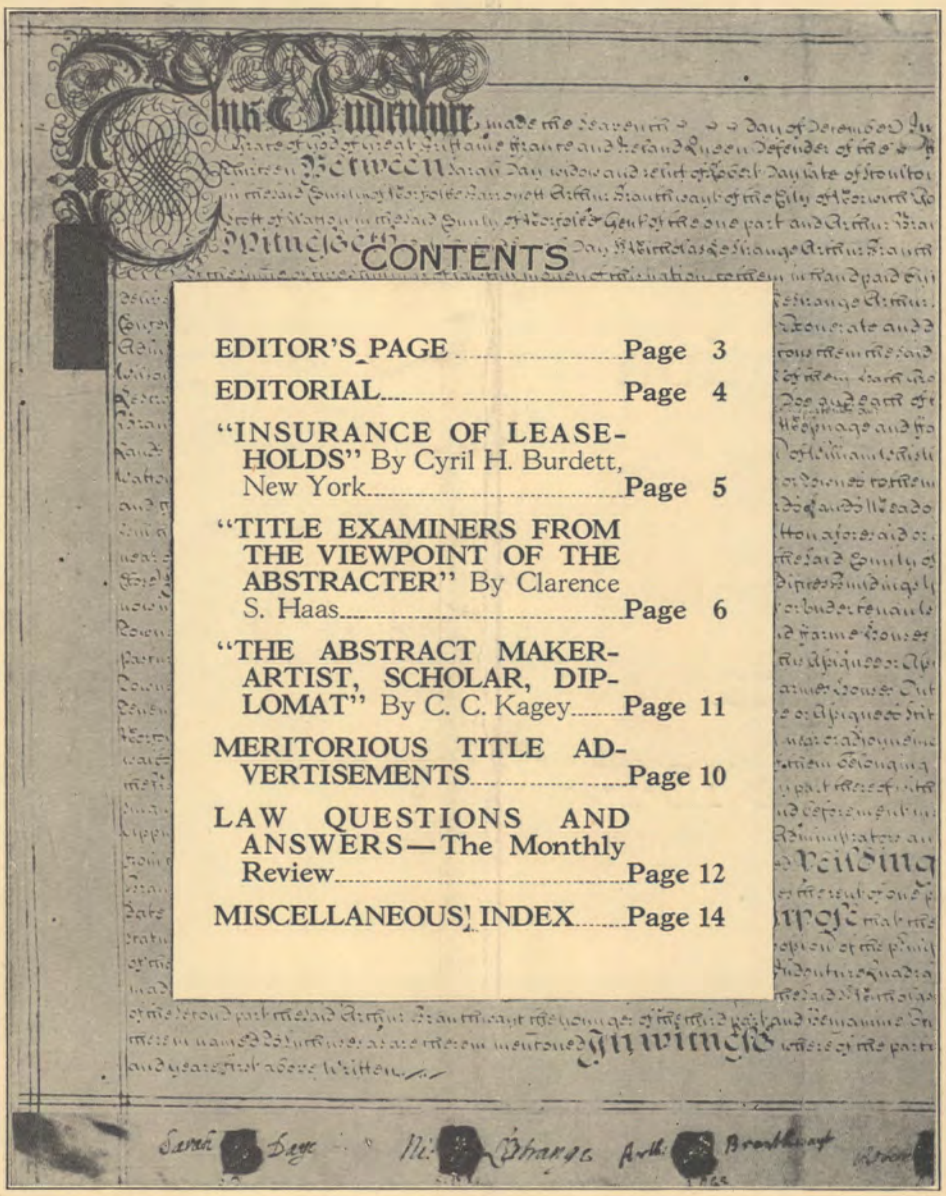
Title News

Vol. 8 *OCTOBER, 1929* *No. 10*



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The Kansas Title Association

will hold its

Annual Convention

in

Salina
November 18-19

Every abstracter in the state should attend this meeting.

The

Annual Convention

of the

Missouri Title Association

will be held in

St. Louis
November 20-21

Those who have attended former meetings in St. Louis couldn't be kept away from this one.

Those who never have should come and find out what it's all about.

This is going to be a lively session.

Every Missouri abstracter should be there.

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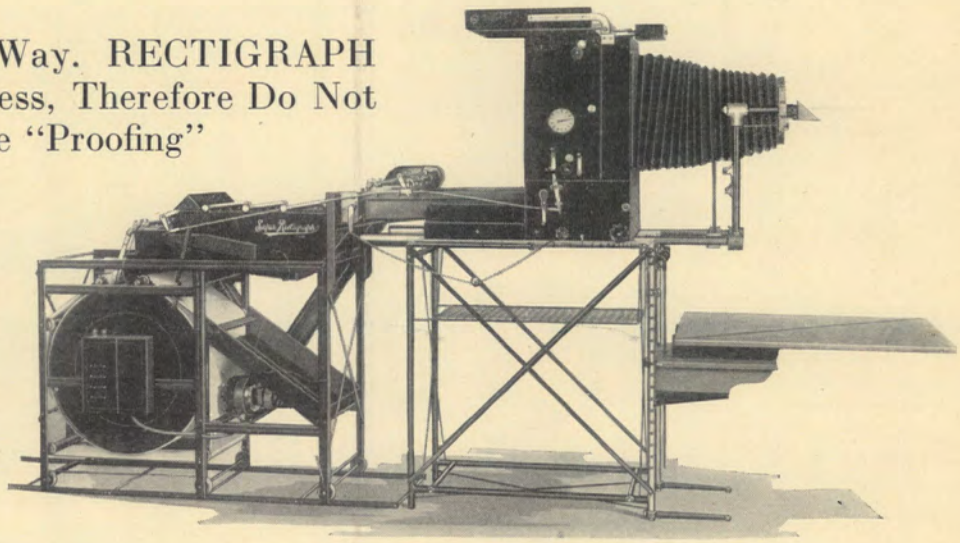

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TITLE NEWS

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The American Title Association

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Vol. 8 OCTOBER, 1929 No. 10

Editor's Page

THOSE who attended the San Antonio convention could not help but have been surprised to learn all that has been going on in the title world recently. Those who did not attend will be equally surprised to read about it all in the printed proceedings of that meeting.

Our legislative activities, both in Congress and the various state legislatures, were very energetic, and the results something to be quite proud of.

With but a few exceptions the state associations are more active than ever before and accomplished many things. The state meetings were particularly well attended and the programs the most interesting and beneficial ever.

The record of the American Title Association shows it to have had a great year. Many really worth while things were developed and accomplished. The report of the annual convention just held will show them.

The November TITLE NEWS will give a general report of the convention. The December issue will be the printed transcript of the proceedings.

The entire membership yearly eagerly awaits and anticipates the publication of the convention report. Its issuance is one of the most practical and profitable things the association does.

You can anticipate the 1929 number more than ever.

IT BEGINS to appear that the title business is about to emerge from its lethargy and indifference and make something of itself. No business can survive or progress unless those in it devote a portion of their time to its welfare.

There is no doubt but that the time is right here when the title business must take hold of itself, move forward and command the respect of the public, or step aside in the march of progress and changing conditions and pass out of the picture. This cannot be put off any longer.

We have been challenged time and time again and users of our services have repeatedly checked it to us. It isn't any more just a question of one's own particular backyard, but the other fellow's too. We must realize our place in the sun of business and the responsibility we have in the general order of things.

Those in the title business have for so long now been unappreciated, kicked about, dictated to, suppressed, repressed and plugged in the rut that title-itis has become chronic.

But from it all has come a realization and also the development of tried and proven things that mean better days. And it's simply up to those in the business to make whatever they want to out of it.

The first requisite is that every state association function. That means they will have to be supported. Rotten conditions for the title business in a state is a sure sign that the state association isn't working. Likewise it's an involuntary confession that those in the business in those states are not doing their part to themselves, their business responsibility or their commercial organization.

But it looks as though the business was getting into motion. It will gain force and achieve as those in it get in the game.

SEVERAL changes in the organization of the American Title Association are contemplated and they are all designed to make for a better working and more representative association.

The title business has demanded much of its representative in the business world—more than it could handle were it not for the wonderful spirit of the membership.

It intends to fulfill these demands and render the service expected by anticipating the needs and providing the necessary.

You will be particularly pleased to learn of the new developments.

ABOUT the articles in this issue, and the authors of them: Title insurance for leaseholds is a special order of business and presents some interesting problems. The article in this month's issue is pertinent. The author, Cyril H. Burdett, is vice president of the New York Title & Mortgage Co. and well known to many members of the association.

One of the popular pastimes of those in the title business is to invite examiners to write articles or give papers at conventions on the abstracter from the viewpoint of the examiner. The first case of the opposite was recently uncovered when the article in this issue was given before the convention of the Illinois Abstracters Association. The author, Clarence S. Haas, is one of the prominent titlemen of Illinois and a member of the abstract company of Chas. D. Etnyre & Co., Oregon.

Another of those interesting musings appears written by C. C. Kagey, of Champaign, Ill., abstracter, examiner, writer and all-around titleman.

The Annual Mid-Winter Business Meeting and Joint Conference of State and American Association Officials will be held in

Chicago
January
10-11
1930

THE title business has been a provincial, hesitating, catering vocation, much abused and underestimated by the public. It is generally thought of as a necessary nuisance.

Those engaged in the enterprise of evidencing and insuring titles know that the time is here when the efficiency of the service rendered, and the profits from operation, must be increased and a little public relations work done.

Everyone knows it can be achieved by a little activity and that the mediums for accomplishment are provided by the various state and the national title associations.

But their hands are hanging helplessly at their sides. The problem of every state and the American Title Association is finances---adequate funds with which to work.

The total amount of money received annually by all the state title associations and the national is not equal to that raised by many city or local dishwashers, waiters or common laborers unions. In short, a brave struggle is on whereby an attempt is being made to develop and protect a nation-wide industry and educate a hundred odd million people as to its importance on a beggarly sum.

Investigation shows that in comparison with other businesses and professions, and even with the so-called lowest of manual trades, those in the title business contribute a negligible sum to their associations.

And the record of the years shows they get a great return. Especially has this been true of late.

Insurance of Leaseholds

By CYRIL H. BURDETT, New York, N. Y.

Bishop Clement C. Moore who is, perhaps, best known to everyone as the author of "The Night Before Christmas," a century ago was the owner of several blocks of land in Chelsea Village, New York City, in the neighborhood of Tenth Avenue and Twenty-third Street. On the block bounded by Twenty-third and Twenty-fourth Streets, Ninth and Tenth Avenues, there was erected in the year 1845, a block of houses known as London Terrace and Chelsea Cottage Buildings. These buildings were leased by the Bishop, during his lifetime and, thereafter, by his executors, for terms of years with extensions for various periods; all of the leases were still running the first day of this month when, in accordance with their terms, they were cancelled. The London Terrace Corporation, which was the successor in interest of the Moore Estate (the stockholders being composed of Bishop Moore's descendants) has now made a lease for twenty-one years at an annual rental of $165,000. for the first term, with three renewals extending, in all, over a period of eighty-four years. This lease contemplates the destruction of the present eighty buildings and the erection upon the block of probably seven large apartment houses, from sixteen to twenty stories in height: the entire cost of the operation being about $15,000,000.

This manner of handling its real property, pursued by the Moore Estate, is typical of the method which has been followed by only a few of the large real estate owners in New York City down to within recent years. When one has named the Estates of Astor, Beekman, Goelet, Trinity Church, Dutch Reformed Church, and Sailors' Snug Harbor, one has mentioned nearly all the long term leasehold estates with which conveyancers have had formerly to deal.

Leaseholds, heretofore, have not been popular because of the unfamiliarity of the public with their advantages, and the consequent hesitancy of large institutions in making loans for the financing of improvements thereon. They are now, however, coming more and more into vogue; the method of their valuation has been reduced to a scientific formula, and familiarity with their legal status has brought about a condition where the owner and the lessee have seen the respective advantages accruing to each; leaseholds are constantly becoming more and more numerous in the real estate transactions of the day. The speculative interest, always a dominating influence in real estate investments in our large cities, inspires the owners of property with a desire to perpetuate their ownership for the benefit of descendants, even to the third and fourth generations.

By reason of the comparatively rare occurrence of leasehold titles, title insurance companies have not up to the present paid sufficient attention to the legal effect of their policies covering the risks involved.

What is the insurable interest of the holder of a lease? What is the measurse of loss which he incurs should the title of the lessor, under whom he holds, fail completely? If one has not carefully studied this matter in all of its bearings, I do not believe he would be able to answer these questions with any degree of satisfaction. For instance, the New York Title Board, in its schedule of charges, provides for regular rates on the aggregate rental for the entire period of the lease, not including renewals, or, if that is more than the assessed valuation, then the regular rates on the assessed valuation. This schedule sets up a mere, arbitrary standard for the fixing of the rates. Upon examination, we will see that the rates have no relation to the obligation or risk assumed by the company under its policy. A policy of title insurance has been held to be an indemnity against loss. The liability of the insuring company is to reimburse the insured for the loss which he has actually suffered in relying upon the policy.

In the well-known case of Whiteman v. Title & Trust Co., 25 Pennsylvania Superior Court Reports 323, wherein the plaintiff was suing for $1,500, the amount of the mortgage upon the premises, the title to which had entirely failed, the Court states:

"The plaintiff is only entitled to recover for the loss which has arisen by reason of the defects or incumbrances against which the defendant company covenanted to indemnify x x x. What he has lost, if the averments of the affidavits of defense are true, is the right to a lien upon land which is worth only $500, and that is the limit of his right to recover."

How, then, can the measure of the loss be the rent for the unexpired term of the lease? The tenant has received full return for the rent he has paid, and if he is evicted, he has suffered no loss from this source down to that date and will suffer none thereafter because he will be relieved from any obligation to pay further rent.

Again, how can the assessed valuation of the fee ownership of the premises have any relation to the interest of the insured in the leasehold? Our rule in New York is that insurance shall be paid for on the basis of market value of the property; usually, the price at which the property is purchased by the insured, in case of purchase. In the case of a mortgage, we also require a policy for the full amount of the mortgage. The assessed valuation is frequently much less than the market value, so that when the policy is written for the former amount, it is for much less than the insurable interest of the insured in the leasehold because, as we shall hereafter see, the insured's interest is made up of so many elements that the possibility of loss will far exceed the assessed valuation of the land. This would especially apply when, at the time of the making of the lease, the premises are occupied by old buildings, which are to be demolished, and new buildings are to be erected by the lessee. The principles underlying the ultimate liability of the Company under a leasehold policy, therefore, have no relation whatever to the valuation of the land at the time of the making of the lease.

There is no question, therefore, that this fixing of rates under our present methods is artificial and arbitrary, and that before many years have passed, they will need radical revision. If the Pennsylvania companies have not heretofore agreed upon a scheme for fixing such rates, they should not be influenced in any way by the present custom of the New York companies. There is, however, more reason in the further requirement which we have adopted in our New York rules:

"Where a leasehold requires the erection of a new building, the cost of the improvement shall be the minimum amount of the insurance."

When the lessee has erected a new building out of his own funds, he has actually paid for something which he may lose in case of failure of title and, therefore, to the extent of his expenditure he, undoubtedly, has a real insurable interest and will suffer a loss against which he can justly claim to be indemnified.

By reason of the improvement in the character of the neighborhood and the more extensive use of the buildings on the premises, or, by the erection of new buildings, rental value of the premises may be very much increased; it frequently happens that leasehold titles are sold for large sums in excess of the rental required to be paid by the lessee to the lessor. Every leasehold title, therefore, has a speculative value, and leases are bought and sold the same as fee titles. This profit, if it can be definitely determined is, undoubtedly, an element of loss covered by a policy of title insurance. This increase in value arises from a number of causes, among them the following, recognized by the fire insurance companies:

1. Improvement of the building in appearance, convenience or in size. A judicious expenditure for improvements frequently increases rental value out of all proportion to the amount of the investment.

2. Improvement in the character of the neighborhood by the erection of better type buildings or those influencing the course of traffic.

3. The shifting of a business center or overcrowding in a mercantile section forces a leading merchant in a given line to move entirely away. He selects a locality where rents are lower, tries to make his establishment more attractive than before and is presently followed by others in the same line.

4. New or improved transportation facilities rendering a locality more accessible.

5. Growth of population attracted by new or enlarged manufacturing enterprises.

6. The natural growth of the population in Cities.

7. Increased cost of materials or labor enhancing the value of all existing structures.

The reverse of such conditions, however, would produce a contrary effect in reducing rental values, in which case, the leasehold estate becomes of no value, and the company's liability fades away. This would be the case where the net sub-rentals fail to equal, or only equal, the rent reserved under the lease.

You will say that the above influences also affect fee valuations as well as leaseholds and, therefore, from time to time, vary the company's liability; perhaps now increasing it and then again decreasing it. This is true, but in the case of the fee value, so far as it affects the company's liability, all these contingencies and influences have been fully considered and have been discounted. In the case of leasehold insurance, however, they have never been considered as in any way affecting the company's liability. All the above influences are progressive where they tend to increase value while the amount of the policy remains fixed and bears no relation to the amount of the insured estate. In the case of Palliser vs. Title Insurance Co., 176 N. Y. 65, Judge Werner says that title insurance, instead of protecting the insured against matters which may arise during a stated period after the issuance of the policy, is designed to save him harmless through defects, liens, or incumbrances which may affect or burden his title when he takes it. This is true as to the factors which may cause the failure of the fee title but, in case of a leasehold, the measure of the company's liability is frequently the result of matters developing after the issuance of the policy as hereinbefore set forth. Every lease should be very carefully analyzed and considered by us, and our fees should be based upon a maximum figure which shall include all of these different factors, which make up present value, and which also will cause increase in value. The applicant, in each case, should be advised that in order to be fully protected, he should carry insurance equal to the probable increase in value of the insured estate over a period of years.

It is interesting to see how the fire insurance companies have selected a single insurable feature of the leasehold ownership. Most leases contain clauses that in case the building erected upon the premises shall be damaged by fire, the rent shall be paid up to the time of such destruction and then, and thenceforth, the agreement shall terminate. Where the lessee has subrented the property, for a term of years, in excess of the amount paid by him as rent, he has an insurable interest to the extent of such prospective profit, and the fire insurance companies will write a policy for a definite number of years. The policy is written for, say, one, two, or five years, and the profit arising between the rent required to be paid under the lease and the actual rentals received in subletting the premises is computed, and insurance is taken out for the amount of this difference, that is: Say, the profit for the twenty-one years of the lease arising from actual subrentals amounts to $5,000 a year. A fire occurs, and the building is totally destroyed one year after the beginning of the lease. The insurable value is $100,000. A policy has been taken out for two years; there being total destruction and the lease having been terminated, the total amount of the policy is paid. If, under the terms of the lease, the building can be repaired, then the insurance company is liable for the loss of rentals for the period during which it is necessary to make the repairs. In this case, only one factor is recognized for the purpose of fire insurance.

Where a policy of title insurance is issued to the holder of the lease, however, there are many different kinds of losses arising which may be claimed against a title company. The policy of fire insurance is written for only two years but the policy of title insurance runs for the entire life of the lease. It will be difficult to determine, in many cases, what would be the maximum liability of the company under a lease with so many unknown factors existing which would affect the amount of loss which might be claimed. In the event of subletting, a lease running for twenty-one years, with renewals, and with subrentals running only for the period of twenty-one years, loss might be definitely known but, with possible extensions and possible subrentals for such extended terms, such amount could not be even estimated as the eviction of the insured might not occur, and company's liability would not be fixed until a subsequent term.

There is also the further element of incidental losses where the lessee is engaged in a large retail business, for instance, such as the Wanamaker Store at Broadway and Ninth Street, New York City, which is a Sailors' Snug Harbor Leasehold. A large business has been built up, a good-will developed, an extensive plant established yielding a profit running, perhaps, into hundreds of thousands of dollars a year; this business could not be duplicated at any other location except after years of effort. If there should be a failure of title resulting in ejectment of the insured, the loss to the lessor in such a case might be of very large proportions. This feature, perhaps, has never been considered by the title insurance companies in analyzing their liability but, undoubtedly, is a very important element in the consideration of damages where there has been an eviction of the insured, rendering the company liable under the policy.

For the purpose of calling attention to some of the salient factors to be considered in leasehold titles, it might be well to analyze the transaction referred to at the beginning. Without in any way assuming to outline the actual transaction now in contemplation among the parties, let us assume the entire cost of the operation to be $15,000,000, including the value of the fee, which is $3,000,000; that the buildings which are to be erected will cost $12,000,000, making a total valuation of $15,000,000; that the lessee will be able to obtain loans aggregating $9,500,000; that the owner of the fee joins in the mortgages so as to make them liens upon the fee ownership. This will mean that the lessee will have to put $2,500,000 of his own money into the operation, and that in addition to paying $165,000 annually as fee rental, he will have to amortize, over the period of the lease, the amount of money which he has personally furnished. The value of this leasehold then will be based upon the profit which the lessee is able to make in subrenting for the amounts necessary to pay the interest upon his $2,500,000, the amortization of that sum over the term of the lease, ground rent, taxes, etc., and all other expenses entering into the cost of the operation. Under the rules now in force in reference to title rates, the lessee would be obliged to take out insurance for $12,000,000, being the cost of the new buildings, which is to be the minimum amount of the insurance. You will see, however, how impossible it will be to determine what the profit on the leasehold will be for a term of years and yet, undoubtedly, this leasehold will be sold after the buildings are finished for a very substantial figure above the outlay made by the lessee. Of course, its value is entirely speculative, for we cannot tell to what extent there will be any profit for a period of years; it all depends upon the maintenance of the present high rentals which brought about the present transaction. The lessee, of

course, should be compelled to take out a policy of $12,000,000, and, in order to protect himself in case of prospective profits and enhancement of value, he ought to be advised, if not required, to take out at least $1,000,000 additional.

Another case will bear analyzing. A block of the Midtown Section, Manhattan, is occupied by a building, thirty stories in height—one of the landmarks in that locality. It is taxed for $8,500,000. The fee is covered by a mortgage of $2,000,000, and the leasehold by mortgages of $8,000,000. The rental reserved in the lease is $195,000 a year. The title company (so as to read "the title company was asked," etc.) was asked to issue a policy for $8,500,000, the assessed valuation. The leasehold was insured, subject to $8,000,000 in mortgages, so that there must have been an equity of value in the leasehold above the mortgages in a number of millions of dollars. The assessed valuation in this case, therefore, did not represent, by any means, the full insurable value of the leasehold. The present value also, whatever it might have been, was only a fraction of a prospective value which must follow as the neighborhood in question develops. The building at the present time is not fully rented but in a few years, without doubt, a very large profit will be realized from the difference between the subrentals received and the rent reserved under the lease. In case the lessee should suffer entire loss by reason of complete failure of title, the equity of $500,000 above the amount of the present mortgages would be a very small fraction of his actual loss.

Still another case of leasehold which has some very interesting phases: Twenty-one years ago, the owner of what was at that time a valuable piece of property in the Midtown Section of Manhattan made a lease for twenty-one years with three renewal periods. At the time the lease was made, the property was valued at $900,000, and the rental reserved was 5 per cent of that value, or $45,000 a year. The land was improved with a two story structure occupied by stores and offices. By reason of the change of neighborhood so that it has now become a business and hotel neighborhood with large retail stores, the value of the land has been constantly increasing, and for several years it has been substantially of the value of $4,500,000, as recently fixed by the appraisers at the end of the first term. The peculiarity of this lease was that, for the second period, the rent was fixed at 4½ per cent of the valuation of the land, whereas in the first lease above mentioned, the rental is 5½ per cent, so that the holder of this last mentioned lease is, undoubtedly, paying 1 per cent less than the market value. This, upon the above valuation, amounts to $45,000 a year and extends over a period of twenty-one years. It will be seen that we at once start with a valuation of this leasehold of, at least $945,000, which should be discounted as of today. This lease has just been sold at a very large figure. The new lessee will be obliged, in order to obtain proper return upon his purchase, to erect a large building on the premises, which will further increase the possibility of loss and, therefore, make desirable the increase of the amount of title insurance.

What are the proper factors to be considered in insuring such a lease as this? This is a question I leave for your consideration.

There is also one other phase of the matter which is important. With the increasing tendency of owners of property situate at focal points to retain the fee ownership and make leases for long terms of years, it frequently becomes necessary for speculators in accumulating large parcels for modern improvements to buy leaseholds and combine such titles with fee titles. Some large lenders do not object to a combination of this kind, although it is, from the standpoint of others, very objectionable. Trustees, savings banks and insurance companies cannot legally lend on leaseholds, even where they are combined with fee titles. For an owner undertaking an operation of this kind, therefore, it materialy reduces the market in which he can place his loans. In such case also, the lessee is required to make his plans so that the building upon the leased premises shall constitute a unit by itself, and upon the termination of the lease shall revert to the owner in such condition that walls, elevators and operating plant can be used as independent units.

I do not know whether you have adopted, in your form of policy, a provision as to divisibility of the insured premises into separate parcels, where the premises consist of several units and a loss results which affects only one portion. We have found such a clause very necessary in New York City by reason of the assembling of so many lots, coming through separate chains of title, into one large plot, and no additional insurance is obtained covering the cost of the improvement. The applicant takes out a policy covering the land only, and the title may fail as to one lot out of a dozen. To cover such a situation, therefore, our policy contains the following clause:

"If the premises described in Schedule A are divisible into separate, independent parcels and a loss is established affecting one or more of said parcels, the loss shall be computed and settled on a pro rata basis as if this policy was divided pro rata as to value of said separate, independent parcels, exclusive of improvements made subsequent to the date of the policy, but this clause does not apply to mortgage policies."

You can readily see that where one policy is made to cover both leasehold and fee, and the title fails as to the portion of the premises included in the leasehold, the entire amount of the policy might be absorbed by this loss. The clause of the policy which I have set forth would limit the loss so paid to be adjusted by the terms of the policy, but great difficulty would, undoubtedly, be experienced in determining as between the leasehold and fee what should be allocated to the leasehold on the one side, or to the fee on the other.

It is better, therefore, to issue separate policies in these instances of combined holdings; one on the fee and one on the leasehold. If one policy, however, is issued, the risk should be divided so that the company's liability shall be fixed as to each portion; a definite amount upon the leasehold, and a definite amount upon the fee. Where a mortgage is insured, it may be difficult to make such an arrangement but, if possible, the same principles should be observed, otherwise, endless confusion will result by reason of all the different factors I have set forth which make up the possibility of a loss.

In the past, we have made no attempt to impress upon our clients the need of taking out additional insurance after the policy is once issued where extensive improvements have been made, very often exceeding several times the value of the land, or where there has been large increase in the value of the premises. We are now trying, however, to educate the public to see the necessity for handling title insurance transactions just as they handle fire insurance; the greater the value, the greater the risk and, therefore, a larger amount of insurance.

I have tried to show the nature of the problem with which we are confronted in the handling of leasehold titles. I have referred to several phases of this problem. I realize that what I have said is only fragmentary, but I hope I have stated enough to show you its seriousness and that with the increasing number of leasehold titles, we have a situation where it is necessary to work out a more scientific scheme for fixing our fees; that at the same time, we must have a better understanding as to the nature and the measure of our liability.

Title Examiners, From the Viewpoint of the Abstracter

By CLARENCE S. HAAS, of Oregon, Ill.

I am fully aware that Foolish Question No. 10,887 may emanate from the pulpit or platform, bench or bar, the voice of the people or the abstract office, as well as from the opinion of the title examiner.

I have not attempted in citing a few instances in this paper to cover all the points that have inspired the idea I am trying to present, but have merely mentioned a few of them that serve to illustrate the idea I have in mind about title examiners, their functions and qualifications from the standpoint of the abstracter.

It is not without some misgivings that I undertake to discuss the subject indicated by the title assigned to this address.

An abstracter is, in quite a large sense, a title examiner himself, even though he may not work at it professionally. As the two functions meet in the business world, I have observed through long years of experience the growth of a sort of rivalry between these two classes of title men.

As to the proper method of showing the record, in many cases it has created a seeming antagonism between abstract makers and the title examiners. This feeling is not engendered entirely by the resentment on the part of the abstracters to the title examiners' criticism of their work, but has been fostered and developed to a considerable extent by the attitude of the title examiners themselves, or perhaps, present company being always excepted, I should say the attitude of some title examiners. But I wish it understood that what I am going to say is offered in perfect good will and in the hope of establishing a little better feeling of cooperation between the abstracters and the examiners. Whatever the feelings of other abstracters may be on the subject, this is offered not with resentment but with sympathy and kindness.

The labors of title men, while bound by strict rules of law, are designed to condense the record title element of real estate transactions to the minimum if possible, in order that real estate and real estate securities may be rendered as liquid and flexible as possible in comparison with other commodities of trade which do not require the same care and scrutiny.

I have observed that the work of both title examiners and abstracters has suffered from the fact that it is not easily understood by the layman, who becomes irritated by the delay attending the investigation of the records, the preparation of the abstract and the examination of the title as disclosed by the abstract, and I have also observed an eagerness on the part of those who handle our work commercially to aid and assist us by trying to create a uniformity of method in the preparation and examination of titles.

Some of the older members of the association will recall that at our earlier meetings much time was consumed in discussing the uniform certificate, many objections having been made to the various forms of certificates used by abstracters in different counties and states. But it never got anywhere and, in my opinion, it never will.

There are local conditions in many counties that enforce limitations upon the abstracter's certificate and which prohibit him from signing a certificate broad enough to be uniform. However, the failure of the Abstracters' Association to arrive at a uniform certificate may be responsible for the adoption of the special certificate which has become so popular in recent years. It may be thought that this comment has little to do with the title examiner's work, but I mention it because it is evident that one of the desires of those who handle titles commercially is also a uniform opinion of title.

I have no doubt that many of you examiners now fill in and sign a printed blank called a "Final Opinion of Title," which seems to me to cover many points not disclosed by the abstract of title at all. These opinions seem to require the title examiner to review not only the abstract but to examine the premises in question, determine the location of the buildings, verify the survey, prove the conveyancing and check up the insurance on the buildings.

It is out of this attempt to cover both the law and the facts in the certificate of the abstract and the opinion of the title examiner that has come, what I have sometimes designated as an attempt to commercialize titles which has resulted in the introduction into opinions of title of criticisms, suggestions and requirements that are commercial rather than legal.

With all due respect and consideration for those who find advantage in handling the title element of real estate and real estate securities on this basis, I believe there is danger in the practice in that purchasers and investors are led to rely too much upon the methods employed to get the title by, and by following commercial methods of title correction and transaction overlook legal methods that are less difficult, more efficient and legally sound.

The function of the title examiner is to determine from the abstract where the title rests, what encumbrances, if any, exist against it, and whether or not the record title is shown by the abstract as fully and completely as it should be to justify a legal opinion. I know that in offices where many titles are examined, more than one examiner goes through the title and that the chief examiner who accepts the responsibility for the opinion may pass upon only those questions submitted to him by the original examiners, and to dispose of these questions properly in the opinion the chief examiner must be especially well qualified. The differences that arise between title examiners and abstracters, in my opinion, are caused in many cases by the point of view with which the examiner approaches the subject.

There is some excuse for the attempt at a uniform opinion, because opinions of title are of great variety in form and character. Some examiners seem to greatly fear that the abstract will be changed in some form or manner after they have made their examination and take great pains in their opinion to identify the abstract by specific reference to the number of pages, the number of items, the dates of the certificates and the signatures thereto.

I have in my files at this time an opinion of title consisting of six pages which are devoted entirely to a description of the abstract examined and that is all. Evidently by the time this examiner got through describing the abstract he was too tired to express an opinion.

Others to avoid this have adopted a cryptic system of characters and symbols, meaning nothing to one who does not possess the key, but which perhaps enables them to identify the several pages of the abstract examined. Some of these methods are

elaborate and complicated and have led some abstracters to class such examiners as abstract butchers for the reason that by the time they are through working their blue and red pencils there is little left for the abstracter to take pride in, no matter how nice a piece of work it may have been when it left his office. It may be necessary at times for the title examiner to review the abstract, or portions of it, but with the improvement in abstracts of title generally in the past quarter of a century, it would seem that a brief description of the abstract, merely sufficient to identify it, is all that should be required.

It would also seem that in view of the record of abstract makers in recent years, and particularly those who are members of our association, the abstract should come under examination upon the assumption that it correctly shows the record. If there is reason to believe there may be an error in the abstract, it can be mentioned somewhere in the opinion. This, it seems to me, is the proper spirit in which to approach the work. I have read many opinions that were merely attacks upon the abstract and written upon the seeming presumption that the title was perfect and the only reason there were any flaws in it was because the abstracter was incompetent.

One of the recent attacks on the abstracter which seems rather foolish to me is the objection to the use of water marked paper or a printed card or seal to identify each page as the genuine product of the abstract office from which it is issued.

I have an opinion on file in which this criticism is not directed entirely to my own abstract but to the practice in general, in which the examiner declares that he is obliged to hold up every page to the light to read the water mark; that sometimes he is obliged to use a micrscope and sometimes a rule in order to determine whether each page is exactly alike. With all due respect to this scrupulous care and anxiety to make his examination a thorough piece of work, I feel obliged to classify this examiner among those who give more attention to the abstract itself than they do to the title it sets forth. In short, examiners of this type seem to me to examine the abstract rather than the title.

I have stated before briefly what seemed to me to be the functions of the title examiner from the abstracter's point of view and have also stated the additional duties that are thrown upon him by some who employ his services.

As to the qualifications of the title examiner, the abstracter is apt to do him an injustice in assuming that he ought to understand certain conditions that may be purely local and which, however familiar to the abstracter, may never have come within the title examiner's experience. But the title examiner should not assume that the abstracter has not included essential matters simply because of his familiarity with the title. He may do it occasionally but not often.

But above all, he should not rely upon the abstracter for his law and that is what it appears the commercial title examiners are doing. If the abstracter must know a considerable amount of law and be familiar with the statutes of his own state to compile an abstract, certainly the title examiner should know more law and be more familiar with the laws of the state to write an opinion of the title. For all I know to the contrary, it may be that the commercial system of title examination may contemplate "passing the buck" on some of these questions back to the abstracter because of his experience in parallel cases, which qualifies him to cite references to the law and court decisions which dispose of the point. But is not this a reflection upon title examination as a profession?

Of course, there are some rare cases where the abstracter may be the best source of information for the reasons already stated, but to adopt a practice of throwing the legal points into the opinion as objections for the abstracter to meet is certainly a reflection upon the qualifications of the title examiner.

For instance, on the one hand, it may not be generally known among title examiners that a parol partition is good in Illinois and as such a thing is a rare occurrence in titles it would not be out of place to ask the abstracter for information on the subject outside the record, but there is no excuse for the title examiner not to know something about the rectangular system of surveying adopted by the United States Government. In the back of every county atlas, in some school books and in other publications there may be found a complete analysis of the system and an examiner should know that in a regular township, Section 7 is south of Section 6 and Section 8 is east of of Section 7. He should know the dimensions of a section of land and its recognized fractional parts.

I know of one instance in which the title examiner finally recommended that an adjoining piece of land in another township be omitted from a mortgage because after he had been furnished with three or four plats and several letters of explanation he could not understand that the corners of the section in one township do not always meet the corners of the sections in another.

The title examiner should know what the word "warrant" means in a deed and how after acquired title inures to the grantee in a warranty deed; he should know that the rule in Shelly's case, while abolished in some states, is law in Illinois; he should know the powers of courts of chancery and their jurisdiction over matters initiated in the County or Probate courts; he should know that inheritance of real estate in Illinois is instantaneous upon the death of an intestate and that administration influences the title only in so far as it may identify the heirs with the lands and show that their inheritance was relieved from the debts of their ancestors; that an estate may be open and yet closed as to creditors and not affect the title of the heirs even though the administrator is not discharged; he should be familiar with the inheritance tax laws of the state and the federal estate tax, and he should also know that some deeds made in other states that would not be legal in his own have been validated by the laws of his own state.

After a delay of nearly six months and considerable correspondence between a firm of distinguished attorneys in Chicago and another firm in the country, it was finally a humble and unpretentious abstracter who referred them to the statute validating the deed in question.

The qualified title examiner should have confidence in himself, but not over-confidence. He is not a court and the result of his labors is opinion, not decision.

In a neighboring county it has been found so convenient to probate wills by publication of notice by the county judge in accordance with the statute that attorneys have practically abandoned filing the petition provided by law and having hearing set for three weeks thereafter. It will be noted that the statute does not say how many times the notice of the county judge or probate judge shall be published and in the country referred to, wills have been admitted to probate after one or two publications.

A title founded on a will admitted to probate after two publications by the county judge is fiercely attacked in an opinion I have on file, in which the examiner says it is utterly presumptuous in the county judge to assume that the statute intended to give him the privilege of giving such notice as he saw fit and that the statute contemplates that he shall publish three notices, one each week for three successive weeks, so that the time shall be the same as where the probate is petitioned for.

Might it not be said in this case, that it is presumptuous on the part of the examiner to make himself the supreme court and decide the question? The attorneys who procured the probate of the will considered his position ridiculous.

A practice seems to have crept in to title examination of recent years, growing out of attacks on the delivery of deeds, whereby certain examiners put themselves in the position of amateur detectives seeking information not disclosed by the record. As a general thing, I do not believe snooping outside the record is a wise practice. The examiner's position in general is that of the innocent purchaser for value relying upon the record, fair on its face, whom the law endeavors

to protect and outside information in many cases may do more harm than good by giving him a guilty knowledge that might ruin his standing and that of his client in equity.

Especially is this true in cases which excite suspicion of that character and where a quarter of a century or more has passed since the record was made.

There is one other criticism the abstracter may properly have of the so-called commercial title examiner. He is an affidavit-eater and permits serious legal questions to be cured by affidavits made by witnesses he does not know and who in their affidavits do not qualify themselves as competent. There is a danger in this readiness to let affidavits of adverse position especially cure the greater part of the errors in the record title. While the statutes of limitation are strong and have been repeatedly upheld by the courts, it should be borne in mind that they do not run against minors, incompetents and co-tenants. In many instances in my experience I have found affidavits accepted that did not cover the ground.

Hence, the conclusion I reach, gentlemen, is that the proper qualification of the title examiner is a knowledge of the law, for it is the law that must finally be the backbone of his opinion.

In conclusion may I suggest that the best results in title examination can be obtained by a spirit of cooperation between the abstracters and the title examiners. Working together they can make a record title as near letter perfect as is humanly possible and save time, trouble and needless expense to their clients.

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, Ill., for October, 1929.
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 TITLE NEWS and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management, etc., of the aforesaid publication for the date shown in the above caption, required by the Act of Aug. 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: 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: None.

RICHARD B. HALL.

Sworn to and subscribed before me this 12th day of October, 1929.

(Seal.) HARRIETT C. OCMOND.

(My commission expires Feb. 28, 1931.)

MERITORIOUS TITLE ADVERTISEMENTS

(Examples of advertisements for the title business. A series of these will be selected and reproduced in "Title News," to show the methods and ideas of publicity used by various members of the Association.)

Reprinted from Shelton Journal of September 26, 1929.

1909
SEPTEMBER
1929

"TWENTY YEARS OF TITLE SERVICE"

20 Years ago this September the Mason County Abstract & Title Company was incorporated under the laws of Washington and commenced business.

The organizer of the company looked far into the future and foresaw that changing business conditions, demanding more and more speed, saving in costs, accuracy and with absolute guaranty of title, would eventually make obsolete the slow, cumbersome and expensive method of evidencing land titles by the abstract system then commonly in use.

With this vision of future demands for title service, this company was one of the first in the State of Washington to qualify under the Insurance Code for the writing of TITLE INSURANCE when the law permitting the same was enacted in 1911.

The adoption of TITLE INSURANCE by the public has been comparable to that of the automobile, radio and airplane, until today the larger portion of real estate transactions in Mason County are evidenced by TITLE INSURANCE written by this company.

Our purpose has been to make the title to real estate in this county as merchantable as a Government bond or note, and our title policy has substantially accomplished this.

We are proud of the fact that we have pioneered and made possible this modern title system for the land owners of Mason County. Many do not know that Mason County, population considered, is the smallest county by far in the United States supporting a home Title Insurance Company.

Very shortly we will occupy our new offices, and with new, modern equipment will be enabled to serve our customers' title needs better than ever, and for those who desire abstract service we will continue to render the same in our usual efficient manner.

Our new building will be known as TITLE INSURANCE BUILDING, and shortly we will invite you to pay us a friendly visit of inspection. Twenty years of effort to render satisfactory title service has made this possible.

Title Insurance—Abstracts—Escrows
Safe Deposit

MASON COUNTY ABSTRACT & TITLE COMPANY
(Under State Supervision)
Shelton, Washington

This ad simply but forcibly tells of the successful transformation of an abstract office into a title insurance business.

The Abstract Maker

Artisan, Scholar, Diplomat

By C. C. KAGEY, Champaign, Ill.

The authorship of abstracts is of recent origin in its present form. Although Bible students point to the record in Genesis of the purchase by Abraham from Ephron as the first recorded proof of transfer, it is only in the last century that the necessity for meticulous accuracy in establishing titles has given rise to this particular and important branch of commercial literature.

The author's conception of an Abstract of Title is a full and complete typed review of all matters of record, set forth in logical order, that affect or appertain to the title under examination. And this royal classic of the profession has been a development from those meager index forms generally prevalent before the organization of the American Association of Title Men, twenty years ago. Individual pioneers in the field, before the creation of the National Association, did heroic work pushing ahead in form and in exhibit, but the greater growth of authorship in the present universal merchantable variety has come from contact among the authors, contact secured through organization.

The present-day successful abstracter is triune: he must be artisan, scholar and diplomat. If he can measure up to these three qualifications, he may feel that he has reached the front rank among his fellows. More, he is in line for leadership among his associates, and in his home community he will be recognized as the prominent citizen he is.

The artisan is more than a mere worker. He is one who labors consistently, methodically and exactly. An abstracter, worthy of the name, works with a constant effort. He must be mature to work consistently. He may be youthful in years, but he must be intensely attentive to the details of his craft or he will never be a success. He must discern all the material essentials in a record or he cannot make a take-off. He must be methodical or he cannot post. And he must be exact or he cannot be trusted even to copy.

He must also be persistent, because, perhaps no other line of labor is less interesting. Only industry and ambition to succeed will insure progress in his work; without these two essentials he will inevitably tire of the daily humdrum repetition of "take-off . . . post . . . file . . . copy."

A man who does not have Method ingrained in his system may never hope to be a successful abstracter. Rule and measure, neatness and exactness only can succeed. Without any one of these he cannot construct dependable indices, or maintain a working set of books. Method, exactness and neatness are as essential to the successful abstract maker as is breath to his life. By these symbols he may forecast success in erecting his plant and producing his output.

As a scholar he must have graduated through the "student" rank, for if he has not diligently searched among the libraries on title affairs, and has not learned the statutes of his state bearing on matters of real estate, he will never succeed. What should he know? Everything pertinent to title affairs in his state, beginning with the government plan of land survey, if his state is a part of the Great Domain. This must include, not only the proper method of description by Section, Township, Range, and Meridian, but the plan of Alienation, be it an original Colonial Grant, a Preemption Claim, a Homestead, a Railroad Cession, a Saline or School Grant, or any one of the more than twenty methods of title inception in the original owner.

This subject of survey and description has alone occupied the minds and been the life work of many individuals. With the title in the ancestor he must know the proper showings from the record to trace the title throughout its history, whether by the act of the individual or by operation of law. He must needs understand the requisite items in deeds at various dates, of trust deeds, and deeds from trustees, the correct proceedings in estates both testate and intestate, the methods of law in foreclosures, and other practices in law and chancery. More important to him than to the lawyer is it to be able to proof a proceeding at law.

He is liable morally and commercially to his clientele for his deeds of omission as well as for those of commission. He should fully understand the burden on his professional shoulders and on his personal conscience.

The successful abstracter must also be a diplomat. He may recognize gross errors in an owner's deed or a lawyer's suit to quiet title, but he cannot vent his disgust in the terse Anglo-Saxon. He must clothe his suggestions in more mellow terms, merely offering to assist in curing the defect if it be desired of him, rather than to exhibit boldly the error of the wrong description or the omission of the service in capital letters underscored in his abstract. To be popular with his fellow men and a success in his profession, he must dissemble when he would criticise, and obtain his ends by more devious ways, when the rough short cut would be so much simpler.

If he can measure his success by
years' return of toil,
If he can leave behind him a
monument to moil,
If he in all his labors meets each
with smiling mien,
He is an Abstract Maker, a success triune, I ween.

LAW QUESTIONS AND THE COURTS' ANSWERS

Compiled from Recent Court Decisions by

McCUNE GILL

Vice-President and Attorney
Title Insurance Corporation of St. Louis,
St. Louis, Mo.

Can installment contracts to purchase be forfeited immediately upon default?

Certain redemption periods (from one to nine months) are provided by statute in some states. Foster v. Bauman, 271 Pac. 30 (Arizona).

Does completion bond to lender protect assignee of note?

Held in Washington that it does, even without consent of company (but usually held otherwise elsewhere). Warren v. National, 271 Pac. 69.

Can grantee from life tenant and remainderman be barred by adverse possession of other remainderman?

No; statute of limitation does not commence to run until death of life tenant. Cameron v. Westbrook, 11 S. W. 2nd 441 (Arkansas).

What is effect of two conflicting constructive or color possessions?

The one having the superior paper title prevails. Patrick v. Goolsby, 11 S. W. 2nd 677 (Tennessee).

Is purchase money mortgage superior to other mortgage by purchaser?

Not if the holder of the purchase money mortgage knew of the other mortgage (in South Carolina). 145 S. E. 113.

What is effect of "reservation of timber for five years"?

It gives grantor right to cut for five years but all the timber uncut at end of period passes to grantee or his assignee. Carroll v. Batson, 145 S. E. 9 (North Carolina).

Do half blood collaterals inherit?

They do (in varying portions) in most states. Howard v. Farson, 145 S. E. 25 (North Carolina).

Can absolute deed be shown to be mortgage by oral testimony?

In Georgia only when grantee did not take possession. Petts v. Cox, 145 S. E. 61.

Is trust, terminating in three years or on prior death of beneficiary, good?

Yes, it is for life, not years. In re Drury's will, 163 N. E. 133 New York.

What is "twenty days" from Oct. 31?

November 20, unless that is Sunday, when it will be Nov. 21. Grant v. Pizzano, 163 N. E. 163 (Massachusetts).

Is deed to administrator in payment of mortgage good?

No; he must foreclose. In re Tredway, 163 N. E. 223 (Ohio).

Does convict's civil disability commence on conviction or imprisonment?

Not until actual imprisonment. Handrub v. Griffin, 275 Pac. 196 (Kansas).

Can guardian of two wards sell their separate lands together?

The sale is void if the tracts are described and sold as one piece. Mobley v. Hester, 275 Pac. 284 (Oklahoma).

Does destruction of notes and execution of new notes affect lien of mortgage?

Not if intention to substitute new notes and preserve lien is shown. First v. Hendrick, 275 Pac 314 (Oklahoma).

Has bigamous wife any interest in husband's property?

She takes half of community in Louisiana if she did not know of the former marriage. Johnson v. Johnson, 120 So. 479.

Are statutes of limitation curing tax titles valid?

Hardly ever; thus the five year statute in Mississippi does not run if city sold forfeited lands without obtaining ordinance authorizing sale. Byrd v. Dickson, 120 So. 563.

If deed to wife states that land is separate property, should conveyance be accepted from her after husband's death?

Not in Louisiana; if recital in deed is not true, the heirs of husband by former marriage will take an interest. McGill v. Urban, 120 So. 408.

Is order of publication good without allegation of nonresidence?

Not in Florida. Balian v. Wekiwa, 120 So. 317.

Is mechanic lien superior to purchase money mortgage by owner?

Not if notice of lien was recorded after record of mortgage, in Florida. VanErpael v. Sarasota, 120 So. 841.

Can forced heir also take as devisee?

Yes; he will take both, as testator can devise the disposable part of his estate as he sees fit. Tridico v. Merenda, 120 So. 85 (Louisiana).

Can easement or right of way be acquired by possession?

Yes, possession for period of limitation gives easement even without written instrument. Jenkins v. McQuaid, 120 So. 814 (Mississippi).

What is effect of death of defendant between decree of foreclosure and decree confirming sale?

The sale is good. Davis v. Scott, 120 So. 1 (Florida).

What is construction of "devise to wife absolutely, with power to sell, but all remaining at her death to go to brother"?

The widow was held to take a fee simple and the brother nothing, under the old doctrine that no estate can be created after a fee. In re Wadsworth Estate, 223 N. W. 783 (Minnesota).

Can specific performance be decreed if wife did not sign contract?

Yes; subject to dower, if purchaser is willing to accept such a title. Zvacek v. Posvar, 223 N. W. 792 (Nebraska).

Is delivery to bank, to be delivered to grantee on grantor's death, good?

It is good if grantor did not reserve any control over the deed. Davis v. Brown, 222 N. W. 859 (Iowa).

Can widow agree to give part of community property to children?

Not if there is no consideration. In re Gregsons Estate, 274 Pac. 991 (California).

Is remainder contingent in devise "to wife for life and on her death to Frank and Harriet."?

No; remainder is vested. Oliver v. Sperry, 274 Pac. 1030 (California).

Is mortgage defective if mortgagor does not acquire title until after mortgage is recorded?

The mortgage is good, as after acquired title enures to benefit of mortgagee. Schelling v. Thomas, 274 Pac. 755 (California).

Is acceleration clause in mortgage good?

Held good in Arizona, even if there is no such clause in the notes. Holman v. Roberts, 274 Pac. 775.

Is mortgage by corporation after resolution by directors good?

Void in Colorado if on entire factory; there must be a resolution by holders of majority of stock. Metalloid v. Luboil, 274 Pac. 826.

Can court order guardian to mortgage minors land to pay delinquent taxes?

Not in Oklahoma. Glover v. Warner, 274 Pac. 867.

Can title by adverse possession be acquired without deed or other color of title?

Yes; Union v. Huse, 274 Pac. 240 (Kansas).

Where property is community, what is effect of husband's will, giving wife life estate?

Wife takes her half, and life estate in husband's half, in Arizona. Roberson v. Teel, 275 Pac. 2.

DEFECTIVE TITLE INFLUENCE IN HISTORICAL EVENT

In 1735 Robert Harper, of Oxford, England, set sail in the Morning Star from London to Philadelphia. Here he prospered as an architect and builder until a defective title to the property he had accumulated caused him severe loss and he decided to go to North Carolina and again establish himself.

In the course of some days he reached the junction of the Potomac and the Shenandoah. Here the remarkable scenery gripped him. He lost his desire for North Carolina in a resolve to possess this unusual piece of real estate. Crossing the river, he proceeded upstream where he soon found two squatters, one a German named Peter Stephens, and the other an Indian named "Gutterman Tom." Having lived on the point since 1733, they possessed a log cabin, corn patch, canoe, etc. These they sold to Mr. Harper for thirteen guineas. Two years later he secured the legal title to one hundred and twenty-five acres for sixty guineas, purchasing the property from Lord Fairfax, who through royal grant was possessed of that portion of Virginia.

Robert Harper thus became owner of the beautiful gap through the Blue Ridge to the Valley of Virginia. Later at this natural gateway, he established a ferry and the place became known as Harper's Ferry.

In 1796 General George Washington purchased from the Harper family 125 acres of land to be used for an Armory site. Washington himself made the survey and draft recognizing the value of the splendid water power.

Thus a defective title caused Robert Harper to leave an established home and business. His move made history, and the story ended happily—most defective title stories do not.

FLORIDA AFFIDAVIT REVEALS HONEST CONFESSION

Honest confession is good for the soul, they say, and in Florida they must believe it. The following affidavit appears in the records at Miami, Florida:

"Elmer Wetzel To Whom Concerned AVERS:

"That he is a duly commissioned Notary Public in and for the State of Florida at Large and that said commission is recorded in Dade County, Florida; that affiant's commission, as such Notary, expires on July 17, 1929; that notwithstanding such expiration date, in that certain satisfaction of Judgment executed by Florence L. Schleckser to A. J. Richey, dated July 31, 1928, filed August 1, 1928, under Clerk's File No. D-34736 and in which affiant took the acknowledgment, affiant did, boneheadedly, only more so (for which affiant has suffered remorse), and without religiously diagnosing the expiration date of his commission as it was written, to-wit: July 17th, 1928, sign his name as such Notary Public, that said Florence L. Schleckser did appear as aforesaid and acknowledge the execution of said Judgment Satisfaction on July 31, 1928, but the date on which affiant's commission expires should have been July 17th, 1929, and not as shown in the foregoing identified instrument for which error affiant is sorry, in fact, real sorry."

The Miscellaneous Index

Items of Interest About Title Folk and the Title Business

Edwin W. Sargent, often referred to as "the father of the legal title business in Los Angeles," recently died at his home in Los Angeles, at the age of eighty-one years. Mr. Sargent was president of the Title Guarantee and Trust Company and had been vigorous and active in the affairs of the company he founded, despite his advanced years.

Mr. Sargent was born in Oregon, Wisconsin. He was graduated from the University of Wisconsin in 1868, and from the University of Iowa law department in 1874. He first practiced law in Denison, Iowa, and came to Los Angeles from Atchison, Kansas, forty-two years ago.

The certificate of title used in real estate transactions today and for the last twenty-eight years is said to be virtually the same as was created by Mr. Sargent in the early days when he was credited with having brought order out of chaos in the real estate title business in Los Angeles.

The Los Angeles Abstract Company was established by Mr. Sargent and others in 1887, and is said to have been the first institution to provide authoritative titles. In 1895, he organized the Title Guarantee and Trust Company.

A. F. Morlan, executive vice-president and manager of the Title Guarantee and Trust Company, Los Angeles, has been advanced to the presidency of the institution to succeed the late Edwin W. Sargent. A. R. Killgore was elected executive vice-president and secretary, and John F. Keogh was appointed chief counsel, in addition to his duties as vice-president and trust officer.

Mr. Morlan has been in the title business in Los Angeles for more than forty years and with the Title Guarantee since 1911. Prior to that he was with the Title Insurance and Trust Company. He is considered an outstanding authority on title matters. During his administration resources of the Title Guarantee have increased to more than $7,000,000.

Mr. Killgore has been identified with the institution since 1905 and his advancement to the executive vice-presidency came twenty-four years to the day from the time he arrived in Los Angeles to begin work with the Title Guarantee. He has served in practically every department of the institution.

Mr. Keogh became associated with Title Guarantee in 1912. Previous to that time, he was in active practice of law for thirteen years.

Another title company has recognized the need of providing parking space for the convenience of its clients. The Union Title Insurance Company, of San Diego, California, has recently made arrangements for such a service with a garage just a block away, and from the comments which have been received, the company feels that in appreciation alone it has been well repaid.

The Guaranty Title Company, of Miami, Florida, announces the acquisition of the entire equipment, records, facilities and personnel of the Abstract & Title Guaranty Corporation.

The officers of the Guaranty Title Company are:

Edwin M. Lee, President.

J. H. Early, Vice-President and General Manager.

John S. Benz, O. M. Bayan, W. T. Pitt, E. S. Corlett, C. F. Mulkey, Directors.

Offices are in the Security Building.

Announcement was recently made of the consolidation of the Toledo Title Co. and the Title Guarantee & Trust Co., both of Toledo, Ohio. The new company will operate under the name of The Title Guarantee & Trust Co. and will be located at 333 Erie Street, Toledo.

The merged company will have a capital of $550,000.00, and surplus and reserves, $65,000.00.

The newly elected officers are as follows:

Wm. M. Richards, President.

Leo. S. Werner, Vice-President and Secretary.

Rheu J. Garty, Vice-President and Title Officer.

Clem H. Barsch, Vice-President.

J. M. Schaal, Vice-President.

Carl H. Beckham, Treasurer.

O. V. Overholser, Escrow Officer.

J. F. Rupert, Assistant Secretary.

At a special meeting of the stockholders of the Title Guarantee and Trust Company, of New York City, it was voted that the number of shares of the Company be increased from 100,000 to 500,000 and that the par value of each share be reduced from $100 to $20.

This gives to each stockholder five shares of the new stock for one of the old, but in no way changes his proportion of ownership in the entire Company.

The Title & Trust Company, of Portland, Oregon, announces the promotion of four of its officers and the election of two of them to vice-presidencies.

William O. Daly, who has acted as treasurer since 1918, was named a vice-president, as was also Albert L. Grutze, for the last ten years trust officer. Charles Moulton, who was assistant secretary, was promoted to secretary, and R. F. Muschalik was elected assistant secretary.

Additional executives have become necessary, due to the expansion of the title insurance business throughout the state, as well as the heavy growth of title insurance in Portland and Oregon City, where the company recently opened a branch office.

Its officers and directors now are: Walter M. Daly, president; Earl C. Bronaugh, Franklin T. Griffith, William O. Daly and Albert Grutze, vice-presidents; Charles R. Moulton, secretary and escrow officer; Edward T. Dwyer, assistant secretary and manager of the title department; and R. F. Muschalik, secretary and cashier. Mr. Grutze will also continue as trust officer.

The Chicago Title and Trust Company has recently distributed among the bar association members of Cook County a very interesting pamphlet on "Examining and Guaranteeing Titles Based on Chancery Proceedings in the Circuit and Superior Courts of Cook County."

This pamphlet was originally prepared by Sherman C. Spitzer for the use of the examiners and title officers of the Company but because of its value to everyone interested in law, Harrison B. Riley, President of the Chicago Title and Trust Company, sent a copy to each attorney in Cook County.

Fred T. Wilkin, of Independence, Kansas, good friend of the American Title Association, did a mighty fine thing in organizing a caravan to drive to the San Antonio convention. Much interest in the meeting was aroused by his efforts, and there will be several autos of Kansas abstracters trekking to the meeting.

TORRENS CERTIFICATE AGAIN HELD NO SURE TITLE

A recent decision handed down by the United States Circuit Court of Appeals in San Francisco contains a warning that the purchase of a properly registered Torrens certificate does not necessarily guarantee title to property.

The case involved is that of the Frances Investment Company, a Utah Corporation, vs. Thomas E. Gill and Myla R. Gill, which has been in litigation for ten years through state and federal courts and now brings victory to the Frances Investment Company. The Gills purchased a large tract of land in the Imperial Valley after the Torrens title was ordered registered by the Court there, and later found that fraudulent acts leading up to transfer of the title had resulted in an improper foreclosure and loss to the holders of a trust deed and promissory note covering the land.

In handing down its decision, the court held that under the Torrens law, in case of a fraud, the person defrauded shall have the rights and remedies he would have if the land were not under provisions of the act and that the law puts the purchaser of the title "under inquiry."

In explaining this decision, Joseph L. Lewinson, Los Angeles attorney representing the winning side, said "The Court's opinion means that regardless of a Torrens title that a Superior Court may order registered upon presentation of evidence of clear title, the purchaser of it must assure himself that the proceedings under which title was ordered registered was valid and that the title was clear when registered."

NEW YORK TITLE & MORTGAGE CO. CONDUCTS SAN ANTONIO TRIP CONTEST

Representatives from four title companies will attend the coming convention at San Antonio, Texas, as the guests of the New York Title and Mortgage Company.

Last January, this company started an "All-Expense Trip Contest to the American Title Association Convention at San Antonio." The contest lasted until October 1, 1929, and prize winners will be announced in the next issue of TITLE NEWS.

The amount of premiums sent in was the basis of award and in order to give the agents in smaller towns and cities an equal opportunity of winning, they were divided into four groups. Group A included cities of population of 100,000 and over; group B, from 50,000 to 100,000; group C, from 25,000 to 50,000 and group D, under 25,000.

There was a great deal of interest in the contest.

MINNESOTA TITLE ASSOCIATION ANNOUNCES ABSTRACT CONTEST

The next Annual Meeting of the Minnesota Title Association, to be held at Minneapolis, January 14 and 15, will be featured by an Abstract Contest, says E. B. Boyce, secretary, in a letter sent to state association members. The rules of the contest follow:

1. An Abstract prepared in exactly the same form now issued by your office must be submitted.
2. The chain of title may be real or imaginary, and may cover City or Rural Property.
3. The Abstract must contain at least 20 entries, and must include entries of a Mortgage Foreclosure by Advertisement and the usual entries presented in a testate estate.
4. A bill in the amount now being charged by your office must be prepared and attached to the Abstract.
5. The Abstract must be sent into the main Office of the Minnesota Building and Loan Association, not later than December 1, 1929.

At this meeting, steps will be taken to promote constructive legislation governing the title business and to incorporate into the laws of Minnesota statutes similar to those of North and South Dakota, Montana, and many other states, which are proving so beneficial to the title business.

The American Title Association

Officers, 1929

General Organization

President

E. C. Wyckoff, Newark, N. J., Vice President, Fidelity Union Title & Mortgage Guaranty Company.

Vice President

Donzel Stoney, San Francisco, California, Vice President and Manager, Title Insurance and Guaranty Co.

Treasurer

J. M. Whitsitt, Nashville, Tenn., President, Guaranty Title Trust Company.

Executive Secretary

Richard B. Hall, Kansas City, Mo., 905 Midland Building.

Executive Committee

(The President, Vice President, Treasurer, Retiring President, and Chairmen of the Sections, ex-officio, and the following elected members compose the Executive Committee. The Vice President of the Association is the Chairman of the Committee.)

Term Ending 1929

Walter M. Daly, Portland, Ore., President, Title and Trust Company.

Henry B. Baldwin, Corpus Christi, Tex., President, Guaranty Title Company.

J. M. Dall, Chicago, Ill., Vice President, Chicago Title and Trust Company.

Terming Ending 1930

Fred P. Condit, New York City, Vice President, Title Guarantee and Trust Co.

M. P. Bouslog, Gulfport, Miss., President, Mississippi Abstract, Title and Guaranty Co.

Paul Jones, Cleveland, Ohio, Vice-President, Guarantee Title and Trust Company.

Councillor to Chamber of Commerce of United States

Fred P. Condit, 176 Broadway, New York City.

Sections and Committees

Abstracters Section

Chairman, James S. Johns, Pendleton, Ore., Vice President, Hartman Abstract Co.

Vice-Chairman, W. B. Clarke, Miles City, Mont. President, Custer Abstract Co.

Secretary, E. P. Harding, Wichita Falls, Tex. Manager, Central Abstract Co.

Title Insurance Section

Chairman, Edwin H. Lindow, Detroit, Mich. Vice-President, Union Title and Guaranty Co.

Vice-Chairman, Harry C. Bare, Ardmore, Pa. Vice-President Merion Title & Trust Co.

Secretary, R. O. Huff, San Antonio, Tex. President, Texas Title Guaranty Co.

Title Examiners Section

Chairman, Stuart O'Melveny, Los Angeles, Calif. Executive Vice-President, Title Insurance & Trust Co.

Vice-Chairman, Elwood C. Smith, Newburgh, N. Y. President, Hudson Counties Title & Mortgage Co.

Secretary, R. Allen Stephens, Springfield, Ill., Brown, Hay & Stephens.

Program Committee, 1929 Convention

E. C. Wyckoff, (the President), Chairman, Newark, N. J.

Edwin H. Lindow, (Chairman, Title Insurance Section), Detroit, Mich.

James S. Johns, (Chairman, Abstracters Section), Pendleton, Ore.

Stuart O'Melveny, (Chairman, Title Examiners Section), Los Angeles, Calif.

Richard B. Hall, (the Executive Secretary), Kansas City, Mo.

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Harry Paschal, Atlanta, Georgia Atlanta Title & Trust Co.

George Batchelor, Indianapolis, Indiana, State Life Insurance Co.

Olaf I. Rove, Milwaukee, Wisconsin, Northwestern Mutual Life Insurance Co.

R. K. MacConnell, Pittsburgh, Pa., Title Guaranty Co.

John F. Keough, Los Angeles, Calif., Title Guarantee & Trust Co.

J. W. Woodford, Seattle, Washington, Lawyers & Realtors Title Insurance Co.

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N. W. Thompson, Los Angeles, California, Title Insurance & Trust Co.

Cornelius Doremus, Ridgewood, New Jersey, Fidelity Title & Mortgage Guaranty Co.

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L. S. Booth, Seattle, Washington, Washington Title Insurance Co.

Chas. C. White, Cleveland, Ohio, Land Title Abstract & Trust Co.

W. H. McNeal, New York, New York Title & Mortgage Co., 135 Broadway.

Kenneth E. Rice, Chicago, Illinois, Chicago Title & Trust Co.

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Golding Fairfield, Denver, Colo., Title Guaranty Co.

Harvey Humphrey, Los Angeles, Calif., Security Title Insurance & Guarantee Co.

C. A. Vivian, Miami, Fla., Florida Title Co.

Paul P. Pullen, Chicago, Ill., Chicago Title & Trust Co.

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James E. Sheridan, Detroit, Mich., Union Title & Guaranty Co.

Donald B. Graham, Denver, Colo., Title Guaranty Co.

Fred Hall, Cleveland, Ohio, Land Title Abstract & Trust Co.

Committee on Membership

Donald B. Graham, Denver, Colo., Chairman, Title Guaranty Co.

President and Secretary of each state association.

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R. O. Huff, San Antonio, Texas, General Chairman.

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New York—H. R. Chittick, New York City, Lawyers Title & Trust Co., 160 Broadway.

Connecticut—Paul S. Chapman, Bridgeport, Kelsey Title Co.

Rhode Island—Edward L. Singsen, Providence, Title Guarantee Co. of Rhode Island.

Massachusetts—Theo. W. Ellis, Springfield, Ellis Title & Conveyancing Co.

District No. 2: (Pierce Mecutchen, Philadelphia, Pa., District Chairman).

Pennsylvania—Pierce Mecutchen, Philadelphia, Real Estate Title Insurance & Trust Co.

West Virginia—George E. Price, Charleston, George Washington Life Insurance Co.

Virginia—H. Laurie Smith, Richmond, Lawyers Title Insurance Co.

District No. 3: (Richard P. Marks, Jacksonville, Fla., District Chairman).

Florida—Richard P. Marks, Jacksonville, Title & Trust Co. of Florida.

North Carolina—D. W. Sorrel, Durham.

South Carolina—J. Waties Thomas, c/o Thomas & Lumpkin, Columbia.

Georgia—Hubert M. Rylee, Athens.

District No. 4: (Coit L. Blacker, Columbus, Ohio, District Chairman).

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Kentucky—Chas. A. Haeberle, Louisville, Louisville Title Co.

Ohio—Coit L. Blacker, Columbus, Guarantee Title & Trust Co.

Indiana—W. O. Elliott, Terre Haute, Vigo Abstract Co.

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Louisiana—W. E. Nesom, Shreveport, Caddo Abstract Co.

Alabama—David P. Anderson, Birmingham, Alabama Title & Trust Co.

Mississippi—F. M. Trussell, Jackson, Abstract Title & Guaranty Co.

District No. 6: (W. A. Mercer, Little Rock, Arkansas, District Chairman).

Arkansas—W. A. Mercer, Little Rock, Arkansas Abstract & Guaranty Co.

Missouri—C. B. Vardeman, Kansas City, Missouri Abstract & Title Insurance Co.

Illinois—Arthur C. Marriott, Wheaton Dupage Title Co.

District No. 7: (Ray Trucks, Baldwin, Mich., District Chairman).

North Dakota—John L. Bowers, Manden, Manden Abstract Co.

Minnesota—E. D. Boyce, Mankato, Blue Earth County Abstract Co.

Wisconsin—Julius E. Roehr, Milwaukee, Milwaukee Abstract & Title Guaranty Co.

Michigan—Ray Trucks, Baldwin, Lake County Abstract Co.

District No. 8: (Frank N. Stepanek, Cedar Rapids, Ia., District Chairman).

South Dakota—A. L. Bodley, Sioux Falls, Getty Abstract Co.

Iowa—Frank N. Stepanek, Cedar Rapids, Linn County Abstract Co.

Nebraska—Leo J. Crosby, Omaha, Midland Title Co., Peters Trust Bldg.

Wyoming—Kirk G. Hartung, Cheyenne, Laramie County Abstract Co.

District No. 9: (Ray McLain, Oklahoma City, Okla., District Chairman).

Kansas—Ernest McClure, Garnett, White Abstract & Investment Co.

Oklahoma—Ray McLain, Oklahoma City, American First Trust Co.

Colorado—Milton G. Gage, Sterling, Platte Valley Title & Mortgage Co.

New Mexico—J. M. Avery, Santa Fe, Avery-Bowman Co.

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Texas—Mildred A. Vogel, El Paso, Stewart Title Guaranty Co.

District No. 11: (C. J. Struble, Oakland, Calif., District Chairman).

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Utah—Robert G. Kemp, Salt Lake City, Intermountain Title Guaranty Co.

Nevada—A. A. Hinman, Las Vegas, Title & Trust Co.

Arizona—H. B. Wilkinson, Phoenix, Phoenix Title & Trust Co.

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Montana—C. C. Johnson, Plentywood, Sheridan County Abstract Co.

Idaho—A. W. Clarke, Driggs, Teton Abstract Co.

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Merion Title & Tr. Co.

Treasurer, John H. Clark, Chester.
Deleware Co. Tr. Co.

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Getty Abstract Co.

Vice Pres., Chester E. Solomonson, Mound City.
Campbell County Abst. Co.

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Title Guaranty & Trust Company.

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Bank of Commerce & Trust Company.

Secy.-Treas., Geo. W. Marshall, Memphis.
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Secretary-Treasurer, Queen Wilkinson, Wichita Falls, Central Abstract Company.

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Yakima Abstract & Title Co.

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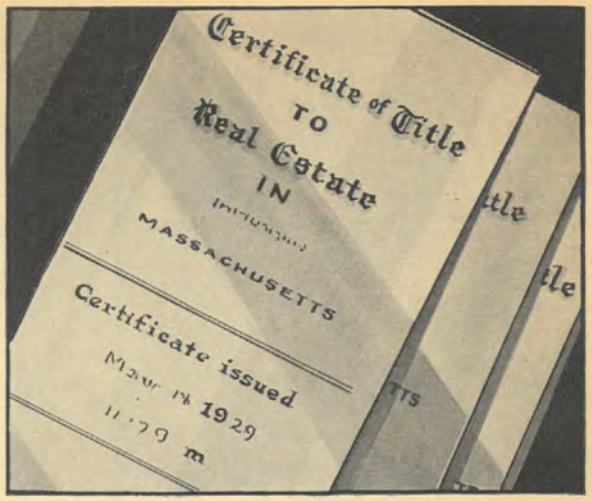
COMMON SENSE FORBIDS the use of INFERIOR PAPER!



TO MOST concerns, prestige is an important asset. To title and conveying companies it is a *vital* asset. You spend years and thousands of dollars building an irreproachable reputation. You calculate every action, every word to inspire perfect confidence on the part of your clients.

Yet some title companies still needlessly jeopardize their client-confidence by the use of inferior, unimpressive papers!

Such papers may easily destroy the prestige it takes years to build

If you think this an overstatement, notice the next letter or document that comes to your desk. If the paper is crisp, fresh and white, your first reaction is favorable towards the people it represents. If the paper is flimsy in appearance, lacks lustre in color, your first reaction is unconsciously one of skepticism and mistrust.

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* * *

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