TITLE NEWS

OCT. 1930

"Legal Liability of Abstracters and Title Companies"

By CHAS. C. WHITE

Vol. 9 No. 10

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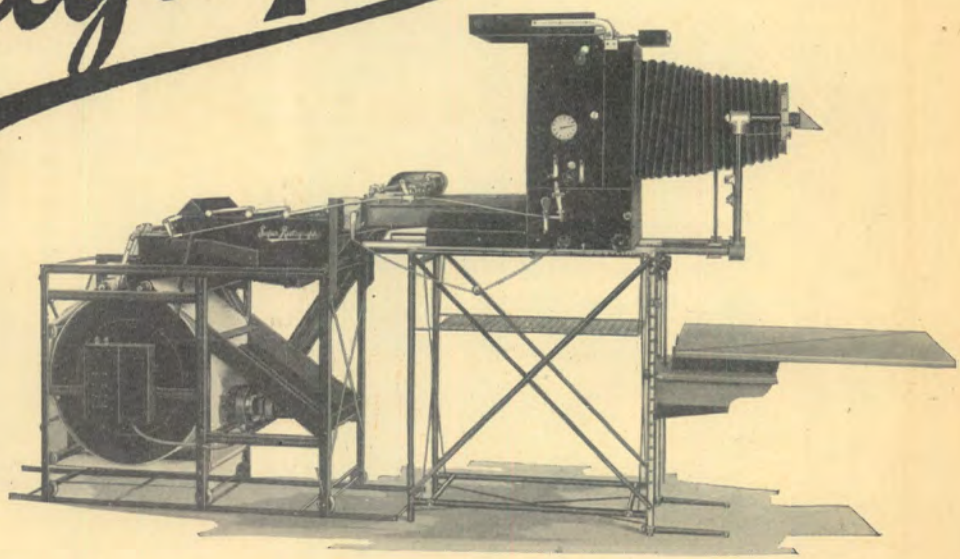

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Conference of State Association Officers

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This is going to be the most important meeting ever held by those in the title business.

It will present the new structure of the national association, putting it upon a definite basis, and organized for constructive accomplishment.

There will be announced a practical, formulated program of activities for the national and state associations which will advance and prosper the title business.

IT IS DESIRED THAT EVERY MEMBER OF THE ASSOCIATION ATTEND

IT IS IMPERATIVE THAT EVERY STATE OFFICIAL BE PRESENT

TITLE NEWS

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Editor's Page

SWAT THE PEST

Old Man Pessimism *is stalking throughout the land, chanting his funeral dirge of bad business and hard times. He would have you think that it is a matter of a short time until the whole country will have gone to the dogs. Crops have failed, business is gone, stock quotations are off, and all the money is out of circulation. He gloomily points with a smudged forefinger to the empty store buildings, and, if you will listen to him, he will show you others which he says will soon be empty. He is a self-appointed promoter of business depression.*

WHEN *you meet this guy, nail him with a few well-directed remarks, or, at least ignore him. He subsists on the attention of those who listen to him and are apparently impressed with his doleful swan song. He cannot live long without this attention from others.*

IT'S TRUE *business conditions are below normal, money is scarce, and some concerns have been forced out of business. We've been rolling in the clover patch so long, we've simply come to the edge. Now it's time for us to build to normalcy again.*

TRY *looking through plain glasses—take off the blue ones.*

UTILIZE *this opportunity to build up your plant. Make those new indexes you've wanted to make. Modernize your office, thereby increasing its efficiency and reducing cost of operation. Get your office records up to date, so that you will be properly equipped and ready for the return of normal conditions.*

QUIT *worrying about your competitor's habits and stop imitating his methods and cut prices.*

THE *derby Thoroughbred trailing bravely in the rear of the race does not give up because he is not winning. Rather, he strains every muscle, throws every ounce of his strength and his very heart into the race, until he crosses the tape. Maybe a poor placer, but surely game to the end. And even then his rider must set the bit with a heavy rein before he will give up.*

START *new business activities. Don't sit waiting for orders. Go out and hustle business. Charge for a lot of legitimate things you have been doing free.*

LET'S *be Thoroughbreds. Think prosperity, look prosperity, act prosperity; and if we will to do that, then we will hasten the return of prosperous times.*

WITH *thanks and apologies to the*

"OKLAHOMA TITLEGRAM."

PLAN AHEAD—

begin making plans NOW to attend the

Silver Anniversary Convention

of the

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A feature will be the

First Annual Abstract Contest

Details will be announced later

The Legal Liability of Abstracters and Title Companies

By CHARLES C. WHITE*

Foreword: This brief deals with the liability assumed by abstracters, and by title companies under the form of title paper called by title companies, a "Statement of Title," popularly known as a "Certificate of Title." Only incidentally does the brief deal with the responsibility of a title company under a policy of title insurance. The paper purports to be only a brief and does not pretend to be an exhaustive discussion. The references to "Niblack" herein are to Niblack's "*Abstracters of Title*," a book which is unfortunately out of print.

* * * * * *

THE LIABILITY UNDER AN ABSTRACT OR A CERTIFICATE OF TITLE IS A CONTRACT LIABILITY

If there is one proposition of law that has the almost unanimous authority of the courts behind it, it is the principle that the obligation assumed by an abstracter is a contractual obligation. Practically all the attempts that have been made to hold an abstracter, or title company, liable in tort, have failed.

"The nature and scope of an abstracter's liability is contractual, and is measured by the nature and terms of the contract."

Abstract and Title Guaranty Co., vs. Kigin, 108 So. (Ala.) 626.

"An abstracter's liability for his negligence in preparing an abstract of title is contractual and dependent upon the existence of a contract, or privity of contract."

Bremerton Development Co., vs. Title and Trust Co., 121 Pac. (Wash.) 69.

A, an attorney at law employed by B, certified title in B. C., relying upon the certificate, loaned money to B. The certificate was not true, there being on record a deed from B. *Held:* (1) There being neither fraud, collusion, or falsehood by A, nor privity of contract between him and C, he is not liable to C for any loss sustained by reason of the certificate. (2) That usage can not make a contract where none was made by the parties.

Savings Bank vs Ward, 100 U. S. 195.

"An action against an abstracter to recover damages for negligence in making or certifying an abstract of title, does not sound in tort, but must be founded on contract; and the general rule is that an abstracter can be held liable for such negligence only to the person who employed him."

"Usage or custom can not create a contract or liability, where none otherwise exists. A usage or custom can only be used to explain or aid in the interpretation of a contract or liability existing independently of it. It can not be permitted to contradict or vary the express terms of a contract, nor to vary the legal import thereof."

Thomas vs The Guarante Title & Trust Co., 81 O. S. 432.

See also the following cases cited below:—

Glynn vs Title Guarantee and Trust Co. 112 N. Y. S. 424; Lattin vs Gillette, 95 Calf. 317; Dorr vs Mass. Title Insurance Co., 131 N. E. (Mass.) 191, and the cases generally cited under "Privity of Contract" and "Statute of Limitations."

The only cases that we have found which hold an abstracter or title company to a tort liability, rather than a contract liability, are *Hillock vs Idaho Title & Trust Co., 126 Pac. (Idaho) 212, and Chicago R. I. and G. Ry. Co., vs Dundan, 273 S. W. (Tex.) 907,* cited and discussed later on in this brief.

THE CONTRACT IS NOT A WRITTEN CONTRACT THE ABSTRACT OR CERTIFICATE OF TITLE IS NOT THE CONTRACT

This fact is very forcibly brought out in *Lattin vs Gillette, 95 Calf. 317,* a leading case on abstracters' liability, which should be read in full. Court says at page 322:

"The written certificate of title given to the plaintiff by the defendants, although an instrument in writing, is not an instrument upon which their liability is founded, ... The contract which is the basis of the plaintiff's cause of action herein, does not rest in or grow out of this certificate, nor does the certificate contain any obligation or contract that can be enforced, or which is susceptible of a violation on the part of defendants, or under which any liability can accrue against them. The obligation assumed by them was that created at the time of their acceptance of the employment by the plaintiff, and antedated the making of the certificate. The certificate is not the evidence of this obligation, but is merely evidence of the act done by them in purported satisfaction of the obligation assumed by them in accepting their employment. Instead of establishing the contract, it is the evidence relied upon by him to establish the breach of that contract, and necessarily presumes that the contract was complete before it was given."

*Title Officer, Land Title Abstract & Trust Co., Cleveland, Ohio. Mr. White is author of many articles on legal matters which have been adopted as authorities on their respective subjects.

THERE MUST BE PRIVITY OF CONTRACT. THIS MEANS THAT ONLY SUCH PERSONS MAY RELY UPON THE ABSTRACT OF CERTIFICATE AS BRING THEMSELVES INTO A CONTRACT RELATION WITH THE ABSTRACTER OR TITLE COMPANY

The above proposition of law represents the practically unanimous holding of the American courts.

"An abstracter is liable only to the person who employed him, and he is not liable to a third person to whom his employer furnished the abstract for the purpose of procuring money or property, or with whom the employer had some business in which the abstract was used. An abstracter is not bound to know that his certificate is for the use and reliance of anyone except his employer, and it cannot be assumed that he gives it for the use of any other person. He contracts with the person who employs and pays him that he will give a certificate which shall state the facts, but he enters into no relation of contract or otherwise in respect to it with any other person. If another relies on it to his injury, he cannot have redress on the abstracter, for the reason that the latter assumed no duty for his protection. To constitute actionable negligence the person causing the injury must owe a duty to the person sustaining the loss."

Niblack, Sec. 18.

"Liability of abstracter extends only to person employing him and to one who is a party or privy to contract of employment."

Abst. and Title Guaranty Co. vs Kigin, 108 So. (Ala.) 626.

"An abstracter, furnishing an abstract of title, is liable only to the person to whom he furnishes the abstract, and not to a third person to whom the customer furnishes the abstract, *unless there be a republication of the abstract to the third person.*"

Equitable B. and L. Assn. vs Bank 102 S. W. (Tenn.) 901, 12 L. R. A. (N. S.) 449.

"An abstracter preparing, at the request of the owner, an abstract on real estate which omitted certain judgment liens, held not liable to one purchasing land 10 months after abstract was prepared, where abstracter had no knowledge that purchaser intended to buy the property and purchaser did not have abstract brought down to date of purchase."

"A custom or usage can not create liability where none otherwise existed, and hence an abstracter preparing an abstract for owner of land, is not liable to subsequent purchaser because of omission of certain liens, though abstracter knew of custom in community whereby owner of real estate procured abstracts of title when intending to sell or encumber land."

Ohmart vs Trust Co., 145 N. E. (Ind.) 577.

"Liability of abstracter for damages from mistakes, is based on contract and not on negligence; hence he is not liable to persons misled to their damage, unless some privity of contract exists between them."

Peterson vs Gales, 210 N. W. (Wis.) 407.

"A right of action for negligence in the examination of a title exists only in favor of the parties to the contract or their privies."

Schade vs Gehner, 34 S. W. (Mo.) 376.

PRIVITY OF CONTRACT IS NOT ALWAYS STRICTLY CONSTRUED. AN ABSTRACTER MAY BE LIABLE TO ONE WHO IS NOT STRICTLY WITHIN THE LETTER OF THE LAW SO FAR AS PRIVITY OF CONTRACT IS CONCERNED

All of which means that if the abstracter knows that *a certain definite person is going to rely upon the abstract or certificate,* and that the abstract or certificate is really being made for such other person, the court will construe such other person as being in privity of contract. It will readily seem that this construction in no way limits the truth of the preceding proposition with respect to privity. It simply extends the factual situation of privity to include such other person.

"One preparing an abstract of title to real estate at the instance of the owner of property, which, at his instance is delivered to a stranger who the abstracter knows will rely upon it in dealing with the property, is liable to him for losses resulting from a material error or omission in the abstract."

Anderson vs Spriesterbach, 69 Wash, 393, 125 Pac. 166, 42 L. R. A. (N. S.) 176.

"An abstacter of titles who at the request of the owner of lands, furnishes an abstract thereof to a third person, knowing that the latter will use it in determining whether title is safe to make a loan thereon, and that in making the loan he will rely entirely on the abstract, ... is liable for loss sustained by the latter on the loan through defects in the title not disclosed by the abstract."

Brown vs Sims, 53 N. E. (Ind.) 779.

"Where the abstracter knew that an abstract was ordered by the owner of the property for the purpose of procuring a loan from a certain mortgage company and for the exclusive use and benefit of that company, and knew that the company would rely on the abstract in examining the title to the property, and delivered the abstract when it was completed to an agent of the company, it was held that there was privity of contract between the abstracter and the company, and that there could be no doubt as to his liability to the company for injuries sustained by reason of failure of the abstract to disclose an unsatisfied judgment which was a lien on the property."

Niblack, Sec. 22, citing *Western Loan & Savings Co., vs Abstract Co., 78 Pac. (Mont.) 448.*

And *Niblack* in *Section 24* says:

"It is sometimes said in opinions that the weight of authority is to the effect that an abstracter is liable only to his employer and not to third persons, and this expression may possibly convey the idea that there are some authorities holding that an abstracter is liable to a stranger to the contract. There are cases holding that privity of contract exists between the abstracters and third persons under the special circumstances in the cases and that republication, renewal or delivery of the abstract by the maker to the third person creates a privity of contract which takes the case out of the general rule. As we have seen, these cases recognize the exception, but there is no case which repudiates the rule."

In other words the courts do sometimes stretch the privity rule to include persons who at first blush might not be thought to be in privity of contract with the abstracter or title company. But they have never, as Niblack says, repudiated the rule that privity of contract is absolutely essential to recovery of damages from an abstracter or title company.

MOST, IF NOT ALL, OF THE STATES WHICH HAVE BONDED ABSTRACTERS, HAVE, BY STATUTE, ABOLISHED THE RULE REQUIRING PRIVITY OF CONTRACT

A word of caution is necessary to those who start to examine the cases on the liability of abstracters. In those

states where abstracters are required to be bonded, it has usually been provided that the abstracter's liability extends to all persons who can show that they have relied upon the abstract. In such states "privity of contract" has of course "nothing to do with the case."

"Under the amendment to the law regulating abstracting the abstracter and his sureties are liable upon the abstracter's bond for all negligent errors and omissions in an abstract, not only to a person who employs him, but also to all persons who purchase or invest in land relying on an abstract furnished for that purpose."

Arnold vs Barner, 139 Pac. (Kans.) 404, Ann. Cas. 1915 D, 446.

It was held in *Crook vs Chilvers, 99 Neb. 984, Ann. Cas. 1918 E. 90,* that in Nebraska a bonded abstracter is liable

"for all damages sustained by reason of any defect in such abstract, not only to the party who employed him to make it, but also to all persons who may deal with such party in reliance upon the abstract so furnished."

"The statute relating to bonded abstracters was intended to extend the liability of abstracters beyond the limits fixed by the common law."

"One who purchases real estate on the faith of a certificate of title furnished to his vendor by a bonded abstracter may maintain an action for damages grounded on the failure of the abstracter to make a proper search and true certificate."

Gate City Abstract Co. vs Post, 76 N. W. (Neb.) 471.

THE STATUTE OF LIMITATIONS AGAINST AN ABSTRACTER, OR A TITLE COMPANY ISSUING A CERTIFICATE OF TITLE STARTS TO RUN AT THE DATE THE ABSTRACT OR CERTIFICATE IS DELIVERED, AND NOT AT TIME WHEN DAMAGE IS DISCOVERED

And please bear in mind that the contract is not a written contract. Hence it follows "as the night the day," that the period of limitation of an action against an abstracter or title company, is whatever period is laid down, in the statutes of the state in question, for an action on a contract not in writing. In Ohio this period is six years; in some states it is less, in some states it is possibly more.

"An action against an abstracter to recover damages arising from an error or omission in the abstract is based on contract and not on tort. A statute governing actions for relief on the ground of fraud or mistake and providing that the cause of action shall not be deemed to have accrued until the fraud or mistake has been discovered does not apply to such an action. It is governed by the law of contracts, and the statute of limitations begins to run from the date of the delivery of the abstract containing the defect, even though the error be not discovered and no special damage result therefrom, until long after the abstract is delivered. The contract of the abstracter is not a continuing one, so that a new cause of action accrues whenever special damage is suffered by its breach. With the delivery of the abstract the contract is executed and the breach is complete. The doctrine is well settled that in an action against an abstracter for negligence or unskillfulness the statute of limitations commences to run from the time the negligent or unskillful act was committed, and the employer's ignorance of the negligence or unskillfulness can not affect the bar of the statute. The cause of action is the breach of duty and not the consequential damage resulting therefrom, and the statute begins to run from the time of the breach, and not from the time of the consequential damage."

Niblack, Sec. 35.

This proposition as to abstracters and the statute of limitations is one that may seem strange to the layman and even courts seem occasionally to balk at it, but it is established by a long line of authorities, and is not at all peculiar to the law respecting abstracters and title companies. If a surgeon negligently sews up a sponge in one's "innards" and it does not begin to trouble one until the statute of limitations has run against the negligent act, it is "just too bad," and one is "out of luck," but the law says that the wrong was committed when the sponge was enclosed, and not when the victim discovered that there was some foreign substance in his interior. It may be as Mr. Bumble contended that "The law is a ass." But "the law allows it, and the court awards it." As is said by Judge Hiram L. Sibley in his little book, "The Right to and The Cause for Action," at page 50:

"The settled doctrine established by the authorities is, that if there has been no fraudulent concealment, *the legal wrong, whether it be tort or breach of contract, constitutes the cause for action; hence the date of the wrongful act is the one when the "cause arises," or the "right of action accrues," and from which the statute begins to run."* (Italics are the author's.)

"When a person who wishes to purchase land, retains an attorney to examine the titles, and such attorney reports to his client that the title of the person from whom he wishes to purchase is good, and it would be safe to purchase, and this report of the attorney is false, he is guilty of a breach of duty, and a right of action immediately accrues to the client. If no special damage or injury has resulted to the client, then he may nevertheless recover nominal damages; if special damages result from the misconduct of the attorney, it is not of itself a cause of action; the breach of duty imposed by the contract is the cause of action, and not the consequential damage resulting from it. And the statute of limitations begins to run from the date of the breach of duty."

Lilly vs Boyd, 72 Ga. 83.

The two following notes are found in *15 L. R. A. 157, 160*:

"It is conceded by practically all the authorities that in case of breach of contract the statute of limitations begins to run against the right of the person damaged to recover, from the time of breach and not from the time actual damages are sustained in consequence thereof."

"It has been universally held that the right of action against an abstracter or examiner of titles for making an incorrect report or abstract of title, accrues when the examiner of the title is reported or the abstract delivered; and the statute of limitations runs from that time, and not from the time the damages accrue."

* * *

"In an action against a recorder of deeds, for damages suffered by reason of a false certificate of search given by the recorder to the plaintiff, in the absence of fraud, the Statute of Limitation begins to run from the time when search was given, and not from the development of damages."

"It is immaterial that the party who received and paid for the search, had no knowledge of its falsity or cause for inquiry until more than six years after it was given. The cause of action, within the meaning of the Statute of Limitation, was the issuing the false certificate. The right of action accrued to the plaintiff as soon as it parted with

its money on the faith of it, and from that period the statute began to run."

Owen vs Western Saving Fund, 97 Pa. St. 47.

"A cause of action against an abstracter of titles for giving a wrong certificate of title accrues at the date of the delivery and not at the time the negligence is discovered or consequential damages arise."

Provident Loan and Trust Co. vs Walcott, 47 Pac. (Kas.) 8.

In *Rankin vs Schaeffer, 4 Mo. App. 108,* the certificate of title read as follows:

"We have examined the title to (description). In our opinion, the title is good and fully vested in ——— in fee, and free from all encumbrances."

The court at page 110 says:

"This does not seem to amount to a warranty of title. The examiner of titles does not warrant; he is not liable, except for negligence or want of necessary skill and knowledge. The contract made by him when he receives a fee and examines a title is not one of indemnity, but a contract that he will faithfully and skillfully do his work; and this contract is broken, and an action lies for the breach of it, as soon as he, through negligence or ignorance of his business, delivers a false certificate of title. Where indemnity alone is expressed, it has always been held that damage must be sustained before a recovery can be had; but where there is a positive agreement to do the act which is to prevent damage to plaintiff, there the action lies if defendant neglects or refuses to do the act."

"The foundation of this action is the implied promise of defendants to perform with care, diligence, and sufficient skill, the duty they undertook for the reward agreed upon. This promise was broken when the certificate of title was delivered, and the statute of limitations then began to run."

"The statute of limitations begins to run against the right to sue an abstract maker for errors in an abstract of title made by him, from the time the abstract is furnished, and not from the time the damage occurs."

Russell and Co. vs Polk Co. Abstract Co., 54 N. W. (Ia.) 212.

"An examiner of title to land does not become a guarantor of such title, but is liable only for the want of reasonable skill and care."

"A right of action for negligence in the examination of title to land accrues at the time the examination is made and reported and not when damages result therefor."

"Such rights of action exist only in favor of the parties to the contract or their privies."

Schade vs Gehner, 133 Mo. 252.

"The statute of limitation begins to run against a cause of action as soon as the right of action has accrued. Upon the breach of any special contract, the statute begins to run at the date of the breach, and a right of action growing out of the negligence of another accrues whenever the act of negligence is complete. . . . the liability arises immediately upon such breach of contract or disregard of duty, and an action to recover the damages which are the measure of such liability may be immediately maintained. The right to maintain the action is distinguished from the measure of damages, and although the entire damage may not have been sustained, or the fact that the negligence occurred, may not have been known until the right to a recovery is barred, yet the time within which an action may be brought is not thereby prolonged."

Lattin vs Gillette, 95 Calif. 317.

"Where a company issues a mere certificate of title and guarantees that it is correct, any breach of the contract is founded on the error in the certificate, and is complete when the contract of guaranty is delivered. The statute of limitations begins to run from the date of the delivery of such a contract of guaranty, even though no special damage results until long after it is delivered. Such a contract of guaranty is not a continuing one, on which a new cause of action accrues whenever special damage is suffered by its breach. The cause of action is the breach of the guaranty and not the consequential damage resulting therefrom, and the statute begins to run from the time of the breach and not from the time of the consequential damage."

Niblack, Sec. 178.

The courts of two states have refused to follow the overwhelming weight of authority on the question of the statute of limitations. These states are Idaho and Texas, as indicated by the cases cited below.

Idaho has a statute under the heading "An action for relief on the ground of fraud or mistake" which reads:

"The cause of action in such case is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

Under this statute it was held:

"One who sustains damages by reason of the mistake and false and fraudulent representation contained in an abstract, may under the statute commence his action within three years after discovery of the fraud or mistake."

Hillock vs Idaho Title & Trust Co., 126 Pac. (Idaho) 612, 42 L. R. A. (N. S.) 178.

It will be noted that the above case is based on a statute, and the court doubtless thought it was accomplishing a highly desirable result, but we submit that a reading of the case shows a misconception on the part of the court of the subject of "mistake" as a ground of action or defense.

It was held in *Chicago R. I. and G. Ry. Co., vs Duncan, 273 S. W. (Tex.) 907,* that (1) An abstracter may be sued either in contract or tort. (2) False representations in an abstract, although innocent, are legal fraud. (3) The giving of the certificate and not the certificate itself is the negligence. (4) Fraud stops the running of the statute and action does not start until discovery of fraud, or until it could with reasonable diligence have been discovered.

We submit that the Texas case goes out of its way to drag in the question of fraud. Also the court relies chiefly upon the Idaho case without seeming to realize that the Idaho case purported to rely upon a statute. Our contention is that if such a fundamental change in the law as to the running of the statute of limitations is to be made, it should be made, not by the courts, but by statute as has been done in California. We dislike to see the accomplishment of even good results by bad court decisions. And we submit that the reasoning in the Idaho and Texas cases is bad.

BONDED ABSTRACTERS ARE SUBJECT TO THE SAME RULE AS TO STATUTE OF LIMITATIONS AS THE NON-BONDED ABSTRACTER

"A cause of action against an abstracter of titles for giving a wrong or false certificate of title, accrues at the date of delivery of the abstract and certificate and not at the time the negligence is discovered, or consequential damages arise."

"It is the breach of the contract of employment, whereby the abstracter agrees to furnish a true and correct abstract of title, that gives rise to a cause of action

against an abstracter and his bondsmen for damages occasioned by the furnishing of a wrong or false certificate of title. The abstracter's bond does not give rise to the cause of action; it is merely a collateral security for the enforcement of the cause of action."

"Where the contract of employment for the furnishing of an abstract of title is oral, and the abstracter furnishes a false or erroneous certificate of title, resulting in damages, the cause of action against the abstracter and his bondsmen is barred by the statute of limitations unless the action be begun within three years from the date of delivery of the abstract and certificate of title."

Garland vs Zebold, 223 Pac. (Okla.) 682.

The above case and *Walker vs Bowman, 27 Okla. 172, 111 Pac. 319,* similarly decided, involved a bonded abstracter. If the abstracter does not feel that he should set up this defense, we feel sure that the bonding company will have no such scruples.

THE LIABILITY OF AN ABSTRACTER IS FIXED BY HIS CERTIFICATE

After all it is not the abstract, it's the certificate, that is important. True as Niblack says, "an abstracter may not limit his liability by a vague and obscure certificate," but if an abstract purports to show only the liens in certain offices, the abstracter will not be liable for liens appearing in other offices.

"Where an abstract of title contains a certificate that the records have been carefully examined in the offices of the county clerk, the clerk of the district court and the county treasurer, and there are no liens upon or in the records of either of said three offices, . . . except as hereinbefore set out," the abstracter is not liable on account of the omission from the abstract of a prior mortgage on the property, then of record in the office of the register of deeds."

Niblack, Sec. 9, citing *Thomas vs Carson, 65 N. W. (Neb.) 899.*

In the last mentioned case there was clearly a conspiracy between the abstracter and the owner to defraud the purchaser by the production of an incomplete abstract. As to this phase of the question, Niblack has this to say:

"Where one has been injured by a conspiracy between an abstracter and others whereby the abstracter limited his certificate to searches in certain offices, well knowing that in another office there were records of liens on the land, with intent to deceive and injure any person who might subsequently deal with the land, the remedy is in tort and not in contract. Where the entries on the abstract are in all respects, true, according to the terms of the certificate, and the abstract and certificate are satisfactory to the person who ordered them, there is no breach of contract. The conspiracy to defraud by leaving off instruments not covered by the certificate is the basis of the action."

Thomas vs Carson is a beautiful illustration of the fact that there may be two actions against an abstracter, an action in contract and one in tort. But the contract action must be based upon the certificate, and *the abstracter can not be held in contract on anything outside his certificate.*

See also *Gardner vs Abstract and Gty. Co. 282 S. W. (Mo.) 698* cited below.

UNLESS THERE BE A REPUBLICATION OR RECERTIFICATION, THE LIABILITY OF AN ABSTRACTER OR TITLE COMPANY ON AN EXTENSION EXTENDS ONLY TO SUCH ITEMS OF RECORD AS APPEAR WITHIN THE EXTENSION PERIOD

"Ordinarily an abstracter who is employed to bring up to date an abstract previously made, is only expected and required to examine and certify as to matters which have been brought on the records during the intervening period, and in such event his liability would be limited to such errors as were made in the extension of the abstract."

Arnold vs Barner, 139 Pac. (Kans.) 404, Ann. Cas. 1915 D, 446.

"When an abstract of title to real estate is presented to an abstracter to be brought down to date, and he enters therein such matters as are of record affecting the title since the date of the last certificate or verifies the fact that the public records do not disclose any change in the status of the title, and he appends to the abstract the recital "Posted from February 9, 1909 to April 12, 1909," or the like, . . . such recital is a certificate guaranteeing that the abstract contains all the necessary entries to show any changes of title between the dates mentioned in the recital, but it does not mean that he verifies or recertifies the accuracy of earlier entries in the abstract prior to those dates."

Arnold vs Barner, 163 Pac. (Kans.) 805.

"Where an abstract company is retained by one party to extend a search which it has previously made for other parties, and by reference and adoption it makes those former certificates a part and parcel of the latter one, it is liable to the party for whom the extension is made, for damage accruing to him by reason of a material omission in the abstract, although the omission occurs not in the extension, but in the previous certificate."

Bremerton Development Co., vs Title Trust Co., 67 (Wash.) 268, 121 Pac. 69.

"Where an abstract company assumed to abstract the title only between certain named dates, continuances and a hearing in a court proceeding affecting the title, which had been begun before the period abstracted and the judgment in which was rendered after that period, are not proceedings affecting the title, and the abstracter is not liable for failure to note such proceedings upon the abstract."

Douglass vs Title Trust Co., 141 Pac. (Wash.) 177.

Court says:

"The rule is that when an abstract is prepared to cover a limited period, it need not include anything outside of such period."

THE PURCHASER, OR OTHER PERSON CLAIMING AGAINST AN ABSTRACTER OR A TITLE COMPANY, MUST HAVE PURCHASED OR CHANGED HIS POSITION IN RELIANCE UPON THE ABSTRACT OR CERTIFICATE OF TITLE. IN OTHER WORDS THE ABSTRACTER'S OR TITLE COMPANY'S FAULT MUST BE THE PROXIMATE CAUSE OF THE LOSS OR DAMAGE

"It is essential, in setting up a cause of action against an abstracter for negligence, that the purchase was made relying upon the abstract."

Batty vs Fout, 54 Ind. 482.

"Purchaser can not hold title company for that part of purchase money paid before he obtained abstract, since he did not rely on the abstract in making such payment."

Beckovsky vs Burton, 175 N. W. (Mich.) 235.

"Where prior to the furnishing of the inaccurate abstract of title by defendant title company, plaintiff's as-

signor had entered into a contract to take title, plaintiff can not recover."

Kenerson vs T. G. & T. Co. 166 N. Y. S. 369.

Court says:

"Plaintiff can recover for failure of defendant to make an accurate certificate only if his assignor has been damaged by such inaccuracy. If plaintiff's assignor was in any event bound to accept title to these premises, then she has not been damaged by the alleged error of defendant."

"It is essential to the statement of a cause of action (against abstracter) that the plaintiff relied and acted upon the abstract or certificate furnished."

Mitchell vs Title Insurance Co. 248 Pac. (Calif.) 1035.

"No recovery for failure to report a judgment lien where plaintiff had already bought and paid for the land and advanced no money on the faith of the examination."

Roberts vs Sterling, 4 Mo. App. 593.

AN ABSTRACTER OR A TITLE COMPANY IS UNDER NO DUTY TO SHOW A VOID LIEN, AND IS NOT LIABLE FOR OMITTING A VOID LIEN FROM THE SEARCH

"An abstract company is not liable on its bond for a failure to show in the abstract a mortgage on the real estate covered by the abstract which is void, and which creates no lien thereon."

"When the purchaser under the conditions above stated, voluntarily pays the mortgage, he does so at his peril, and with full knowledge of the law, and is not entitled to recover the sum thus paid from the abstract company."

Manville vs Abstract Co., 162 Pac. (Okla.) 682.

In *Gardner vs Abstract and Guaranty Co., 282 S. W. (Mo.) 698,* an abstracter certified that there were no mechanics' liens of record in the office of the clerk of the circuit court of a certain county. The law provided that mechanics' liens should be filed with the clerk of the circuit court at Kansas City. There was on file a mechanics' lien in the office of the clerk of the circuit court at Independence. It was held, since the lien on file at Independence was invalid and a mere nullity, that the abstracter was under no liability to show said lien.

THE LIABILITY OF AN ABSTRACTER OR TITLE COMPANY IS A DIRECT AND NOT A SECONDARY LIABILITY

At page 472 of *Gate City Abstract Co., vs Post, 76 N. W. (Neb.) 471,* cited above, in discussing privity and bonded abstracters, the court says:

"It is claimed that the plaintiff could not maintain this action without having first exhausted his other remedies. He might, of course, have sued his grantor on the covenants of warranty contained in his deed, and he might also have proceeded against Cammenzing after having taken an assignment of the judgment from Patrick; but we know of no rule of law that required him to do so. The plaintiff's damage resulted from the fault of the abstract company, and consequently its liability to him is a primary one."

"A mortgagee who contracted for a first lien, may recover the difference in value between that and what she got, of the attorney who undertook to search the records for her, but negligently overlooked prior liens; and this without waiting to see if there is any loss by failure to collect the loan secured."

Lawall vs Groman, 37 Atl. (Pa.) 98.

Court says at page 98:—

"The argument . . . that it has not yet been shown that plaintiff has suffered any damages, would not be without force, if the question were new, inasmuch as she took the mortgage as security only, and the mortgagor, when called upon, may pay the debt, or, the mortgage being sued out, the property may bring enough to cover it. But the law is settled the other way. Plaintiff is entitled to the security she contracted for, and may recover the difference in value between that and what she actually got. The cause of action is the breach of duty, not the damages which are only an incident. . . . The cases have usually arisen on the statute of limitation, and it has been uniformly held that the right of action is complete, so that the statute begins to run from the breach, although the damage may not be known, or may not in fact occur, until afterwards."

THE LIABILITY OF A TITLE COMPANY UNDER A CERTIFICATE OF TITLE IS DISTINCTLY DIFFERENT FROM ITS LIABILITY UNDER A POLICY OF TITLE INSURANCE

"There is a difference between a guaranty of the correctness of a certificate of title and a policy of title insurance. Where a company makes a certificate of title to a certain piece of land, issues it to a person, his heirs and assigns, and guarantees it to be correct, it is a guaranty of the correctness of the certificate. On the execution of such a contract, if the title to the property is not as stated in the certificate, there is an immediate breach of its conditions, and suit may be brought against the company. But a policy of title insurance is a contract of indemnity against loss which may arise by reason of defects in the title as stated, and under such a contract actual loss must precede the bringing of a suit and the fixing of compensation or damages. The difference between these two forms of contract lies in the time of the breach of the contract and the consequent running of the statute of limitations, and in the rule of damages."

Niblack, Sec. 150.

"Where a certificate of title issued by a title insurance company to a land owner, as to the title of the latter, recites that the guarantor shall not be liable for damages to exceed a certain sum, and shall defend the guarantee, or his successors or heirs, as to every claim adverse to the title guaranteed, and that if the loss is less than all the land, the company shall only be liable for a proportionate share of the loss, and that the guarantor, in case it makes payments under the certificate, shall be subrogated to the rights of the guarantee, *the instrument is a guaranty of title, and is not rendered a mere guaranty of the correctness of the certificate by the additional provision that the company guarantees the certificate to be correct.*"

"An action on a title insurance policy does not accrue, or limitations commence to run, till insured is evicted by the holder of a superior title, though the mortgage under which he is evicted was in existence when the title was guaranteed."

Purcell vs Land Title Guarantee Co., 94 Mo. App. 5, 67 S. W. 726.

The above case very clearly brings out the difference between a certificate of title and a title insurance policy, and should be read in full.

The court at page 727 (67 S. W.) says:—

"The principal contention upon the part of the de-

fendant is that the writing in suit is not a guaranty of title,—only a guaranty of the correctness of the certificate. This contention is based upon the following recitation of the certificate, viz.: 'And the said company makes this certificate for A and B, their heirs and assigns, and guarantees the same to be correct.' Standing alone, there could be no construction put upon it, other than that it was a mere guaranty of the correctness of the certificate, for that is its plain meaning. But such a construction would, in effect, render nugatory other provisions in the certificate (quoting the other provisions)."

As a matter of fact the quoted provisions of the title paper in question clearly show that it was a title insurance policy under the partial form of a certificate of title, as it contained most of the provisions usually found in a title insurance policy.

The City of Los Angeles by ordinance provided for a license tax to be paid by "every person, firm, or corporation conducting, managing or carrying on the business of examining, searching or investigating titles to real estate and issuing abstracts, statements, or certificates showing or purporting to show or certify to the condition or state of the title to any particular property or properties as disclosed by an examination of the public records, but which abstract, statement, or certificate does not insure or purport to insure the title to real property or any interest therein."

The Title Insurance and Trust Company is a corporation which insures titles and issues what are generally known as title insurance policies. It also issues certificates of title in the following form:—

"After a careful examination of the official records of the County of Los Angeles, State of California, and of the records of the federal offices located at Los Angeles, in relation to the title of that certain real property hereinafter described, The Title Insurance and Trust Company, a corporation, having its principal place of business in the City and County of Los Angeles, State of California, hereby guarantees that the title to said property as it appears from said records, is vested in ———."

The Title Insurance and Trust Company paid the license fee under protest claiming that its business was wholly an insurance business. In the lower court it prevailed and got a judgment against the City for the amount of the license fees. The city appealed and the case in the California Court of Appeals is cited as *Title Insurance and Trust Company vs City of Los Angeles, 214 Pac. 667.* Hearing was denied by the California Supreme Court.

The question to be decided by the court was whether or not the issuing of certificates of the sort quoted above is insurance business. The interesting part of this case is that the company was in the position of urging that the issuance of such a certificate is insurance, while the city was contending that it is not insurance.

The court at page 669 says:—

"Counsel for the appellant (the city) in support of their contention that the certificate here in question is not a contract of insurance, go further and assert that it is not a contract at all. They rely upon *Lattin vs Gillette, 95 Calif. 317, 30 Pac. 545, 29 Am. St. Rep. 115,* which they say presented 'an exactly similar question.' In that action it appeared that, under employment for that purpose, the defendants furnished to the plaintiff a certificate which stated that from a careful examination of the records concerning the title to the described property 'we find the same vested in Jacob Birnbaum free from all encumbrances.' It was held that the certificate did not contain any obligation or contract, but was merely the evidence of an act done in purported satisfaction of the obligation assumed in accepting the employment."

"But we think that the certificate now under consideration is itself a contract. The words 'hereby guarantee' are words of contract, whereas the words 'we find,' in the certificate in the Latin case, were only a statement of fact covering the contents of the record and the opinion of the parties issuing the certificate regarding the effect thereof. There was not, as there is in the present case, a contract guaranteeing that the record and its legal effect were as stated in the certificate. In the Lattin case there was merely the contract implied in the acceptance of the employment, that the records would be carefully examined, and that the defendants would in good faith state their opinion concerning the effect of the record. They would be liable for negligent or other failure to perform that contract. The right of action would accrue at once upon issuance of the certificate, and it would be an action to recover damages for breach of contract. But in the case of a certificate like that now before us, the party entitled to the benefit of the guaranty has a right of action to recover upon the contract contained in the certificate itself, and the liability is one that does not accrue until discovery of the loss that may be incurred if the title is not as represented in the certificate."

It is to be noted that the last sentence above as to when liability accrues is based upon a California statute providing that the cause of action against an abstracter on a "certificate, abstract or guarantee of title" shall not accrue until the discovery of the loss or damage. This statute was passed in 1917.

The court held that a certificate of the sort quoted above is "a contract of indemnity and insurance."

Notwithstanding the contentions of our California friends, we have always thought that the reasoning in this case is faulty and that the attempted distinction between the form of certificate in this case and the form of certificate in *Lattin vs. Gillette,* above, is largely a distinction without a difference. It has always seemed to me that the exigencies of the case put the title company on the wrong side of the question.

A TITLE COMPANY MAY HAVE TWO LIABILITIES, VIZ.: (1) AS A CONVEYANCER, (2) AS AN INSURER

"Where a title insurance company agrees as a conveyancer to examine title to land, and see that it is clear and free from all encumbrances, and by a separate contract in writing at a different date it insures the title, and it appears that the company negligently overlooked an encumbrance on the land created by the deed of a former owner, suit may be brought immediately upon the breach by the person injured for the negligent performance of its professional duty as a conveyancer, and the question of the company's liability under its title policy is not in the case."

Bodine vs Wayne Title & Trust Co., 33 Pa. Super. Ct. 68.

"It will be observed that defendant undertook to act

for plaintiff in two capacities—as a conveyancer who examined the title and undertook to advise her whether it was good and marketable, and as an insurer who undertook to insure that she had a good and marketable title. In the former capacity the defendant assumed the same responsibilities and owed to the plaintiff the same duty as if it had been an individual attorney or conveyancer."

Glynn vs Guarantee Title and Trust Co., 117 N. Y. S. 424.

See also *Dorr vs. Mass. Title Ins. Co., 131 N. E. (Mass.) 190; Ehmer vs Title Guarantee & Trust Co., 50 N. E. (N. Y.) 420, 156 N. Y. 10.* The distinction between the liability as conveyancer and as insurer is sometimes quite important in the handling of escrows. As escrow agent the title company quite often owes a different duty to its client than its duty either as an issuer of a certificate of title or a title insurance policy.

IN SO FAR AS A CERTIFICATE OF TITLE IS AN OPINION, A TITLE COMPANY'S LIABILITY IS THE SAME AS THAT OF AN ATTORNEY

"Abstracters of title formerly confined their work to furnishing in an abridged form a compilation of the title as shown by the records, but, with the formation of title companies with large capital stock, the work of certifying to the state of titles has become one of the features of the business of such companies. Whether such certificates are signed by lawyers or by title companies, they are the results of labor done by lawyers, for such labor requires an acquaintance with the laws of real property and a practical legal knowledge of titles, which can be derived only from long experience in dealing with them. One who can examine a title and state its condition must have prepared himself by a course of special study and education. Reports which are given by lawyers are usually called opinions of title, and those which are given by title companies are usually called certificates of title, but they are to the same effect and are governed by the same legal rules."

Niblack, Sec. 45.

"Attorney advising loan upon mortgage of property held by husband and wife as tenants by the entireties, not liable for mistake when in that state it had not yet been held that such a mortgage was void as to both."

Cits. Loan Fund & Savs. Assn., vs Friedley, 23 N. E. (Ind.) 1075.

"Attorney not liable to client for an error of judgment upon a doubtful question of law."

Hill vs Mynatt, 52 L. R. A. (Tenn.) 883.

There is an elaborate note to this case in *52 L. R. A. 883.* In so far as a certificate (or statement) of title is an attorney's opinion (and it is necessarily so in part) this case and note are in point.

"The rule of liability of conveyances for errors of judgment is the same as lawyers and physicians."

Watson vs Miurhead, 57 Pa. St. 161.

MEASURE OF DAMAGES

"Where a certificate of title is guaranteed to be correct, and it is in fact incorrect, there is an immediate breach on the delivery of the guaranty, and a cause of action at once arises against the guarantor. If the person guaranteed has sustained no loss on account of the breach of the guaranty, it is doubtful whether he may recover more than nominal damages, but where he has sustained a loss, he is entitled to the same measure of damages as is applied in cases of loss under a title insurance policy."

Niblack, Sec. 176.

Abstracter omitted judgment lien. The measure of damages is the amount of judgment with interest, cost, and reasonable expenses.

In such case the plaintiff may not permit the property to be sold and charge the abstract company with the increased expense made necessary in procuring title from the purchaser at the execution sale. It was his duty to reduce his damages as much as was reasonably possible.

Marcell vs Abstract Co., 199 N. W. (Neb.) 731.

UNDISCLOSED AGENT

"A title company or an abstracter is liable to the owner, even though the title paper is ordered by an undisclosed agent."

Young vs Lohr, 92 N. W. (Ia.) 684.

VOLUNTARY PAYMENT OF A LIEN OMITTED BY ABSTRACTOR OR TITLE COMPANY

"There can be no recovery where the judgment omitted is voluntarily paid and satisfied by the purchaser."

"Abstracter may set up in defense that the judgment debtor had sufficient other land to satisfy the judgment."

Roberts vs Sterling, 4 Mo. App. 593.

Afterword: We have attempted to set up herein a series of legal propositions with reference to the title business with ample citation of cases to support the propositions. We have purposely refrained from discussing whether or not it is expedient for title companies always to insist upon their strict legal rights, more especially with reference to the question of privity of contract and the statute of limitations. At any rate it is well to know what one's legal rights, powers, privileges, and immunities are.

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, 1930.

State of Illinois } ss.
County of Cook }

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 the 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, Chicago, Ill.; Editor, Richard B. Hall, Chicago, Ill.; Managing Editor, Richard B. Hall, Chicago, Ill.; Business Manager, Margaret Maddux, Chicago, Ill.

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, Chicago, Ill.; Donzel Stoney, President, San Francisco, Calif.; E. H. Lindon, Vice President, Detroit, Mich.; J. M. Whitsitt, Treasurer, Nashville, Tenn.

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.

RICHARD B. HALL.

Sworn to and subscribed before me this 28th day of October, 1930.

[SEAL] C. EDWARD NORRIS.

(My commission expires March 13, 1931.)

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.

Is deed executed and delivered on Sunday good?

Not in Arkansas unless ratified on week day, and paying interest and making repairs is not a ratification. Burnette v. Elsesser, 22 S. W. Ind. 386.

Does possession of surface constitute adverse possession of minerals?

Not if minerals are separated from surface by deeds. Claybrooke v. Barnes, 22 S. W. Ind. 390 (Arkansas).

Does an absolute power of disposal change a life estate into a fee?

Not in most States; but does in Tennessee and remainders are void. Waller v. Sproles, 22 S. W. Ind. 4.

Must life tenant pay for permanent improvements?

Not entirely; they must be apportioned between life tenant and remainderman; this includes buildings, fences, and ditches. Kory v. Less, 22 S. W. Ind 25 (Arkansas).

Can alley be established by reference in deed without formal dedication?

Yes; it will be a public alley by common law dedication. Cartmell v. City, 22 S. W. Ind. 102 (Kentucky).

Can sale of homestead for debts be passed if debts existed before homestead was acquired?

It can in some cases; but not if purchased with proceeds of former homestead, nor if acquired by descent, devise, or gift, in Kentucky. Deboe v. Brown, 22 S. W. Ind. 111.

What is effect of deed in consideration of support of grantor as long as she lives?

It constitutes a mortgage for such support and if support is not furnished the grantor will have a lien superior to subsequent mortgages, 124 So. 586 (Louisiana).

Is possession land without paper title, notice of possessor's equitable rights?

Yes; as were possessor's deed had void description. Russell v. Scarborough, 124 So. 648 (Mississippi).

Is title merchantable if building encroaches on adjoining lot?

No; Veters v. Walsh, 124 So. 687 (Louisiana).

Mechanic's lien suit is filed within statutory time but summons is not served until after time elapsed; is it good?

Yes; Bougher v. Cohen, 124 So. 813 (Florida).

Can a personal judgment for taxes be obtained against landowner after land is sold for taxes?

No; Carrier v. Quitman, 124 So. 437 (Mississippi).

Are mortgage notes coming due at different times of equal lien?

The one due first is a prior lien and must be satisfied in full on foreclosure before anything can be paid on the others. Wright v. Merdes, 124 So. 448 (Florida).

Why is it necessary in Southern and Western States to inquire into the entire marital history of each owner?

Because some former wife or her descendants may own half, the property, although in husband's name alone, might have been community property. Pointdexter v. Ry. Co. 124 So. 537 (Louisiana).

Can possession of grantee in quitclaim deed for small price bar covenant of grantor?

It can in Louisiana; but some other States differ on these points. Land Co. v. Schulz, 124 So. 125.

Can heirs sue to partition land subject to dower, homestead, and administration?

Not in Alabama. Hopkins v. Crews, 124 So. 202.

Does contract of sale invalidate insurance?

It does in some States if purchaser takes possession; and in some even without possession. Tucker v. Royal, 124 So. 215 (Alabama).

Does mechanic's lien attach when contract is made or when work is commenced?

When work is commenced in Alabama hence mortgage dated after contract but before commencement of work is superior to mechanic's lien. Wohouma v. Plumbing Co. 124 So. 388.

Is mechanic's lien good against tenancy by entireties where husband alone made contract?

No; Allardice v. Weatherlow, 124 So. 38 (Florida).

Is a mortgage securing future advances superior to mechanic's lien for work between first and last advancements?

Mortgage held superior in Florida even though a building loan. Franklin v. Fisk, 124 So. 43.

Is deed by aged person of $4,000 property in consideration of support during life good?

Held void. In re Fitzpatrick's will. 236 N. Y. S. 113.

Does power to divide give power to sell?

It does where division cannot be made without sale. In re Garginlo's will. 236 N. Y. S. 143.

Devise to wife for her use and benefit during life; all that may remain to nephews; what interest has wife?

Fee simple in New York. Keefe v. Keefe, 236 N. Y. S. 176.

Does mortgagee take with actual notice of agreement shown on title company's report to mortgagee's attorney?

Yes; Chelsea v. Creinstein, 236 N. Y. S. 185.

Is a verbal building restriction on one lot binding on others?

It is if the purchasers of the other lots knew of it. Liberty v. Co. 236 N. Y. S. 194.

Is mortgage securing future advances superior to later encumbrance?

This varies in different states; in Nevada if the advances are optional and made after notice of later encumbrance the advances are not superior. Chartz v. Cardelli, 279 Pac 761.

Is assignment of oil rights prior to permit of Secretary of Interior to prospect on Government land valid?

No; Alford v. Hesse, 279 Pac 831 (California).

Is judgment against husband a lien on property in wife's name?

It is a lien on husband's interest in a community state. Bear v. Wilcox, 279 Pac 1090 (Idaho).

Is deed by mother to daughter good during father's life if property was community?

Good as to half interest by enurement if mother survived father and he left no will. Lynch v. Lynch, 279 Pac 653 (California).

Does patent "subject to water rights" give notice of hidden pipe to spring?

Yes; Bank v. Jones, 279 Pac 657 (California).

Does real estate brokers bond protect against false representation in sale of mortgage note?

No; Layne v. Malmgren, 279 Pac 670 (California).

Is grantee, personally assuming mortgage, liable, if his grantor is not personally liable?

Not liable; because he assumes only the liability of his grantor. Worthington v. Hess, 22 N. W. 225, (South Dakota).

Is provision for payment of high interest after maturity usury?

No; any provision that borrower can avoid by previous payment is not usury even though it results in illegal interest. Easton v. Butterfield, 279 Pac 716 (Idaho).

What is effect of erroneous finding by Probate Court that property is not homestead?

The finding is conclusive if no appeal is taken, and no other suit can be brought to show that it was homestead and to thereby nullify sale to pay debts. Tuttle v. Sowards, 279 Pac 331 (Oklahoma).

Can there be a homestead in a leasehold estate?

Yes; Miller v. Farmers, 279 Pac 351 (Oklahoma).

Can a lake be considered navigable even though it is not commercially navigated?

Yes; Best v. State, 279 Pac 388 (Washington).

Can subsequent owner of property claim usury?

Conveyance of the property subject to the usurious mortgage usually cures the effect of usury. Eposti v. Rivers, 279 Pac 423 (California).

Can interest in water rights be determined in suit to quiet title?

Yes; it is a property right. Yuba v. Nevada, 279 Pac 128 (California).

Does forfeiture of land contract cut out purchaser's mortgage on crop?

No; Yakoobian v. Johnson, 279 Pac 165 (California).

Is a mortgage of future rents valid?

Only where mortgage gives mortgagee right of immediate possession, in California. Pacific v. Schropfer, 279 Pac 170.

Does omission of dollar mark from assessment book affect validity of tax sale?

Yes, the sale is void. Sawyer v. Berkeley, 279 Pac 217 (California).

What is effect of words scratched out of holographic will?

They are revoked but balance of will is not affected. Fisher v. Thompson, 279 Pac 291 (Idaho).

Is devise of "all my possessions" an exercise of a power of appointment?

It is in Wisconsin, First v. Helmholz, 225 N. W. 181.

The Miscellaneous Index

Items of Interest About Title Folk and the Title Business

"Money Talks" is the most interesting and attractive house organ we have seen for a long time. It is a monthly publication put out by the Penn National Bank and Trust Company, with which is affiliated the Penn Title Insurance Company, and is distributed among the employees, clients, and friends of the companies.

Its contents hold you from cover to cover and in story style tell interesting facts about the title business and investments. And there are also many interesting bits about various subjects of general interest.

It is splendid advertising.

The Fidelity Union Title & Mortgage Guaranty Company, of Newark, N. J., has recently issued a very attractive book entitled "The Supreme Investment." In an interesting and convincing way it tells of the advisability of investing in real estate and real estate mortgages.

The Title Guaranty Company of Wisconsin, formerly the Milwaukee Title Guaranty & Abstract Company, has recently moved into new quarters and has inaugurated a statewide expansion program by the appointment of abstracters in various countries as agents for the issuance of its title insurance policies.

"The Real Estate and Building Activity Bulletin" is published monthly by the Kentucky Title Company and by means of various statistics and charts presents a graphic story of real estate activity in Louisville and Jefferson Counties.

It is being distributed to the real estate and loan companies of the community and was received with much commendation.

Here's a good antidote for local real estate and general business depression. A. W. Blom, president of the Menominee Abstract & Land Company, Menominee, Mich., has been doing some effective work in boosting the value of real estate as an investment and attempting to create good will towards it. We need some boosting instead of so much knocking.

Mr. Blom sent the following message to Menominee business men:

"Let me tell you just one thing. Business is good and it's going to be better.

"There never was a time when the outlook was any brighter for the real live go-getter Realtor.

"Send today for our new booklet on Farms, Resort Properties and large or small tracts of lands.

"EIGHTY-FOUR CHICAGO PEOPLE bought lands here during the year 1929.

"Special low prices on tracts of lands. Let us hear from you.

"MENOMINEE ABSTRACT & LAND CO.,
"By A. W. Blom, President."

A splendid spirit of consideration and cooperation was displayed by the three San Francisco title companies during the recent move of one into its new building.

Upon the completion of the new quarters of the Title Insurance & Guaranty Co. and the transfer and occupancy, the other two, the California-Pacific Title & Trust Co. and the City Title Insurance Co., called upon the Title Insurance & Guaranty Co., offered every assistance they could be, and to even the handling of its business during the confusion. It was found very convenient to avail of the offer and it demonstrated the value of cooperation and confidence that can exist and is helpful to every business.

A new title company, to be known as Commonwealth Title Corporation, has been organized in Miami, Fla. The new company will represent the Mortgage-Bond and Title Corporation, of Baltimore, Md., a well-known national title insurance company, with combined resources of over $46,000,000. Its policies will be issued by the Commonwealth Title Corporation covering lands in Miami and Dade County.

Following are the officers of the newly organized company: J. C. Coppinger, chairman of the board of directors, who will also be an active vice president; S. M. Tatum, president; William A. Lane, vice president and treasurer; C. A. Vivian, vice president; Gary Griffith, vice president.

The Clay County Abstract Co., Liberty, Mo., announces a re-organization of the company and increase of its capital stock to $100,000.00.

The increase comes about as the result of negotiations with the Kansas City Title & Trust Co., Kansas City, Mo., which acquires one-fourth of the capital stock of the company, and the Clay County Abstract Co. in turn becomes the owner of the abstract books and plant for Clay County of the Kansas City Title & Trust Co.

Title Insurance policies issued by the Kansas City company will be issued through the Clay County office. This county is adjacent on the east to the county of which Kansas City is the county seat.

Albright Title & Trust Company, of Newkirk, Oklahoma, announces the election of the following officers at its annual stockholders' meeting:

Roy S. Johnson, President.

Luther M. Miller, Vice-President.

Hugh C. Ricketts, Secretary.

Emmett A. Woolsey, Assistant Secretary.

The American Title Association

Officers, 1930

General Organization

President

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

Vice President

Edwin H. Lindow, Detroit, Michigan, President, Union Title and Guaranty Co.

Treasurer

J. M. Whitsitt, Nashville, Tennessee, President, Guaranty Title Trust Co.

Executive Secretary

Richard B. Hall, Chicago, Illinois, 111 West Washington St.

EXECUTIVE COMMITTEE

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

Term Ending 1930

Edward C. Wyckoff, Newark, New Jersey, Vice President, Fidelity Union Title & Mortgage Guaranty Co.

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

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

Paul D. Jones, Cleveland, Ohio, Vice President, Guarantee Title and Trust Co.

Term Ending 1931

J. M. Dall, Chicago, Illinois, Vice President, Chicago Title and Trust Co.

Henry B. Baldwin, Corpus Christi, Texas, President, Guaranty Title and Trust Co.

James S. Johns, Pendleton, Oregon, Vice President, Hartman Abstract Co.

Harry C. Bare, Ardmore, Pennsylvania, Vice President, Merion Title and Trust Co.

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Term Ending 1931

Harry A. Kahler, New York City, President, New York Title & Mortgage Co.

William H. Allen, Jr., Los Angeles, California, President, Title Insurance & Trust Co.

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

Term Ending 1933

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Term Ending 1935

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A. S. Moody, Houston, Texas, President, Texas Abstract Co.

Councillor to Chamber of Commerce of United States

Henry R. Robins, Philadelphia, Pennsylvania, Vice President, Commonwealth Title Insurance Co.

Sections and Committees

Abstracters Section

Chairman, Donald B. Graham, Denver, Colorado, Assistant to President, Title Guaranty Co.

Vice Chairman, Arthur C. Marriott, Wheaton, Illinois, Vice President, Dupage Title Co.

Secretary, Herman Eastland, Jr., Hillsboro, Texas, Secretary, Eastland Title Guaranty Co.

Title Insurance Section

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Vice Chairman, Charlton L. Hall, Seattle, Washington, Secretary and General Manager, Washington Title Insurance Co.

Secretary, Leo S. Werner, Toledo, Ohio, Vice President, Title Guarantee & Trust Co.

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Vice Chairman, McCune Gill, St. Louis, Missouri, Vice President, Title Insurance Corporation of St. Louis.

Secretary, Andrew M. Sea, Jr., Louisville, Kentucky, Secretary, Louisville Title Co.

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George Burgess, Dallas, Texas, Attorney, Stewart Title & Guaranty Co. (Southwestern Reporter).

E. L. Smith, Birmingham, Ala. Vice-President Title Guarantee Loan & Trust Co. (Southern Reporter).

Wellington E. Barto, Camden, N. J. Vice-President & Secretary, West Jersey Title & Guaranty Co. (Atlantic Reporter).

Olaf I. Rove, Milwaukee, Wisc. Law Dept., Northwestern Mutual Life Insurance Co. (Northwestern Reporter).

J. L. Mack, San Bernardino, Calif. President, Pioneer Title Insurance Co. (Pacific Reporter).

George L. Bremner, Cleveland, Ohio, Title Officer, Cuyahoga Abstract Title & Trust Co. (Northeastern Reporter).

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E. O. Sloan, Duncan, Okla. Manager, Duncan Abstract Co.

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John C. Adams, Memphis, Tenn. Mgr. Title Dept., Bank of Commerce & Trust Co.

Roy S. Johnson, Newkirk, Okla. Albright Title & Trust Co.

John Henry Smith, Kansas City, Mo. President, Kansas City Title & Trust Co.

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C. Barton Brewster, Philadelphia, Pa. Title Officer, Commonwealth Title Insurance Co.

H. Laurie Smith, Richmond, Va. Exec. Vice-President, Lawyers Title Insurance Corp.

C. A. Vivian, Miami, Fla. Sec.-Manager, Florida Title Co.

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Louisiana—Lionel Adams, New Orleans. Vice-President, Union Title Guaranty Co.

Mississippi—M. P. Bouslog, Gulfport. President, Mississippi Abstract & Title Guarantee Co.

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Arizona—L. W. Coggins, Phoenix. President, Coggins Title Co.

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Oregon—B. F. Wylde, La Grande. Sec. and Manager, Abstract & Title Co.

Idaho—O. W. Edmonds, Coeur d' Alene. Panhandle Abstract Co.

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Secretary, George H. Decker, Wausau.
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Under the Title— the *Paper*

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