TITLE NEWS

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VOLUME XXIX APRIL, 1950 NUMBER 4

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DUSTING OFF THE LAW

by

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If a little knowledge of the law be a dangerous thing, as has been held, that which follows may be deemed perilous stuff. For while I was one who dusted off considerable law in my time, I inhaled but a mere smidgen of it, and my competency as a witness may well be called in question.

The Law, I hasten to affirm, is a majestic institution, cloaked in profundity, black robes and a pervading atmosphere of awesomeness, and none but a rash individual would presume to riddle those sable cerements with the pot shot of ridicule. Having thus propitiated the judicial Cerberus with this prefatory sop, and forestalled any possible citation for "lese majesty" or contempt of court, I brashly proffer a few conclusions, painfully arrived at, which are the fruit of my brief wandering in the baffling maze of jurisprudence.

The Old Order Passeth

The good old custom of reading law in the office of an attorney, and eventually braving the bar examination without benefit of college preparation, seems rapidly on its way out, Time was when many a successful attorney acquired his legal training in that musty manner, and went on to win his diploma and become what is called a limb of the law; but in this age of specialized mass education, most law students imbibe their jurisprudence at the professorial teat, in the nursery atmosphere of the classroom, and roll off the assembly line, pert and polished, eager to plead, argue, expound or demur.

It was my fate to essay the mastery of the law in a more rugged manner, without such professorial suckling and class-

room coddling. The nutriment thus afforded seems to have been deficient in certain elements, for I faltered and ducked the bar examination, The diploma which I faint-heartedly wooed, and planned to espouse, was left waiting and weeping at the State House door, and I have existed in a state of lawless blessedness ever since.

It would seem that, after battling to the death with a regiment of legal text books for a painful period of three years, the combatant should carry some sort of a blushing diploma over the threshold and experience a modicum of judicial bliss, and yet both diploma and honeymoon were denied me. The blame for the tragic wreckage of my contemplated legal career should be lain at someone's door, and I point an accusing finger at the publishers of those text books. It was owing to their unimaginative outlook and lack of understanding that I became neither the captain of my fate nor master of the law, all as I shall soon demonstrate.

Terrifying was the Prospect

At an early and impressionable age I entered the office of an elderly attorney, and was turned loose, like a babe in the woods, in a rotting forest of legal text books. They were the most unlovely volumes that ever huddled together on a dusty shelf, like so many grinning gargoyles on a roost. Here, I said to myself, I shall find no snappy reading. I somehow sensed that those grim brain-children had been conceived with deliberation, gestated with dignity, and delivered with considerable gloomy travail. They were all bound in "law calf", which, as described by Dickens, was the color of "underdone pie-crust", and it was this lack-lustre binding that proved to be the root of my difficulty.

It became my duty not only to read those dull volumes, but to dust them as well. In this I was like that character in "H.M.S. Pinafore", who polished the door knob of a London attorney, and arose by degrees to become the "Ruler of the Queen's Navee", although there seems to have been more future in polishing than in dusting, for I experienced no such dazzling ascent.

My Skill Developed

In any event, whatever my deficiencies as a student of the law, I became a whiz with the feather duster. My children and

my grandchildren will be proud to learn that at stated intervals, over a period of three years, I gave the brush-off to Lord Coke, Chief Justice Blackstone and Chancellor Kent, not to mention numerous other bewigged and bewhiskered dignitaries, whose lucubrations were stacked in that arsenal which was facetiously referred to as a "library". It won me no diploma, but I experienced a solemn satisfaction, akin to that of the antiquarian, in thus flicking the dust of ages from those "most potent, grave, and reverend signiors". It was like furbishing the Caesars, restoring lost luster to the Ptolemy's, or bringing to light the buried grandeur of Pompeii.

Cooley Gets the Brush-Off

I well recall pausing, feather duster in hand, before a monumental work on "Torts", by a Mr. Cooley. Somewhere in my consciousness stirred the vague impression that Torts were something prepared by the Queen of Hearts on a summer day, but I never opened that volume to satisfy my curiosity. I have since learned that a Tort (derived from the Latin "Tortus") is something twisted or crooked, at which I am not surprised, for much of the stuff I sparred with in those text books seemed badly twisted and awry, as witness that hop-skip-and-jump thing called the "shifting and springing use"--a crazy creature which I chased through many a dreary textual page, and never did lay hands on. The Cooley collection of assorted Twists aroused in me no insatiable desire to open the volume and explore the devious doings of the crooked Tort, for I reasoned there could be nothing alluring or intriguing in any volume bound in underdone pie-crust. And so, I airily gave him the brush off, with the mental notation that has dinned in my ears ever since--"Dusted, but not read."

Another pause in the dusting routine occurred when I reached a volume entitled "Pleadings", by one Chitty. There was something plaintive, if not downright poetical, in that title, suggesting as it did the Arcadian amours of shepherd and shepherdess--Strephon "pleading" with Chloe--and similar sylvan dalliance. That volume had a phony label. I think I may now affirm, boldly and without reservation, that any fancied similarity between the Pleadings of Mr. Chitty, and those of Strephon for Chloe, and any imagined resemblance of the characters in Mr. Chitty's treatise, to shepherds and shepherdesses living or dead, is not only coincidental, but utterly presposterous. I have learned the hard way, by dusting and delving, that "text books" are never

catalogued as "sexed books", legacies have naught to do with "cheese-cake", and Mr. Chitty takes not his place with Beaumont and Fletcher, who collaborated on the Arcadian Follies of the sixteenth century. Furthermore, no Arcadian amour ever was bound in underdone pie-crust. Chitty's Ditties reposed undisturbed beside Cooley's Torts--"Dusted, but not read."

And thus it was that for three weary years those somber volumes, and others of their ilk, glowered at me from their dusty shelves, all unopened and unread, albeit faithfully dusty. They reminded me of that ominous bird, the Raven, which fluttered from the night's Plutonian shore to perch above the chamber door of the melancholy Poe, and utter that fateful word "Nevermore". Similarly did those gloomy birds, Coke, Kent, Blackstone et al., brood on those shelves, cock at me an accusing eye, and croak the dismal refrain--"Dusted, but not read."

No Glamour

This may seem like a protracted preface to the point I wish to emphasize, which is that my promising legal career "died a-bornin' " owing to but one circumstance: a massive dosage of underdone pie-crust. Those drab volumes, wherein lay the "open sesame" affording access to that wished-for diploma, lacked but one thing to encourage perusal--jackets. Most volumes issuing these days, whether Best Smellers or Worst Smellers, are attractively encased in flashy jackets, depicting some character to be encountered within -- usually a hyper-mammiferous female. Frequently one finds to his disgust that the jacket is like unto the gilded wrapping enclosing a mummy, revealing only dehydrated putrefaction at the core: but they do serve one potent purpose, and that is to seduce the reader into opening the volume to discover what is between the covers. If he finds the hyper-mammiferous female between the covers, as the jacket promised, he is very apt to page eagerly through the volume for amplified and glowing details; but to entomb such meritorous matter in a sarcophagus of underdone pie-crust is to forever seal it from inspection by the youthful reader.

It should be said that the law books of recent years show marked improvement, buckrum binding supplanting the conventional law-calf, but the flamboyant pictorial lure is still lacking. For the benefit of the law book publishers, and in the interest of the young men who are urged to grapple with such books, I suggest an innovation which might well revolutionize the publi-

shing industry.

How to Improve Cooley

Cooley on Torts, if there be another edition (which I doubt) should issue gaudily clothed in a colorful jacket, depicting a couple of Torts, in shorts, cavorting on a tropical isle. They should be male and female, of course, for the biological urge still springs eternal, even in the law student's breast. The jacket should carry some "come-on" stuff, like the "Stromboli" ads, such as "The Strange Twist of an Impassioned Tort", or similar hot stuff. Thus adorned, I wager the volume will be read, as well as dusted, by the youthful reader.

Chitty on Pleadings deserves a jaunty jacket, displaying a lusty Strephon pleading with a bosomy Chloe, with evident prospect of success; or, in reverse, a warm and well-stacked Venus, pleading with a shy Adonis, might furnish the necessary lure. The Arcadian atmosphere should be stressed, with a background of leafy bowers and convenient mossy banks. Had the volume been thus presented to me, Mr. Chitty might not have "pleaded" in vain.

Even Better Than "September Morn"

And, finally, if those text books on Real Property, which I was admonished to study, had worn flaming jackets, showing the "naked legal title" curvaceously coiled on a leopard skin rug, like a Petty Girl, my appetite might well have been whetted seducing me into opening the volumes to ascertain when and in what manner that title became vested or corseted, and similar intimate details which are the concern of the snoopy abstracter and the prurient examiner. I hope future text books may thus incorporate a little Real Life with Real Property, by such jacketed lure, rendering them more seductive and less repulsive.

All the foregoing may seem both irreverent and irrelevant, if not immaterial, but it may be of interest to some to learn the cause of my embitterment. What adds to that embitterment is the information, proffered me by young attorneys, that they no longer tangle with text books in college, but study "case law", whatever that may be. It would appear that jurisprudence these days is delivered by the case, like beer, while mine came packed in underdone pie-crust. I was born forty years too soon.

In any event, "underdone pie-crust" was my undoing. I became what is called an Abstracter, who is not a limb of the law, but only a feeble off-shoot or sucker. I slink about the Court House corridors, frustrated and scorned, like a legalistic Pariah. I am he for whom the bell tolls, and the dismal refrain which falls upon my ears, like the knell of Fate, is--"Dusted, but not read." For me there awaits that pathetic but realistic epitaph engraved on the tomb of an ancient Greek (doubtless some student who perished of a forced diet of underdone pie-crust)--

"Sparta had many a worthier son than he."

* * *

CONCURRENT ESCROWS

by

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Union Title Insurance and Trust Company

San Diego, California

It frequently happens that a purchaser of real property finds a buyer at an increased price before he completes his purchase. He may have opened an escrow, made a small deposit, and agreed to pay the balance on or before a certain date, usually 30 days. Then, during that time, he finds a buyer and opens a new escrow under which he is to get enough cash to fulfill his obligation under the first escrow. Can he use these funds and avoid putting up any more money of his own?

Suppose that the time for closing the second escrow is set for the same time as the first. Suppose further that all conditions of both escrows have been met except for the payment of the money by the second purchaser and the passing of the deeds. The situation is this:

"A" has given the escrow company a deed to "B" which it is authorized to deliver provided on or before a certain date it holds so much money for "A's" credit. In a second escrow "B" is entitled to that much money provided that by the same date he can furnish title to "C" who has made a deposit of $1000. If "C" then changes his mind, does "B" have a right to declare a default and forfeit "C's" deposit? Under a similar state of facts a California Appellate Court said "No", in Brant v. Bigler, 92 A.C.A., page 857

In that case the particular language used in the instructions by the ultimate buyer, "C", was "I will hand you $14,500.00 which you are to use provided on or before June 24, 1946 instruments have been filed for record entitling you to procure Standard Owner's or Joint Protection Policy of Title Insurance .... showing title vested in 'C' ". The fact was that the plaintiff,

"B", was without title to the property but proposed to acquire title through an escrow pending with another company and further proposed to use the purchase money to be deposited by the defendant to consummate the transfer in the other escrow. The plaintiff could not deliver title unless and until defendant had deposited the full purchase price in the other escrow and then only through the device of simultaneous delivery of deeds and money in the two escrows. The court found that defendant did not agree that plaintiff could use the money, nor did he agree it or any part of it could be transmitted out of escrow until he was vested with title. The court stated the general rule, "In a contract for the sale of real estate the delivery of the deed and the payment of the purchase price are dependent and concurrent conditions" and cited American Jurisprudence to this effect: "A vendor who at the time of contracting to sell land has not perfected his title to it cannot claim a forfeit deposited by the purchaser to secure performance on his part on the latter's repudiation of the contract before the time for performance arrives unless he shows that he has perfected his title so as to be in position to perform his own agreement".

It is to be noted that this case hinged upon the particular language of the escrow instructions and that the result might have been avoided by the use of a carefully worded escrow instruction form.

* * *

PREVENTING TITLE LOSS THROUGH EXAMINATION

by

HARRY J. McISAAC, VICE-PRESIDENT

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The title for my comments, "Preventing Title Loss Through Examination" first left me with about the same impression a barber might have had for a barbers' convention, when he had been given the topic "How to Make Lather," and I was not wholly enthusiastic over the titillating nature of any comments I might be able to make. I suppose I might better digress here for the benefit of some title men and to point out that Webster says that titillate means "to tickle, hence to excite pleasurably." I wouldn't want anyone to lose the point of my talk by speculating unduly long on this particular word.

However, I have come to find some value in this topic, not only for the seasoned and unseasoned title men, but also with reference to our public relations work. While I shall try to stay on my topic, I will from time to time digress, to bring in other observations which occurred to me in my preparation. The first digression is to suggest that when an officer or employee of his company or local office is active in public relations work in his county, by way of speaking before realtors, escrow men, bankers, lawyers or other groups, and the question arises "What shall we talk about?" why not reach for your recent copies of proceedings of these conventions and look for ideas. In fact, I am hoping that what I am going to say this morning may possibly be of interest to an assistant title officer in some distant county, who might be called upon six months hence to speak at an evening meeting of some realty board in that locality. Out of these convention comments a busy title man might find a narrative of experiences, enjoyed or suffered by various units of the industry, that would give him and his listeners a very satisfactory evening and certainly be a means of developing more good will for the title industry.

Furthermore, whenever such opportunities arise to address a group, I think it desirable that you have as one of your premises, the observation that in handling a title order we do not do so solely from an actuarial point of view,but rather that we, as distinguished from other insurers, take every step and do everything possible to avoid overlooking any error or circumstance in the chain of title that could bring about a loss, not only to the insured, but to ourselves. For some people there is always the question--do we ever pay a loss although we call ourselves an insurance company, and for other people there is the question addressed to us: "Well, you are an insurance company. Why don't you sometimes take a risk?"

We,as title men,know of course that title insurance protects the owner of real estate or a lender of money on real estate against losses which he may sustain because of defects in title, and that it further protects the insured against liens or encumbrances against the property at the time the title policy is issued. We also will recall that the Supreme Court of Pennsylvania has said that title insurance is not merely guess work, nor is it a wager. It is based upon careful examination of the muniments of title, and the exercise of judgment by skilled conveyancers. The quality of a title is a matter of opinion, as to which, even men learned in the law of real estate, may differ. A policy of title insurance means the opinion of the company which insures it,as to the validity of the title,backed by an agreement to make the opinion good in case it should be mistaken and loss should result in consequence to the insured.

Title insurance is not intended for known bad or defective titles. A title company does not write a title policy where there is a known serious defect,no more than a life insurance company would write a life insurance policy for an applicant whom a doctor reported to be seriously ill with some incurable disease. To issue a title or life insurance policy in such cases would surely be a gamble as well as a bad business risk.

While these matters are,or should be,all clear to us,nevertheless, to the layman title insurance purposes are not always understood and to him title insurance still means insurance of known defects or bad liens. We have not always been skillful, in that we have not aggressively and forthrightly handled this phase of our public relations.

Title Loss Through Examination" be a convention topic? Examination has always been basic with title work. Another feature of public relations in connection with this topic is that we have sometimes had customers suggest that inasmuch as we insured a given title six months, a year or two years before and our records were complete up to that time as to the title, what could have happened in the meantime to warrant our making so much to do over such a title in bringing the matter down to date. So, with these objectives in view, it appeared that it would be helpful to have information of a character that had probably not heretofore been assembled by the industry, relative to the status of orders in the office or orders recently closed, to determine what percentage of these orders actually revealed title defects or mistakes or other matters which could develop into a loss.

A statewide survey on the subject was recently completed in which nearly every title company in the State with large and small units was contacted and they were asked to check a certain number of "run-of-the-mill" orders, and report the number in which errors were found, such as:

(a) Defective description
(b) Defective execution
(c) Tax liens and judgments
(d) Encumbrances not covered by instructions
(e) Potential mechanics' liens
(f) Defective proceedings
(g) Miscellaneous errors

The result of the survey should be surprising to even the old hands in the business. Out of approximately 4,190 orders examined, it was found on analysis that 30% of the cases examined (with an approximate liability of $10,572,843.43) contained defects and mistakes or potential title losses. A further breakdown showed that of the orders that contained such errors,

25% contained defective descriptions
30% contained defects in execution
23% contained tax liens and judgments
17% contained encumbrances not covered by escrow instructions
9% contained potential mechanics' liens
3% contained defective proceedings of various types
14% contained miscellaneous errors

Of course, we have no way of knowing which of these errors would have ripened into a loss, or how many of them overlooked, would have lost their significance with the lapse of time. It is certain, however, that in the process of our title examinations many title defects or mistakes of every nature are discovered and brought to the attention of our clients, either by the issuance of our preliminary title report or by consultation, which if it had not been for the fact that we had examined the title many of such defects or mistakes would have resulted not only in embarrassment to our clients and their attorneys but monetary losses as well, some of which might be of a very serious nature.

Most every one of us has had that uncertain feeling that comes when the insured or his lawyer hands us a copy of a complaint, wherein our insured is named as a defendant and we are requested to undertake the defense. Sometimes the basis for the plaintiff's cause of action is readily apparent from the reading of the complaint, and sometimes the complaint is a simple quiet title one. We make a hurried check of the books and our file to see what could be the source of the trouble. If there is trouble, we of course know that we are just in the beginning of another unhappy and, perhaps, expensive experience, and of course even more unhappy when we find that the defect is one that we had an opportunity to note and overlooked it.

Now that we have these figures, and percentages, what use can we make of them? In the first place, it would seem that every office that assembled and sent in some of these data could profitably gather its own personnel together and discuss their own experience for their own mutual benefit. Second, it might be feasible to establish a pattern for such a survey about once a year. This would tend to keep personnel alert; it will be useful to new personnel and possibly suggestions for improved operating methods could be distilled out of the surveys. Third, for those customers who are not as friendly as we would like to have them toward our business we could tactfully, in the course of a conversation, point out that of the title work in the office at a given time, we found that these circumstances of error and defect prevail. Adjust comment, of course, to person, time and other factors, but endeavor to leave the idea in your parties' minds that all the delays are not just due to our alleged cumbersome ways, but rather due to the condition in which we find the order and the documents, and that we of course are making every effort possible to render the kind of service and coverage people really want.

Fourth, for the man I referred to a few moments ago, who is going to speak before a realty board, he can go a long way toward an educational project devoted to descriptions, instructions in escrow and execution of documents and the other acts that are part of the chain of title, but which are sometimes done in the broker's office over the kitchen table or in his Overland while out looking at a 40, and the wife says: "Can't I sign now, then you gents can let me off at the house while you men go over to the title company to finish the deal. I've got a big tub of Jack's underwear to wash." Now, if the broker hasn't lately been told about being sure that a change of name by a party should be kept in mind, he may find, when the title officer requires a new deed, that the woman in the case left the next day on the bus for Pocatello to help her daughter have a baby. So the deal is held up. Now, if we can get additional plausible reasons to talk to our broker friends about interesting experiences, we save them as well as ourselves these unsatisfactory delays.

Getting back into our own offices with this subject, I am left with the belief that our best use of data of this sort is one of continuing education and training, with an improved procedure here and there to avoid errors. It is not unlike trying to minimize the ordinary cold that makes one uncomfortable. We all know that we should keep our feet dry but merely having this knowledge is not enough. We have to keep telling ourselves and others and use such aids to dramatize the knowledge as are available to us.

* * *

TAKE-OFF AND TITLE PLANT BY CAMERA

by

LEONARD LAMB

Weld County Abstract & Investment Company
Greeley, Colorado

About 40 years ago, our company obtained a certain amount of experience in photography. We then photographed about 300 books which currently are in use. Many of the pages are torn and the edges frayed, but our people still prefer to use these when possible.

A year or so ago, we decided to adopt a more efficient and expeditious method of handling the Take-Off. We settled upon the Remington Rand "Dexigraph", and after using it for a week or two, we were satisfied it could be adapted to our plant. Since November 8, 1948, we have made the daily Take-Off photographically.

The Print

The print is 6 x 9. We experience no curl if we use care, especially in filing. We were inclined to question the readability and were of the belief we would have to use an enlarger. However, our typists, and for that matter all our employees found, by actual experience, they could read the 6 x 9 with little or no trouble. This is a trifle larger than newsprint. Being white on black, it may be slightly difficult to read.

Costs for Materials

In the past year we have made about 15,000 prints in our Take-Off and extra work. We have about 1,235 books in our County. We have made careful studies on costs and arrive at a cost for materials and chemicals of about $2\frac{1}{2}$¢ per print.

Under our old manual system, our costs for the Take-Off

ran $200.00 to $250.00 per year. Costs in the past year with the camera have been about $350.00.

Side Line Earnings

This extra cost has been written down by the fact we have taken in about $100.00 for non-abstract photographic work--photographing income tax returns, bills, invoices, etc., for which we charge 25¢ per print. We have not pushed this business but we plan to go after it aggressively after we have installed a photographic machine which will give an exact full size copy of anything the customer might want.

Operating Savings

The biggest saving has been in salaries. Previously, in the old manual system, the abstracter making the Take-Off was busy all day in the Take-Off of thirty-five to forty instruments a day. After that was completed, it had to be compared--another two hours. We figured this took approximately twelve man hours' time, at a cost of over $200.00 per month.

Our present Take-Off salary expense stands us no more than $60.00 per month. It takes about two and a half hours to complete the process.

Exposure of Print

We find we cannot expose the prints as fast as with microfilm. It takes about half an hour to prepare the instruments for exposure and actually exposing the print. It takes about fifteen minutes to develop and get into the washer the prints of an average day's work of fifty to seventy-five pages.

When this is completed, having used about forty-five minutes, we make it a practice to wash prints at least two hours. The employee assigned to that can perform other duties in this period. Then it takes about forty-five minutes to dry the prints.

We go to the Court House at 2:30 or 3:00 p.m. The process is completed and we have that day's record ready at opening hours the next day.

Procedure

We make a master sheet which is checked against the Index Book of the Clerk to assure we have all the instruments photographed. Then all instruments are posted on our index books. By 10:30 or 11:00 a.m. all instruments of the previous day are posted and available for use in the making of continuations of an abstract. Thus we are able to certify abstracts to a more recent date. Formerly we were at least two days behind with our closing date. Now we can close the same day that the last checker checked out the abstract.

Filing the Take-Off

We have visited many abstract offices in our state. All seem to do the same thing--but differently. Manually, most are taken off one right after the other so that on each page of the big book there are possibly three or four instruments abstracted. Where it is done by microfilm, it is on the last roll of film.

We file these in an open file in reception number. If you want a copy of an instrument, you take it from the file. You don't need to use the last page or the last whole film.

Procedure

Let me illustrate. On an order for a continuation, the checker goes to the index book. There are four entries to be put into the abstract. After she has checked the miscellaneous and judgment books, she goes to the file, takes out the four necessary instruments, and hands these to the typist. When typing is finished, the work is compared. After corrections, if any, are made, it is turned over to the second checker. There again she has the accurate photographic copy of the record she is to abstract.

Microfilm

Microfilm has many uses and serves many good purposes. But if you use it on the above procedure, how many people can use the needed last roll of film? One. If you use the book, how many can work on it? One.

With the method I have described, there is no waiting. We estimate we save three and a half to four man hours per day.

Don't misunderstand me. I am not trying to discredit microfilm for I am not. It has many uses. I can aver to that by adding we are co-owners of a microfilm camera. I think one of the best things you can do is to microfilm completely and store it away from your office, perhaps even away from your city. It we move into title insurance more, than we can build an actual accurate record as regards examination of title, etc.

To my mind, a combination of the two--Dexigraph or comparable camera for the Take-Off and microfilm for recent work would be a mighty good system.

Size of Print

Mention has been made about using a print 6 x 9, to be made each day, from the daily Take-Off if by microfilm. We calculate this to be a double process with a cost of $5\frac{1}{2}¢$ to 6¢ per instrument. But with a combination of the two, I think you would have a nice set up.

Multilith

I strongly recommend the Multilith for an abstract office. We reproduce practically all our printed forms, all certificates, statements, abstract sheets, etc. on our Multilith. It pays for itself.

* * *

TITLE EXAMINATION STANDARDS

by

HENRY H. BLAIR, RESIDENT TITLE ATTORNEY
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Kansas City, Missouri

I appreciate very much President McAdams' invitation to talk about "Title Examination Standards" and the work of the Title Examination Standards Committee of the Missouri Bar. It is a subject of some importance both to lawyers and abstracters, and one in which I have become very much interested during the time I have served as a member of the Committee.

I assume that abstracters know a good deal about the title standards movement. It is an attempt to gain a greater degree of uniformity in title opinions. Abstracters have helped with this work, as you know. In some states abstracters have helped lawyers initiate the title standards movement. In other states they have worked with state and local Bar Associations in the formation and improvement of title standards.

Make Up of Committee

In Missouri, five lawyers, who are also abstracters, served on the Committee last year. Four of these are members of the Missouri Title Association. Their contribution to the work of the Committee has been valuable. In addition your president, Mr. McAdams, and John P. Turner, of your Association, worked with the Title Lawyers Group of Kansas City, in an advisory capacity, when it considered the first group of recommended standards in 1947.

You probably recall the panel discussion on title standards which took place at the meeting of the American Title Association in Kansas City in 1947.

Origination

Title standards originated in Connecticut in 1931. Title lawyers who examine the records in that state originated the movement. Title standards have now been adopted in many states, including Nebraska, Kansas, and Oklahoma. These three states each have a very comprehensive and useful group of title standards.

In Missouri, The Missouri Bar appointed its first Title Standards Committee in 1946. The initial group of seventeen standards was drafted in 1947 and adopted in 1948. Six additional standards were drafted in 1948 and 1949 and adopted September 10, 1949. The last group of standards has been published, but official notice of approval has not as yet been printed in The Missouri Bar Journal.

Standards, Not Law

In considering title standards, I wish you would keep in mind that they are not laws. They are expressions of majority opinion on points of law or custom believed to be well settled by case law, statutes, or usage, but about which lawyers still differ. Title standards are useful and can be very helpful in eliminating many trivial and unnecessary title requirements. However, they cannot be expected to achieve absolute uniformity, nor can they be substituted for statutes where statutes are needed.

For instance, a suggestion was made in 1946 to draft a standard approving direct conveyances from a husband to himself and wife. That is an interesting subject which was argued and debated with much vigor by the Committee. We found some sentiment in favor of such transfers. However, the Committee felt this was a question to be handled by statute rather than by a standard. We did approve such a statute based on Section 18 of the model real estate code which, if passed by the legislature, will permit direct conveyances.

Not a Panacea

Title standards cannot be expected to correct bad case law. An example is a suggestion made to the Committee in 1946 that we formulate a standard which would construe the word, "trustee," after the grantee's name in a deed to be descriptive rather than notice of a possible trust. This is not the law. The

case of Sanford vs. Van Pelt, 282 S. W. 1022, holds to the contrary. The suggestion had to be rejected.

However, standards can be used effectively to interpret statutes. An example is Standard No. 17, which has to do with Federal Judgments and conformity in Missouri.

So much for what you might call the formal part of this talk. I would now like to discuss a number of the approved standards. I would appreciate it if you would ask questions at any time.

The Abstracter's Certificate

I am going to discuss the several standards in order. It so happens the first standard will be No. 3. The certificate -- Abstract of Title.

> "If a certificate is made by a reliable abstracter, is not limited to any specific person, and covers either (a) everything filed or entered in the public records of the county or (b) all matters filed, of record, or proceedings in the offices of the Recorder of Deeds, Clerk of the Circuit Court, the Probate Court of the County, and all taxes general and special, it should be accepted without requiring recertification regardless of lapse of time.

Perhaps this is not strictly a title standard. It does, however, state the coverage which lawyers seek in the certificates to the abstracts they examine. For this reason it is properly included in the group approved by The Missouri Bar.

Please read the Standard again. You should note three points of interest to abstracters. First, it does not require your certificate to be addressed to any specific person. Second, it does not require an abstract to be recertified for lapse of time alone. This indicates lawyers have either had a satisfactory loss-negligence experience with Missouri abstracters or you have not raised technical defenses to negligence claims, if any there have been. In either event it is to that extent complimentary of the work of abstracters.

Circuit and Probate Courts

For the third point, note the standard calls for a certificate covering all proceedings in both the circuit and probate courts.

Only a few abstracters prepare certificates which meet this requirement. Some certify pending suits in the circuit court. Not many cover proceedings in the probate court.

I don't mean to be critical but out of eighteen different certificates studied over the past few months only five met the requirements of this standard. Of the thirteen remaining certificates, all failed to cover circuit and probate court proceedings, and only a few covered suits pending. Nine of the thirteen abstracters were members of the Missouri Title Association, and all are well known abstracters, whose abstracts probably actually covered all court proceedings, past and pending, including probate.

Perhaps many abstracters do not maintain tract books on circuit and probate court proceedings. If not, they should do so. When an attorney examines an abstract, he would like to feel the abstracter has shown every proceeding which could affect the title. The examiner gives his most effective service when he passes on proceedings which not only are, but perhaps are not, in the direct chain of title.

Recitals of Death and Heirship

The next standard to which I would like to call your attention is No. 7--Recitals in Application for Letters Presumed True after 31 Years.

> "Recitals of death and heirship in the affidavit contained in an application for letters of administration or testamentary, or in a deed from a person recited to be an heir, should be accepted without further requirement as sufficient evidence of the truth of such recitals, where the affidavit or deed has been of record not less than thirty-one years unless controverted by other entries in the abstract."

This is a good subject for a title standard. Many lawyers rely on the affidavit or deed recitals within the thirty-one-year period. Others require confirmatory affidavits well back of this time. If the recitals have gone unchallenged for thirty-one years, there seems to be no need for confirmatory affidavits. The standard assumes there will be intervening conveyances during the 31-year period. If title is being conveyed now by the heirs after thirty-one years, a requirement for a confirmatory affidavit would be valid.

This standard is not based on Sec. 1008, R. S. '39, the 31-year statute. The Committee believed thirty-one years was long enough to permit confirmatory affidavits to be dispensed with prior to that time.

Presumption of Intestacy

The next Standard for your consideration is No. 8--Intestacy Presumed after Ten Years.

> "Intestacy may be presumed and administration waived where the abstract of title contains satisfactory information either by affidavit or deed recital as to date of death, place of domicile, heirship and intestacy, and probate of the estate is not shown, and it further appears that the deceased has been dead more than ten years."

This is also an excellent subject for a title standard. It is perhaps possible to admit a will to probate after ten years. However, most lawyers have found that after all claims are barred, that is, after ten years from date of death, an affidavit of intestacy may be safely relied on. This standard states the practice of the majority of examiners in Missouri.

Old Judgments and Decrees

Now turn to Standard No. 10--Proceedings Antedating Judgment or Decree Presumed to be as recited after Thirty-one Years.

> "Where a judgment or decree affecting the title to real estate has been entered of record for more than 31 years and appears in the abstract, but the remainder of the action either is not shown, or is incompletely shown, and where such judgment or decree gives full information as to the status of parties and the nature of the action, which is sufficient upon which to base an opinion as to the validity of the proceedings in question, the proceedings shall be presumed to be valid and binding as to all matters recited in the judgment or decree, and such showing shall be accepted as sufficient, unless something affirmatively appears therein, showing lack of jurisdiction of either the parties or the subject matter."

This standard has no relation to Sec. 1008, R. S. '39, the 31-year statute. It states the practice of most lawyers that after

31 years it is no longer necessary to abstract incomplete or missing court proceedings providing all the essential elements are developed in the recorded judgment or decree and the abstract does not otherwise indicate any defect in the proceedings.

This does not mean an abstracter today preparing a base abstract should omit these proceedings, if available. However, in many courts part or all of the records are missing. When this is true the examiner should be able to rely on recitals in the decree where of record for 31 years and more.

Affidavits re Old Notes

Next consider Standard No. 12--Not Negligence for Examiner to Rely on Affidavits of Lost Note or Notes as Provided in Sec. 3465 R. S. '39.

"Where affidavits as to loss or destruction of note or notes secured by a deed of trust are in conformity with Sec. 3465 R. S. Mo. 1939, the truth of such affidavits should be presumed without requirement, unless something affirmatively appears to put the examiner upon inquiry."

This is one of the most interesting of the standards. It is a correct statement of the law. I understand the Missouri cases hold it is not negligence for the examiner to rely on the affidavits. Lawyers discussed the standard, briefed it, and argued it. The Committee has no hesitancy in approving it.

Discussion

MR. TAYLOR: As to the affidavit of the maker of the note provided for in this Section, in case he has sold this property to some other person who really paid it, the grantee of the maker assumed and paid the note, will he be the legal representative of the maker to the degree he may make the affidavit instead of the original maker?

MR. BLAIR: That has been my understanding. In other words, representative extends to the successor in title to the original maker.

PRESIDENT McADAMS: We have always considered the term, representative, was used in connection with that statement, successor as distinguished from a legal representative.

MR. BLAIR: However, it is a standard which some title insurance companies and institutional lenders do not follow in all cases.

Most exceptions involve notes lost recently. Common sense requires buyers and lenders to investigate carefully before loss affidavits are accepted in such situations. Recent loss of notes would be a sufficient factor to put the examiner upon inquiry within the meaning of the Standard.No reason for any real disagreement with the Standard seems necessary. If there is disagreement with this statement the standard should be clarified.

Perhaps a better way to handle the problem would be to amend the law to require deed of trust to be transferred by recorded assignment. An alternative amendment might be to require a brief, informal court proceeding to establish loss of the note. This would include examination of the owner of the note and deed of trust under oath, and an order of the court authorizing the release.While this would not eliminate perjury,it would result in more "lost" notes being found. The costs should be against the loser of the note.

Conformity as to Federal Judgments

The next standard for consideration is No. 17--Conformity as to Federal Judgments. It reads as follows:

> "A judgment rendered by any United States District or Circuit Court held within the State of Missouri is a lien on real estate of the person against whom such judgment is rendered situate in the county in which such court is held; and such a judgment, upon filing of a transcript thereof in the office of the Clerk of the Circuit Court or any other county, becomes a lien upon the real estate of the person against whom such judgment is rendered, situate in the county in which such transcript is filed. Federal Court Searches as to judgments (except as to bankruptcy) are to be required only in counties in which the Federal Court sits."

"Conformity" is perhaps the most controversial of all the subjects considered by the Committee. This Standard indicates approval of the amendments of 1935 (Laws Mo. 1935, P. 207) and means that in the opinion of the Committee they were sufficient to provide "conformity"within the requirements of Sec. 812 of the U. S. Code (1888).

The need for the amendments of 1935 arose following the ruling in the case of Rhea vs. Smith, 272 S. W. 964. There the Missouri Supreme Court held it was "conformity" to require a United States District Court judgment to be filed in the Circuit Clerk's office before a lien arose, in a county where the circuit court's judgment was a lien from rendition. The United States Supreme Court reversed the case (274 U. S. 434) because the requirement to docket the District Court judgment in the absence of a similar requirement for the state court judgment was a denial of equality.

The Legislature's problem was how to get around the statement in the Rhea case (in Mo. 272 S. W. 964) that the words, "for which the court is held," in Sec. 1104 R. S. '29, applied only to the state court and could not extend to the Federal District Court. The amendments of 1935 did little more than add the words, "or in which," to the conformity section. However, this was enough to make District Court judgments liens from rendition in counties where rendered when state court judgments are liens from rendition. This was the test laid down by the United States Supreme Court. In some counties and cities both judgments must be abstracted before the lien arises, Sec. 1314 R. S. Mo. 1939.

The statement in Gill on Missouri Titles (pars. 733 and 2707, 1946 anno.) that the 1935 amendments were probably ineffective because all judgments are not required to be entered in a judgment book or docket in all counties is confusing. The Committee could not see where statewide docketing had anything to do with conformity. The test was whether there was conformity at the county level. When the legislature amended the law to provide District Court judgments were liens in the counties where rendered, the same as state judgments, that was all that was necessary to be done to provide conformity.

Missouri may not have "conformity" as to bankruptcy. The 1938 Bankruptcy Act requires recording to give notice, providing the state laws "authorize such recording." Sec. 13, 161 R. S. Mo. '39, does not specifically direct the recording of bankruptcy matters.

My time is now almost at an end. I hope the five standards we have discussed give you an idea of the work of the Committee. We believe a greater uniformity in title requirements will result in greater uniformity in title opinions. If this occurs both

abstracters and the public will benefit.

Before closing, I would like to refer briefly to the abstracters' certificate bill. It was prepared by the Committee this year in order to continue part of the work begun by abstracters in their attempts to persuade the legislature to pass a licensing bill. We believe a bill which authorizes the bonding of abstracters, provides, in effect, a uniform certificate, and extends liability on it to all persons relying on it for a period of time up to ten years, will help abstracters gain some of the objectives sought in the licensing bill. It should result in a more usable, and hence a more valuable, abstract.

Objectives

These are the objectives of the certificate bill. Lawyers would like for your Association to approve it. If you object to the present bill, then we urge you to appoint a committee to work with the Standards Committee until a bill satisfactory to both abstracters and lawyers is drafted. Such a bill should receive favorable consideration at Jefferson City.

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