no condition is either party allowed to withdraw from the escrow without the consent of the other. The escrow instructions themselves become a contract, a meeting of the minds, and no further contract is required. Upon the opening of an escrow of this kind the title company usually examines the title, and if it can issue its title insurance policy with only the incumbrances which are listed in the escrow agreement, it closes the escrow, notwithstanding the fact that any one of the parties may desire to withdraw. This is the system in use in Southern California cities, the cities of the East and the Pacific Northwest. This is the escrow as you and I, I believe, understand it, and in my opinion it is the proper way of handling an escrow.

The other system which, as I have said, we may call an imperfect escrow (although this is not a proper name for it), or we may call it an escrow based upon good faith, is the method used by the San Francisco companies and the companies of Central and Northern California. Under this system when money and instruments are deposited no signed instructions are given; therefore, the escrow instructions are not a contract and are not enforcible. It is assumed that there is already a binding agreement between the buyer and the seller upon which suit may be begun if required. Based upon this contract, the purchaser deposits his money with the title company, which gives him a receipt in a simple form stating that the company will pay this money to the seller only upon the delivery of a specified title, or a title subject to specified incumbrances. The seller deposits his deed with the title company and accepts a similar receipt, which states that the deed is to be delivered to the purchaser upon the deposit of a certain amount of money, which money is to be disbursed in the manner set forth in the receipt. At any time before the title company closes this escrow the money or the instruments are subject to withdrawal. In short, the title company does not handle an escrow at all, but assumes the position of agent of the various parties for the purpose of recording instruments and disbursing funds, based upon the contract which they have between themselves. You may say that this is rather an odd way of handling escrows, and yet it is the custom that has been built up in central California over a number of years and it seems that both the title companies and the public are satisfied.

In escrows covering both personal property and real estate transactions the greatest care is necessary. If it is an escrow in which there is an exchange of property, either real or personal, or if it is an escrow involving a deal of any sort, there must be a complete meeting of the minds, and the escrow instructions from all parties, if taken separately, must coincide so that there is but a single contract. If there are discrepancies in the various instructions so that there is not a complete contract, there is liable to be a loss to one of the parties, and if any of the parties suffer damages because of an error in instructions or a failure to handle the escrow in a proper and business-like manner; or if all of the different phases of the transaction are not carried out to the letter; or if the property is delivered to a wrong party; or if by any other means the escrow agent does not handle the escrow in strict accordance with the instructions, I believe that the company is liable and that the parties can collect damages. The handling of escrows is, therefore, a very serious business, and every safeguard should surround all of the details, and in the case of any doubt it is advisable to go back to the parties for amended instructions; or, in case this cannot be done, it is sometimes even necessary to throw the whole matter into the courts for settlement.

In discussing escrows with the officers of companies who handle large volumes of business I have been told of cases where it has been necessary for the companies to take over large pieces of property or to advance money on mortgages and even to pay sums of their own money because of errors in handling escrows. It is very necessary, therefore, in the handling of escrows to charge fees commensurate with the work and the responsibility, for every escrow agent some day is going to have a loss which will be substantial, and which may cause him to realize that this is a service for which he must not only be properly paid, but which will also create a reserve to take care of the losses which will undoubtedly come.

In Chicago, the minimum escrow fee is $10.00, Cleveland, Ohio, $30.00, and in Southern California I believe it is something like $12.50. I do not believe that escrow fees should be too high, but they should be sufficiently large to take care of more than the clerical work involved, and I believe should be based on the responsibility of the company, for the losses will depend upon the value of the property and not upon the amount of work involved.

The thought is perhaps now running through your mind that escrows may be all right for title companies in the large cities that are doing a title insurance business, but that they won't fit in the smaller offices that are on an abstract basis. This thought, to a great extent is true, yet the demand for escrows is growing and it behooves everyone to get in shape to handle escrows when they do come. In California it is estimated that 90% of all real estate deals are handled through the escrow departments of the title companies, and this is true in the small as well as the large cities, so it is not unreasonable that the title companies of the Northwest may expect some of this business in the future. The business will not come to you of its own accord. You must go after it, for, like all new things, the public must be taught that the new is better than the old, and it is your duty to be the teacher. There is no one way of going after this business, but you must keep it in mind all of the time. Write to the mortgage companies or building and loan associations that are doing

business in your field. Tell them that you can save them considerable work if they will forward the papers in their loans, together with a check for the funds; that you will attend to getting the papers signed and recorded, will pay the taxes and liens against the property and also mortgages or other incumbrances noted in their attorney's report. I know of one small company in Oregon that is now closing all of the loans in its county which are made by a joint stock land bank, and also two other mortgage companies. These companies are glad to be relieved of the details and the local company has made some good clients for its office, besides getting proper fees for its work.

When people come in to order abstracts of title, ask them if they are selling their property. If so, tell them that you will prepare their deeds and attend to the closing of the deal for them. You are well qualified to handle any real estate transaction. By keeping escrows in your mind all of the time you will be surprised how much business of this character you can get.

When this business starts to come, are you going to be ready to take care of it. How many of you now have any equipment with which to keep a record of escrows. If you haven't, you should have. The essentials are very simple—a small loose-leaf ledger, a Graves or similar index and some envelopes (preferably large envelopes that will hold 8½x13 papers, as these papers will hold their appearance better if allowed to remain flat). Number your ledger sheets from one up, your envelopes the same, and you are ready.

When the first escrow comes in, index every name that appears, whether it be buyer, seller, mortgagee, realtor, tenant, or what-not, referring in your index to the escrow number. Credit the cash received on the ledger sheet to the same escrow number. You will note that I have not provided for escrow forms, for in the beginning there is no necessity of having printed instructions, but be careful to see that the instructions are clear, simple and thoroughly understandable and that all instructions harmonize so as to make a complete meeting of the minds of all parties. Later, when the volume of business increases, proper forms should be provided.

After all cash has been disbursed, all papers recorded, all receipts obtained—everything in connection with this escrow, including your ledger sheet should be filed away in the envelope as a permanent record. You can never tell when the papers will be needed for use in court, by an income tax official, by an executor of an estate, and the fact that they are easily obtainable may save the parties a great amount of inconvenience and be another evidence to them as to the service that an escrow renders.

I wish to leave this thought in your mind—make your place of business more than a mere abstract office. Enlarge your service. Tell the public that you can not only prepare their abstracts but that you can prepare their papers, and do all things necessary to see that they are protected in the closing of their deals, whether it be a sale or a loan, and in short render such a service in your own communities as the larger companies are doing in the cities. You can do it if you will only try and keep trying.

Suggestions for the Tract Index

By Earl W. Jackson, South Bend, Ind.

During a discussion at our state convention of the various methods of abstract plant operation, it developed that the system in use by our company was somewhat different from that in use by many of the other companies, and I was requested to outline our method in writing. Realizing that each abstracter has a system all his own, which he has developed to a point of perfection, I hesitate to offer our own for his criticism, unless we can be assured of receiving the benefit of his critical remarks. For the past seventeen years, the abstracters of our county have employed the county recorder to prepare for them every day a typewritten record of the instruments which have been recorded that day. Every morning at eight o'clock each abstracter receives his sheet from the recorder, setting out in the order of their recording, each instrument that was recorded the day before. The serial number, names of all parties, dates. considerations, descriptions, acknowledgements, etc., of each instrument filed, are copied onto this sheet by the recorder, and each instrument abstracted by him full enough that it would be possible, if necessary, to copy it into a complete abstract. We always abstract, however, direct from the records, and do not use this sheet except to post from. By noon of the day we receive the sheet each item has been posted in its proper place and the books are up to date. Since the recorder is usually a week or two back in his work, it is not possible to post at this time the book and page upon which each instrument will appear, so this makes it necessary that we go over our posting about two weeks after it is entered in our books and insert the book and page upon which the instrument has been recorded.

For the past four years we have had the county clerk prepare a record each day of the judgments rendered in each of the three county courts, together with a list of wills admitted to probate, new estates opened, lis pendens notices filed and all suits filed which affect real estate. We keep these sheets also and bind them as we do the Recorder's notes. Wherever real estate is described in the Clerk's notes, we post it directly in its proper place by reference to the page and line upon which it appears. We verify judgments, lis pendens, etc., as shown by this sheet with the county records about once a week, and index them in a separate index.

We also keep an index of every grantee and another of each mortgagor. It only takes a few minutes each day to index these names and we often find it a great convenience.

Our tract index is laid out in such a manner that each 80 acre tract in the county has a separate page, upon which we post every transaction associated with that eighty acre tract or any part thereof. We now use loose leaf ledgers but when our set of books was begun, over fifty years ago, permanently bound records were used. After land has been platted, the subdivision is laid out in a new record and a page given to about every four lots in the plat. We post directly to this page every deed, mortgage, lien, release, affidavit, or any instrument affecting a particular lot. Only the deeds and mortgages are posted in full showing the names of both parties, dates, description, consideration, etc. The other instruments are posted there only by reference to the volume, page and line upon which they appear on the sheet prepared by the recorder. These sheets are 13" by 17" and are bound permanently in volumes of 500 sheets each.

When an order is received for a complete abstract the chain of title is prepared much as it is in any office, I presume. Examination is made to determine first, if we have ever abstracted any of these instruments before. If so, we have carbon copies in our files. The chain of title is then handed to a stenographer who first copies whatever numbers we have already abstracted, and then works out the balance of the chain at the courthouse in long hand notes and returns to the office to transcribe them. A page is given to each instrument and the abstract is assembled and maps prepared it is arranged chronologically, rechecked, numbered and tied up. One stenographer has followed the title

through from the beginning, abstracting each entry whether deed, mortgage, taxes or any kind of court proceeding. When she has finished it is largely her own individual work.

We have found this system of keeping records and abstracting most satisfactory although I realize that it would not be practicable in the larger cities or smaller communities.

If any abstracter can apply anything I have tried to express herein to his own particular business and thereby shorten his labor or increase his profits, I will be very pleased.

A Few Curious Wills

By William A. Gretzinger, Philadelphia, Pa.

In this little writing I have a number of very curious *Wills* and *Bequests*—some very singular, and others very benevolent in their nature. The purposes for which Bequests are made, alter with time and circumstance—in fact, many Bequests outlive the object for which they are intended; for instance, we hear of one man leaving money to redeem "Christian Slaves from African captivity"; another, to "promote bull-baiting"; and another leaving so much "for whipping dogs out of church." Some one oddly remarked, "That man's a fool who writes a letter, but he's a greater who destroys one." This might be applied in another way, "He is a fool who makes his *own* Will, but he a greater who does not make one."

Giving Their Hearts Away.

Robert, the famous Earl of Mellent and Leicester, one of the early crusaders in the Holy Land, died in 1118, in the abbey of Preaux, where his body was buried; but his heart, by his own order, was conveyed to the hospital at Brackley, to be there preserved in salt. Isabella, daughter of William E. Marshall, Earl of Pembroke, who died at Berkhampstead in 1239, ordered her heart to be sent in a silver cup to her brother, then Abbot of Tewkesbury, to be there buried before the high altar. The heart of John Baliol, Lord of Barnard Castle, who died in 1269, was, by his widow's desire, enclosed in an ivory casket, richly enamelled with silver. There are many bequests of hearts on record besides the above.

William de Beauchamp's Will.

William de Beauchamp, dated at Wauberge, upon the morrow after the Epiphany, † anno 1268, 53 Henry III. My body to be buried in the Church of the Friars-Minors at Worcester. I Will that a horse, completely harnessed with all military caparisons, precede my corpse; to a priest to sing mass daily in my Chapel without the City of Worcester, near unto that house of Friars which I gave for the health of my soul, and for the souls of Isabel my wife, Isabel de Mortimer, and all the faithful deceased, all my rent of the fee of Richard Bruli, in Wiche and Winchester, with supply of what should be too short out of my own proper goods; to Walter, my son, signed with the cross, for a pilgrimage to the Holy Land on my behalf and of Isabel, his mother, two hundred marks; to Joane, my daughter, a canopy, some time belonging to St. Wolstan, and a book of Lancelot, which I have lent them; to Isabel, my daughter, a silver cup; to Sibill, my daughter, all the money due to me from my son William, towards her marriage, and forty marks more, with the land which I bought in Britlamton, to enjoy it until she be married, and no longer; to Sarah, my daughter, one hundred marks for her marriage; to William, my eldest son, the cup and horns of St. Hugh; to my daughter the Countess, his wife, a ring with a ruby in it; to Sir Roger de Mortimer and Sir Bartholomew de Sudley a ring each; to the Friars-Minors of Worcester forty shillings; to the Friars-Minors of Gloucester one mark; to the Friars-Carmelites there one mark; to the Hospital of St. Wolstan at Worcester one mark; to the Hospital of St. Oswald there ten shillings; to the Canons of Doddeford one mark; to the Church and Nuns of Cokemill ten marks; to Isabel, my wife, ten marks; to the Church and Nuns of Westwood one mark; to the Church and Nuns without Worcester one mark; to every Anchorite in Worcester and the parts adjacent four shillings; to the Church of Salewarp, a house and garden near the parsonage, to find a lamp to burn continually therein to the honor of God, the Blessed Virgin, St. Katherine, and Saint Margaret; and I appoint my eldest son William Earl of Warwick, Sir Roger Mortimer, Sir Bartholomew de Sudley, and the Abbots of Evesham and of Great Malverne, my executors.

Joane Lady Hungerford's Will.

Joane Lady Hungerford, Feb. 1, 1411. My body to be buried in the Chapel of St. Anne, in the Parish Church of Farleigh, Hungerford, next to the grave of my husband. I Will that, with all possible speed after my decease, my executors cause three thousand masses to be said for my soul, and for the souls of all the faithful deceased. Also I desire on my burial day that twelve torches and two tapers burn about my body, and that twelve poor women, holding the said torches, be cloathed in russet, with linen hoods, and having stockings and shoes suitable. I Will that ten pounds be bestowed to buy black cloth for the cloathing of my sons and daughters, as likewise for the sons and daughters of all my domestic servants. I Will that the two hundred marks now in the hands of my son, Sir Walter Hungerford, be given to found a perpetual chantry of one chaplain, to celebrate divine service in the Chapel of St. Anne, in the north part of the said Church of Farleigh, for the health of my soul, and the soul of my husband, and for the souls of all our ancestors for ever; to Katherine, the wife of my said son Walter, my black mantle furred with minever, and to Thomas his son a green bed, embroidered with one greyhound. *(Dugdale's Abstract Vol. II, p. 204.)*

John Wilcock's Will.

John Wilcocks, of Chipping, Wycombe, 5th July, 1506. My body to be buried in the Church of All Hallondon on Wye, before the rood. To the repair of our Lady's Chapel of my grant XXIIIs. IVd.; I Will that my executors pay the charge of new glazing the window in the said chapel; also I Will that an obit be kept yearly; I Will that my executors buy a marble stone to lay on my grave, with the picture of my two wives of seven foot in length, the stone mentioning her sons Thomas and Michael Wilcocks. I appoint Walter, my son, my executor, and also Robert Ashebrooke and Robert Brampton, priest, and John Aley, my executors.

Cow Charity.

Woodchurch, Cheshire.

James Goodaker, of Barnston, in this parish, in 1525, left twenty marks to buy twenty yoke of bullocks, which were subsequently replaced by cows, and given to the poor of Woodchurch; every parishoner that had a cow or cows paying yearly for each to the overseers the sum of 2s. 8d. every Friday before Whitsunday, which hire was to be a stock for the benefit of the poor for ever.

The parish of Woodchurch includes ten townships, from each of which a trustee of the cow property is elected, whose duty it is to see that the animals are properly taken care of, and those persons are termed governors of the cows. There is an annual meeting, on which occasion the cows are produced and examined.

Fish for the Poor in Lent.
Clavering, Essex.

John Thake, by Will, dated 13th June, 1537, gave to Robert Cockerell and his heirs his house and lands called Valence, upon condition that they should for ever, yearly, on Friday, the first week in Lent, give to poor people of Clavering one barrel of white herrings and a cade of red herrings, (a cade is about half a barrel,) always to be given by the oversight of the churchwardens and the tenants and occupiers of the lordship and parsonage of Clavering.

The owner of the farm called Valence, regularly sends to the house of the parish clerk, in Lent, a barrel of red herrings and a barrel of white, which are distributed in the church by the parish clerk and sexton, four to each married couple, two to each widow and widower, and one to each child.

Bequest of White Peas.
Sawston, Cambridgeshire.

John Huntingdon, by Will, dated 4th August, 1554, devised lands and tenements to Joice his wife, and his heirs, upon condition that his heirs should yearly for ever sow two acres of land, lying together in Linton field, with white peas, one combe to be yearly bestowed upon each acre, for the relief of the people of Sawston.

Two acres, the property of Richard Huddlestone, Esq., the lord of the several manors in the parish, are annually sowed with white peas, as directed by the Will, which are gathered green on a day fixed by the occupier of the land, by all the poor indiscriminately, when a complete scene of scramble and confusion ensues, attended with occasional conflicts.

Milk Tribute.
Alresford, Middlesex.

Edmund Porter by Will, dated 27th May, 1558, directed that John Porter should have a house called Knapps, with the appurtenances, church fences, and caprons, (which comprised thirty-one acres of land,) to him and his heirs, upon condition that they should give for ever the morning milk of two able milk beasts to the poor people of his parish, every Sunday yearly, from Whitesunday to Michaelmas, 3s. 4d. on Good Friday, and a like sum on Christmas day.

This milk tribute has subsequently been commuted for a money payment, which is distributed in bread amongst the poor.

Cuttings of Fish.
London, Fishmongers' Company.

Robert Harding, by Will, dated 20th November, 1568, gave to the Company of Fishmongers an annuity of £3 6s. 8d., issuing out of his lands and tenements in Pudding Lane; and Simon Harding, his son, by deed, 7th September 1576, confirmed the same; to hold the said annuity to the wardens and commonalty and their successors, to the intent that they should pay in the Lent season £3, that is, in New Fish Street 30s. and in Old Fish Street 30s., to the use of the poor inhabiters and artificers compelled by necessity to repair thither, to buy the cuttings of fish and the refuse of fish; the residue to remain the wardens for their labours in this behalf.

There being no poor persons of the description mentioned in the deed, the annuity has been added to the fund distributed to the half-yearly poor at Christmas.

Halfpenny Bread Charity.
Godmanchester, Huntingdonshire.

Robert Grainger, by his Will, dated 10th October, 1578, gave and appointed as much bread as could be made of a coomb of wheat, to be made into halfpenny loaves, and to be distributed among the poor of Godmanchester by the churchwardens, to be charged on his mansion house in Godmanchester.

The present owner of the house pays the value of four bushels of wheat, according to the average price of wheat at Huntingdon market, on the Saturday before Good Friday, to a baker, for supplying the bread, which is distributed on Good Friday.

Is is curious how quickly a man turns to his will in the event of coolness or misunderstanding. Cardinal Vaughan has told how his friendship with Cardinal Manning died down. "We consulted one another and told one another everything. Well, he had appointed me to be one of his executors. On one occasion when I was staying with him in London, we got into a discussion; I could not accept his views, and I suppose, on the contrary, strongly maintained my own. I saw he was a little bit put out—but what do you think he did? He went upstairs, took out his will, and struck his pen through my name as executor."

An uninitiated reader of Elizabeth Stow's will would never have known what bitterness lay behind that £5 legacy; but sometimes such bitterness is evident enough. Harry Staple, of Ospring, Kent, whose will is dated Feb. 19, 1691, is curt and downright: "To the widow Hall of Ospring and unto my three undutiful daughters, Mary and Elizabeth and Martha one shilling apiece." John Braibroke, of Cooling, in 1535 requested his son Thomas "not to meddle with nothing of my testament or last will, nor my wife Alice to meddle with nothing that is or hath been between me and my son Thomas from the beginning of the world unto the present day." A startling bequest was that of 3½d. to a son for the purchase of a rope for his wife, to be used as soon as possible. And another son to reap trouble was Freeman Ellis, whose father's will was proved in 1664. "Memo. that Freeman Ellis late of the parish of St. James Clerkenwell . . . having a very great love and affection for Bridget Fanny and Judith Ellis who had always been very kind and loving to him, and being very much displeased with his son Freeman Ellis, who had been undutiful to him and married without his consent and was gone away from his wife, would and did several times in his life time . . . say and declare that whenever he died he would make his said sisters . . . his executrixes and leave his estate to their sole ordering and disposing."

Wives fall under a full share of abuse. A London bookseller, in 1785, left a legacy of £50 to "Elizabeth whom through my foolish fondness I made my wife, without regard to family fame or fortune, and who in return has not spared most unjustly to accuse me of every crime regarding human nature, save highway robbery." Robert Frampton also had unhappy experiences. He describes himself as of Woodley, in the parish of Sonning and county of Berks, and his will was dated in London December 18, 1677. "I do devise and bequeath to my wife Ann £1000 to be paid her out of my personal estate, not being able to leave her more by reason of her extravagancy in all things, embezzling the money given her for her apparel and leaving what she bought for that use upon the score, which I was forced to pay, and her running me into debt a good sum besides whereof she would never give any account. She hath also from time to time given her gossips a great part of what bought for herself the children and necessaries for the house and of the provisions thereof to the huge increase of my expenses and great damage of my estate; yea, in all things she hath ever been a profuse imperious and unkind wife unto me, and sundry times bound herself under a curse to ruin me if she could and necessitate the children to beg and starve."

Sir Humphrey Style, in 1658, was more reticent in his misfortune. He gave to his wife £20 to buy mourning for him if she pleased, and a further sum of 5s "for good reasons best known unto myself, but not for her honour to be published." But doubtless the gossips wagged their tongues no less.

A Spanish lady, not long since, included all her relations in one condemnation. "Nothing shall come to them from me, but a bag of sand to rub themselves with. None deserves even a goodbye. I do not recognise a single one of them." But not only within the family is animosity shown. John Bacon Sweeting, of Honiton, surgeon, whose will was proved November 10, 1803, in a codicil thus complains: "Be it remembered that whereas I am unhappily so situated as to have Samuel Lott, Esquire, as possessor of a spot of waste land adjoining some lands which I bought . . . and situate on the north side of the Borough of Honiton, and the said Samuel Lott has set up a claim to a certain space behind the same which

he has refused to leave to be referred to the arbitration of Wm. Tucker of Croydon, Esquire, from a consciousness, I conceive, of the injustice of his pretensions, this as a serious man and a Christian I would not assert if the same conduct had not been notoriously observed by him wherever he had a prospect of over-reaching his neighbour, and feeling that this conduct will as [illegible] prevent my selling the property at a fair and just value, as most people wish to avoid law, it is my will that the same shall not be sold during the lifetime of the said Samuel Lott for a less sum than £120, and it is further my will that if the said Samuel Lott shall encroach any building on the spot alluded to, that then my said executors shall pull down such encroachments and defend the act as they shall be advised, and the expenses paid out of my property." More recently a testator thus gave vent to his feelings: "My estate would have been considerably larger if it had not been for my association with this perambulating human vinegar cruet and the cleverest known legal daylight robber."

But a transition to the subject next appearing may conveniently be made by mention of the will of Robert Halliday (dated May 6, 1491), who gave 5s. issuing out of an estate in St. Leonard, Eastcheap, to make an entertainment once a year for persons at variance with one another, that peace and love might be promoted and prevail.

Among the freakish wills collected by Harris, may be mentioned that of the nobleman of the house Du Chatelet, who died in 1280, and directed that one of the pillars of the church at Neufchateau should be hollowed out and his body stood upright therein, so that the vulgar might not walk upon his corpse.

The strange request of the great English jurist, Jeremy Bentham, that his corpse might be embalmed and placed in his favorite chair at the banquet table of his friends, on all occasions of state, was carefully carried out by his friend, Dr. Southwood Smith. By some scientific process the body of the philosopher and law writer was preserved, by a French artist and in his usual suit of clothes, with his broad-brimmed sombrero and his favorite walking-stick, in his old armed-chair, the lifeless body of this gifted man graced the meetings of his friends, until it was removed by Dr. Smith to University College.

Another Reason for Title Insurance

By McCune Gill, St. Louis, Mo.

Sometime ago the writer was discussing title insurance with a lawyer client, and mentioned as one of the reasons for such insurance the hazard of future court decisions. The client answered that such decisions were almost invariably just and reasonable, and hence not to be feared. The writer replied that the contrary is true and that courts usually show a fine disregard for the practical justice of the case and follow the dictates of obsolete precedents and faulty logic. To settle the argument it was proposed to select, at random, a volume of Supreme Court reports and critically examine the real estate decisions therein, so as to determine whether the case or statute law involved in the decisions be just or unjust. In short, to see whether the trend of court decisions, present and future, constitute a hazard to landowners that should be protected by title insurance. The volume chosen happened to be the 269th Missouri containing eight real property cases, decided in the year 1916. The result of this study is herewith submitted:

Schneiderheinze v. Berg, 269 Mo. 263.

In this case a married woman, Sybilla Schneiderheinze, was granted in a sheriff's deed under execution in 1888. For some undisclosed reason, best known to herself, she did not attempt to obtain possession of the land until 1911, or twenty-three years after the date of the deed, and two years after the death of Berg, the judgment debtor, who had continued in possession during his life. The court held that she was not barred by limitation because she was a married woman. It also erroneously intimated that she would have been barred in twenty-four years (the correct rule being that she would not have been barred until ten years after the death of her husband). But why this distinction in favor of a married woman? Until the day of her marriage the claimant of land in possession can hold adversely against her, which holding will run against her during her marriage and become invulnerable in ten years. But if his claim begins the day after her marriage, it would not avail him anything until ten years after her husband's death perhaps fifty years later. If limitation is a proper public policy why not apply it to all alike? We hear that she had no right of action because of her husband's estate during coverture. Why shouldn't she have a right to sue? And why cannot courts establish rules in accordance with modern ideas of the status of women, without being forced to do so by a tardy legislature. This was done in the present instance by the Acts of 1917 and 1919 bringing married women within the ten-year rule, but not until much injustice had resulted from the operation of the old rule.

Woodward v. Fisher, 269 Mo. 271.

In 1913 the legislature passed the Corporation Registration and Forfeiture Act. About the only useful purpose served by this act seems to be the collection of fees from corporations to be expended on roads (the connection not being very evident). It was perceived that the act would be wholly ignored unless adequate punishment for violation be imposed. So the crime of nonpayment of this tax was made capital; the corporation lost its life upon noncompliance. In the present case, a suit on account, forfeiture was avoided because notice was not posted in the recorder's office and the next year the act was changed to make even this simple formality unnecessary. The legislature has, however, left unstopped a very obvious means of exit. The act itself provides that the president and directors of a forfeited corporation can convey its real estate, as trustees, and more recently the court has decided that a deed by the president is sufficient even though executed in the corporate name. Something more than capital punishment seems to be necessary to collect this road tax. The whole grotesque subterfuge should be repealed. Should a corporate charter, a contract between state and stockholders, be nullified without notice, process or proceedings whatsoever? Why should corporations be singled out to pay a road tax, or be executed without trial by either judge or jury, for failure to pay it.

Bank v. Kirby, 269 Mo. 285.

This is a suit to foreclose a mortgage on land in the name of Charles W. Kirby. The mortgage was signed by Kirby and his wife, Adda Kirby, but not acknowledged by either. Foreclosure was ordered and no appeal was taken by the husband, but the wife appealed. Her contention was that a deed conveying dower is absolutely void, even between the parties, and even after the Married Women's Acts, if not acknowledged. And the court sustained this contention. That such a flimsy excuse, following a doubtful historical precedent, should defeat a valid mortgage, is almost unbelievable. Perhaps the court did not realize that it was blindly following the rulings that were obtained centuries before in the days of fines and recoveries, although these strange farcical lawsuits were never in vogue in Missouri. The obvious remedy for

this condition is to abolish dower, for the dead weight of stare decisis seems too great for courts to overcome. Dower has been abolished in more than half of the States and recently in England, and in the latter country (from whence we got our dower) it was enacted almost a century ago that dower should attach only to land owned by a man at his death and not to that conveyed by his sole deed in his lifetime.

City v. Moore, 269 Mo. 430.

This is a proceeding to open a street from the end of Slattery Street, a blind street or cul de sac, through to another or cross street. To so do would necessitate taking the eastern thirty feet of the rather commodious yard or playground of a public school. The deed by which the school board acquired title stated that the east line of the property was the center line of "proposed Slattery Street." The deeds of the owners of the other half of the proposed street were made subject to an easement for street purposes. It would seem that here was a reasonable and a just plea, but the court forbade any inquiry into the merits of the opening by ruling that the public acting through a city government has no right to open a street through the same public's property used for a school, no matter how greatly the street is needed nor how little the school will be damaged. Is not a city as well as a school board an instrumentality of the State? Would it not be better to inquire into the justice of the proposal rather than to assign some fanciful and arbitrary superiority to one branch of government? The court excuses itself by saying that the remedy is with the legislature and not with the courts. Has not the legislature already given the city power to open streets? Must it be given specific power to open streets through each particular ownership or class of ownership? Surely obstinate school boards as well as obstinate private citizens are within the meaning and necessity of the constitutional power of condemnation.

State ex rel. Kinloch Telephone Co. v. Roach, 269 Mo. 437.

This was an attempt to mandamus the Secretary of State to allow an extension of a corporate charter without payment of the statutory fees. While there was nothing for the court to do but to follow the statute, this decision is a good example of the incongruity of our corporation laws. One of the chief reasons for incorporating is to obtain continued existence regardless of the death of stockholders. Still it is provided that corporation existence shall not continue longer than twenty years, unless the articles provide a longer term up to fifty years. If the policy of the state is to limit to twenty years, why allow fifty upon mere request? If fifty years is proper, why not for all? And if one fee is sufficient for an original term of fifty years, why should it not be sufficient for an extension of fifty years? A better way would be to make corporations perpetual, subject to termination upon abandonment or misconduct, and to require an annual fee or tax based upon capitalization, or still better upon the amount of profit realized. The fee in the present case amounted to three thousand dollars—too large to be justified as a clerical service charge, and probably too small if viewed as a tax on the benefits of corporate existence. It may be remarked that two of the judges in this case dissented, in the teeth of the statute, but without assigning any reasons.

Reading & Sparks v. Chandler, 269 Mo. 589.

This is a four-to-three decision on whether a private road, previously condemned and paid for, should be vacated. Another or public road had been opened through to the farm of Chandler served by the private road but at a point that made the distance to town greater by a mile. The statute provides for the vacation of a private road only when a "convenient and practical" public road is opened, and the court held that the new road was not convenient or practical. This seems a very strained construction particularly as the location of the old road appears to have imposed considerable burden upon Reading and Sparks by bisecting their farms. The minority opinion brings out these points to some extent but is weakened by an attempt to inject a constitutional question, referring to the provision in the constitution forbidding the condemnation of private property for private use except for private ways "of necessity." Then the minority proceeds to confuse this sort of condemned and paid-for road with the implied easement of necessity that arises without compensation when an owner sells a lot separated from the road by his own land. It may be said in passing that our constitutional prohibition against condemnation for private use seems strongly out of date when compared with the modern English statutes allowing private condemnation for homes, factories, gardens, and other worthy purposes.

Orchard v. Laclede Land & Improvement Co., 269 Mo. 647.

This is to determine the validity of a tax title under judgment for taxes in 1887, through which defendant claims. Plaintiff claims under deed in 1911 from Alonzo T. Slaight, the owner, who refused to pay his taxes in 1887. It would seem that the important question would be as to who had been in possession since 1887, and who had paid the taxes all those years. But these points if raised did not reach the appellate court. The only points there mentioned were three small and inconsequential clerical errors in the proceedings in 1887. One was that the number of the case recited the judgment was No. 90 instead of No. 19. The court very properly held that this did not affect the validity of the tax title. The next point was that one of the defendants other than Slaight was omitted in the judgment and the name of the purchaser, Laclede Land & Improvement Company, inserted instead. The court also passed this defect as harmless even though it became necessary to criticize a previous ruling of the same court. On the third point, which seems the most trivial of all, the court held the tax title void. The land was described as SW ¼ Sec. 22-31, 2W. The only sensible rule as to description is that a surveyor should be able to locate the ground. Any surveyor, or real estate man (or farmer) would say that these figures meant section 22, township 31, range 2 West. They couldn't mean anything else. But the court held the tax title void. Courts delight to defeat titles created by other courts. And judges who are officers of a government whose existence depends upon taxation, seem eager to find flimsy excuses to defend those who refuse to pay their taxes. Bids at tax sales will continue to be very small so long as courts declare the sales void on every pretext.

Chapman v. Chapman, 269 Mo. 663.

Fannie E. Chapman sued Fred E. Chapman for divorce and alimony, and joined Walter E. Chapman, brother of Fred, because Fred's real estate stood in Walter's name. Fred had absconded and could not be served with process. The plaintiff asked for divorce and that any alimony be declared a lien on the husband's real estate in his brother's name. She did not ask for an attachment nor allege fraud on Walter's part. The court held that a divorce court in Missouri cannot make any order with reference to any specific property and that the statute does not authorize a proceeding in rem. If true, this appears to be a serious defect in our statute, as compared with those of other states, authorizing and requiring divorce courts to settle all property rights in the divorce action. But is our statute thus limited? It states that in addition to a money judgment for alimony, a divorce court may enforce the order "by sequestration of property." The legislature could not have meant sequestration in its narrow or historical sense for that was a sort of equitable attachment in lieu of imprisonment for debt. It would seem that the legislature intended to create a lien, particularly as it includes divorce with "attachment, foreclosure, mechanics liens and other liens" in the statute allowing service by publication in actions in rem. But all of this was denied by the court. By the combined efforts of legislature, counsel, and court, the plaintiff failed to obtain what everyone seems to have conceded she should, in good conscience, have had, support out of her husband's property.

LAW QUESTIONS AND THE COURTS' ANSWERS

Compiled from Recent Court Decisions by

McCUNE GILL,

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Title Insurance Corporation of St. Louis,
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What is effect of divorce on tenancy by entirety?

Husband and wife become tenants in common, each taking undivided half. Baker v. Kennerup, 140 Atl. 681 (New Jersey).

Is trust for son, during his life, then to all his children during their lives, then to named nephews, good?

Yes; it is not a perpetuity (at common law) because the life estates to unborn children must vest at end of life in being (son), and the final remainders (to nephews) vested at testator's death. McAllister v. Elliott, 140 Atl. 708 (New Hampshire).

Does a corner lot front on both streets?

No; only on the narrower width; as where there is a building line restriction on "street on which lot fronts." Rhinehart v. Leitch, 140 Atl. 763 (Connecticut).

Does lessor's consent to sublet carry over into renewal period?

Held not, even though lessee had privilege to renew. Sisson v. Mathews, 227 N. Y. S. 721 (New York).

Is trust to pay income to five children during lives, remainder to each one's descendants, good?

Yes; not a perpetuity even in a two life state, as the shares are separable. In re Peek, 227 N. Y. S. 682 (New York).

Is Probate sale to strawman, who conveys to administratrix, good?

No; sale is voidable, particularly where administratrix is also life tenant. Johnston v. Johnston, 227 N. Y. S. 526 (New York).

Can land owner buy at foreclosure of first mortgage and cut out second mortgage?

No; the second mortgage revives and becomes a first lien, if owner executed or assumed the second mortgage. Clearman v. Graham, 4 S. W. 2nd 581 (Texas).

Is construction mortgage superior to mechanics' liens filed after recording of mortgage?

Mortgage is inferior if mortgagee knew of mechanic's claim, even though mechanic did not exercise right to file warning notice, in Kentucky. Coral v. Trust Co., 4 S. W. 2nd 737.

Who loses when escrow bank fails?

The purchaser, where bank holds purchase money pending the perfecting of the title by the seller. Foster v. Elswick, 4 S. W. 2nd 946 (Arkansas).

Should title policy be issued as soon as partition sale is approved?

No; there is a right to appeal from subsequent order distributing the proceeds. Schee v. Schee, 4 S. W. 2nd 760 (Missouri).

Does the mere word "Trustee" constitute notice of the rights of beneficiaries?

It does in those States that have not passed the act recommended by the American Title Association; hence deeds must be obtained from beneficiaries. Howey v. Cole, 4 S. W. 2nd 861 (Missouri).

Can the homestead be partitioned by suit?

No; but it can be set apart from other property in a partition suit. Crayton v. Phillips, 4 S. W. 2nd 961 (Texas).

Is a devise to one if another dies without issue during a preceding estate, good?

Held both ways in Missouri at the same term. Barnhard v. McGrew, 5 S. W. 2nd 77; Ewart v. Dalby, 5 S. W. 2nd 428.

Can cashier take acknowledgment of mortgage to bank?

He can if not a stockholder. Bank v. Niklasson, 218 N. W. 744 (Nebraska).

Is affidavit "on information and belief" sufficient?

No. Maplewood v. Margolis, 141 Atl. 564 (New Jersey).

What is effect of description to "bank of creek"?

Runs to bank only even though otherwise would run to center. Hutton v. Yolo, 265 Pac. 933 (California).

Is agent entitled to commission if deal falls through?

Yes. Collopy v. Stevenson, 265 Pac. 1098 (Kansas).

Did omission of stamps make deed void?

No; the deed is good. Chauvin v. American, 218 N. W. 788 (Michigan).

Can wife give husband power of attorney to release her dower?

Usually not; but held that she can in New York, although she cannot convey her dower to him. Carney v. Morrison, 228 N. Y. S. 308.

Can guardian of two minors sell lots of each in one deed?

No; the sale is void. Bennett v. Airington, 266 Pac. 451 (Oklahoma).

Can fees be deducted from proceeds of reinvestment sale of remainders?

Yes; such as fees of attorney, broker and guardian ad litem. In re Roosevelt, 228 N. Y. S. 323 (New York).

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