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Table of Contents

Page

ADMINISTERING SUPERVISORY TRAINING PROGRAMS

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He Will Do His Job More Effectively, If You Know What to Stress

The purpose of training programs is to create among personnel appointed to leadership duties a desire to be better supervisors, as well as to make supervisory personnel more effective. The means to this end lies in the proper approach to the program. Hence, the director of training should ask himself: "What do supervisors need to know?" Experience shows that most difficulties encountered by supervisors result from a lack of knowledge of basic management principles. This implies that training should acquaint supervisory personnel primarily with these principles so that they would learn to perform their duties properly and effectively.

AUTHORITY, RESPONSIBILITY, ACCOUNTABILITY

It should be stressed that there is no difference between management activity and supervisory activity, because a supervisor is a manager. This means that supervision is no different from any other managerial activity. In firms where the office force is quite large, the responsibility for the activities of the office is divided among a number of department heads and supervisors. The top **authority** above these lower or higher ranking managers is the office executive, who, along with the respective department heads and supervisors, is **responsible** for the efficient operation of the office as a whole. While the office manager, or whatever title he may hold, has authority over the department heads and their supervisors, the latter exercise authority over subordinate office employees, such as typists, clerks, bookkeepers, receptionists, etc. Since the supervisor has authority only over a restricted number of the office force, his **responsibility** and **accountability** must obviously also be confined to a limited amount of specific assignments received from his superior officer in the chain of command.

In connection with the principles of authority, responsibility and accountability, there are two common supervisory mistakes which it is particularly worthwhile to point out in training programs. One of these mistakes is that quite a few supervisors perform clerical jobs in their departments **themselves.** They may not realize that doing is not a supervisor's job; the supervisor should **delegate responsibility** to particular employees for certain assigned work. Of course, the responsibility for seeing that the assignment is done still remains with the supervisor. Efficient supervisors are able to get work done by others just as well, or even better than they could do it themselves.

The second supervisory difficulty seems to arise from the fact that the supervisory personnel may not know exactly "just how much" authority has been delegated to them. Because of such lack of knowledge of proper authority, they frequently make decisions pertaining to office affairs for which neither their competence nor their experience is sufficient. As a result of this, higher ranking members in the management-organization may experience difficulties in straightening out such supervisory "blunders."

A case in point is the supervisor in the credit department of a large mail-order house who assumed a part of the credit manager's authority in approving certain kinds of credit. The result was forfeiture of payment by a customer. Besides egregious blunders like this, such lack of knowledge of proper authority and responsibility may result in decreased efficiency be-

cause of the possibility of "buck passing" and duplication of effort. In this example, credit requests were approved by both the credit manager and this particular supervisor. The above mentioned duplication was first discovered when this forfeiture of payment occurred.

An induction or pre-employment training of supervisors in their duties (authorities), in their responsibility and accountability, with special emphasis on the limits of their respective authority, may eliminate such supervisory shortcomings.

MEANING OF SUPERVISION

Since **doing** is not the task of the supervisor, it should be emphasized that **Thinking, Decision Making** and **Managing** concern our supervisory personnel. Many supervisors do not seem to know, however, the meaning of management. An effective training program would emphasize that management involves (1) planning; (2) organizing; (3) directing; (4) controlling, and (5) coordinating the activities of subordinate employees to achieve efficient office operations.

Planning is the thinking process which should occur prior to performance of the assignment. It is concerned, for example, with the flow of work and the scheduling of work loads in such a manner that no interruption or piling up of work at certain desks occurs. It requires considerable thought in order to synchronize the activities of one desk with those of the others.

Work loads, based on time studies, or at least on experience, must be properly calculated and the desk of a particular employee should be able to absorb the work received from the previous desk. This may require the development of certain work standards, establishment of time limits, elimination of unnecessary handling of materials, waste motions.

Once these things are properly planned, the next task of the supervisor is to put these plans into action —organizing. As far as the supervisor is concerned, this means the selection of the best suited employee available in his department for a particular job. While planning has divided the tasks to be performed into specialized activities, organizing must put these plans, through the proper choice of personnel, into practice.

For extremely simple repetitive jobs, a person with lower mentality can be selected; for typing important letters, where knowledge of grammar and spelling is significant and a certain intelligence is needed, a rather capable typist must be chosen. Thus, organizing requires the supervisor to know his subordinate employees, their special abilities and skills, shortcomings. A carefully developed job specification may facilitate the supervisor's organizing activity.

After the supervisor has selected the "right person for the right job," it is his next duty to **Direct** the employees properly so that they know what is expected of them. Direction is concerned with explaining what to do and how to do it. It is much better to explain the job or the assignment and let the employee do it. Employee training should be similar to teaching swimming. The employee has to try "how to swim." The coach should only explain.

Direction requires an abundance of common sense and a rather delicate knowledge of good human relations. There is no simple rule as to how to deal with employees, because people are different. The extensive use of case studies may help supervisors to realize the importance of good psychology in dealing with subordinate personnel.

If possible, the supervisor should develop procedures through which **direction** can be impersonalized and facilitated to a great extent. The use of procedures will relieve the superior of part of his management duties yet will still accomplish the same purpose. Also a procedure must be learned by the employees, but once it is known, no further direction is necessary. Thus the term "direction," is used here in the sense of training, i.e., explaining or communicating ways and means of doing given jobs properly.

The **Control function** of the supervisor can be personally and imper-

sonally carried out. The less personal control is exercised over the employees the better. The reason being that employees resent those supervisors who act like watch-dogs. Such close personal control may have an adverse effect on the morale of the work-team and efficiency may suffer. Impersonal controls, such as standards of performance, may give the impression of freedom. Employees may leave for coffee or make a short phone call, yet since the daily task must be accomplished, waste of time will be kept "voluntarily" to a minimum. Deadlines for accomplishing work, budgets, and other impersonal methods of control may create a relaxed office atmosphere and contribute to employee satisfaction and ultimately to office efficiency.

In good supervision **Coordination** of activities becomes almost unnecessary. A good supervisor should be able to develop good will, enthusiasm, and a feeling of belonging to the organization. If the supervisor has succeeded in developing "teamwork" among his subordinates, coordination will be replaced by cooperation. Of course, it cannot be expected that perfect cooperation will be achieved. People are people; one typist may dislike another one, thus reducing the possibility of cooperation. In such a case, the supervisor's task is to **make them cooperate.** Cooperation achieved through the application of pressure is called **coordination.** Coordination is the final step leading to a smooth synchronization of all necessary activities to achieve the total task assigned to the supervisor. In connection with coordination it should be mentioned that procedures can be very excellent means to facilitate the supervisors' coordinating function. Of course, only carefully developed procedures, which have succeeded in synchronizing the interrelated activities of the office and created a continuous flow of office work, will achieve this purpose.

HOMEWORK ASSIGNMENT AND CASE STUDIES

Training program should be based on the case method of presentation of the above mentioned problems. It is advisable that the trainees themselves hand to the **Discussion Leader** homework assignments covering some of the problems encountered in their supervisory activities. These problems should be summarized and built into a "case" by a competent member of the training department. The case study could be built upon the logical steps listed above or it might be tailor-made and organized in a different fashion depending upon the training needs of the particular office. It is imperative, however, that the trainees themselves participate in the discussion and develop their own solution to the case. In this way a closer contact between their own problems and management principles can be established.

In order to make case material sufficiently realistic for study purposes, it is desirable to gather the appropriate data from the supervisor's own company. However, the case is merely a skeleton which will not become akin to "reality" until the members of the training program, through their own imagination, make it true. And the chances are if the case originates from their own environment, they will be able to identify themselves with a variety of "case characters" and thus will be in a position of giving a "reasonable" solution to a particular problem. Since here we are dealing with "practitioners" of management, our purpose is not so much to add to knowledge of the participants; it would be too late to do that. The purpose of the training programs is directed primarily toward the development of insight and skill, as well as to proper behavior rather than acquisition of new knowledge.

SUMMARY

Experience dictates that supervisory training programs should not only teach supervisors how to do their job in every little detail, but should show them the meaning of supervision relative to the office as a whole and make them aware of the fact that they are in a sense managers. Of course, it should be pointed

out that there are different levels of management and that the supervisory groups comprise the lower levels of this management-organization. This implies that their authority over and responsibility and accountability for certain tasks concerns only a limited number of activities at the operating level.

Since they are managers, their primary job is to see to it that the jobs are properly **delegated** to qualified office employees; the responsibility and accountability for the accomplishment of the jobs delegated to various subordinate office employees remains, however, with the supervisor. For this reason the supervisor must not only exercise authority, but also must see to it that employees properly carry out the tasks assigned to them.

Unless the supervisor has the proper power to make employees **accountable** for the assigned task, his authority does not hold water. In short, if supervisors accept their appointments, they have to know the meaning of authority and what it entails, hence they have to know that they are responsible for the management of a part of the office (i.e. office force). And they have to know that management means: to plan, organize, direct, control and coordinate the activities of subordinate employees in order to make them accomplish their respective tasks, not only fast and without waste of effort, but at the lowest possible cost.

WATCH YOUR LANGUAGE

MORTIMER SMITH

President, Oakland Title Insurance Company, Oakland, California

We are privileged to carry in "Title News" an excellent article written by Mr. Mortimer Smith, former President of our Association. The article originally appeared in "Right of Way", organ of the American Right of Way Association, in its issue of April, 1956. The article is interesting and informative; it is good public relations in its finest sense.—J.E.S.

Human actions are very short-lived, but human writings evidencing those actions are most enduring in their effects. No one such as an attorney, a right of way man or a title man may ever forget this fact because those of us who consider ourselves and our activities in those occupations find ourselves continually dealing with human actions and human writings.

We deal with actions and writings of the past, we are confronted with them in our immediate daily work of the present and just as important, if not more so, we are at all times put to the task of using our imaginations to attempt to make sure that all the actions and writings of the past, wherever possible, and certainly the present, create order and certainty for those who will take our places in the future.

This has to do with easements and rights of way.

Our contacts with the actions of the past are not direct but rather through the record of the writings evidencing those actions. We endeavor to interpret what was intended by people when they wrote what to them appeared to be clear and concise portrayal of their intentions. To them at that time their language in that document said exactly what they meant to say and

in such terms that they and all who came after them must surely know its complete meaning and entire effect beyond a doubt.

Change in Use

Experience, however, has shown us that in spite of all of the good intentions of those good people of the past, their mental products as we find them in our records do not tell us today what many of those of yesterday meant to tell us. At least that is true in terms of the today's living use of those creations of yesterday. There are probably many reasons for this.

No doubt one is the complete difference in the lives they led and the lives we lead. We will call it progress. Probably very few right of way men, attorneys or title people of seventy-five years ago could possibly have imagined transportation and traffic conditions as they now exist.

Another reason is this English language of ours, or perhaps a better way of putting it would be that another reason is the **use** of this English language of ours. For some reason or another a great number of users of the written word of our language, past, present and probably future, seem to feel that words of universal meaning and understanding never should be used. So many of us from time to time come up with so many much better words and expressions than those with which everyone else is favorably acquainted. We call them, at least in our own minds, contributions to literature, or if legal form is our product, perhaps a gift to posterity for all to use from that time forward.

Very often, however, when that is done, rather than a real strength of meaning having been created the opposite is the result. We cause an infirmity, a determination of words to the page, which, though it is familiar to you in parliamentary debates, committee and official reports, old-fashioned documents, new-fashioned articles and even in articles by a fellow by the name of Smith, makes understanding most difficult.

Think, for instance, of your very close friend who meets you on the street and talks about the "bad weather" and then goes home and in writing for his trade journal writes about "adverse climatic conditions."

Maybe there is a natural desire in all of us to ornament the language too much. Our enthusiasm to lift our statements from the commonplace makes us like the newspaper man who, reporting his mother's death, wrote, "Regret to inform you, the hand that rocked the cradle has kicked the bucket."

Beyond a doubt, the words, "The answer to the question is in the negative" mean "No." No examination could cause them to read anything less or anything more.

We Meant to Say

Mr. Robert Littler of San Francisco has written a very fine article which appears in a recent issue of the Journal of The State Bar of California. The title is "Legal Writing In Law Practice." In the article which is splendid reading, Mr. Littler tells of Dr. Rudolph Flesch of New York University who was retained by the OPA to help revise some of their directives. Dr. Flesch found this language in an old OPA regulation on eggs:

"Ultimate consumer means a person or group of persons generally constituting a domestic household, who purchase eggs generally at the individual stores of retailers or purchase and receive deliveries of eggs at the place of abode of the individual or domestic household from producers or retail route sellers and who use such eggs for their consumption of food."

He revised this gem to read:

"Ultimate consumers are people who buy eggs and eat them."

So, what about the use of this English language by us as attorneys, right of way men and title men? Can we profit from the recorded experiences of those scribes who have left to us the easements and rights of way in existence today? Their experiences can be our text book. In case after case, the courts have told us what

they **meant** to say. Perhaps in the light of those meanings placed today upon the writings of yesterday what we write now with more imagination pointed toward the future may make easements and rights of way easier to deal with tomorrow.

The very use of the word "easement" or the term "right of way" can mean different things to different people. One dictionary definition of "easement" is "the act of easing, or relieving, as from pain or discomfort; that which gives ease or relief;" and most all of us who drive a car have had experience with that other driver who insists that he has the right of way when we meet him at that street intersection.

Past Directives

Our kinds of easements and rights of way, however, are the legal kind, or at least our intent at the time of their creation is to make them legal. In general our use of the word "easement" includes the term "right of way." Technically, a right of way is an easement, but there can be situations, however, where an easement is not necessarily a right of way.

Simply defined, an easement is an interest in land which confers a right upon the owner of the easement to some profit, benefit, dominion or lawful use of or over the estate of another.

And an easement, even when coming within that definition, has some essential characteristics which always must be kept in mind in its creation. We know of these essentials because our Courts and Legislatures have taken the experiences of the past which have to do with easements and have told us that when we create easements now we must have these fundamentals in mind and the language we use must show clearly that we do have them in mind.

An easement is an interest in land and as a result is created by an agreement, express or implied, or grant, and is dealt with under the general rules having to do with real property transfers and uses. Also, because in general in real property matters any lesser interest of a person merges with a greater interest of that person, it is an interest in the land of someone other than the holder of the easement.

The owner of an easement has only such control over the physical property affected by his interest as will allow his use and enjoyment of his easement as that use and enjoyment is actually set forth or implied in the documents or actions creating the easement. Generally, his easement rights are beneficial to him or his property, or both, and detrimental to the property of another, a positive right. However, easements may be created giving to the holders of them the advantage of being certain that a neighbor will **not** use or will not do something, negative easements. In the latter case, it is the non-use or non-action on the part of that neighbor, or his successors, which is helpful to the owner of the easement or to his property.

For the right to use real property which one has in the property of another to be classed as an easement, that right must be one capable of creation by conveyance.

Actually those few fundamentals are not too many to have before us constantly as we approach our drafting of documents creating easements. With them before us as our target, it becomes our duty to watch our language in the present drafting and be sure that we use as much imagination as we can to try to make our meanings clear now with certainty of interpretations of those meanings in the future.

Proper Words

While most of our dealings are with **appurtenant** easements, we should bear in mind that there is another class also. They are easements **in gross.** Fundamentally an appurtenant easement is one the ownership of which is attached to and which benefits a particular parcel of land called the "dominant tenement." The land upon which the easement is imposed or is a burden is called the "servient tenement." An easement in gross is a mere personal right belonging to a given individual

or corporation irrespective of the ownership of or benefit to any property.

It is not always easy to determine whether or not an easement is an appurtenant easement or an easement in gross. Probably it is the intent of most parties in creating easements that the results of their creative efforts will be appurtenant easements for the benefit of particular parcels of land and not mere personal rights or easements in gross. Here very particularly must we watch our language and state definitely that the easement is an easement appurtenant, to what property it is appurtenant and that its privileges and burdens benefit and bind the succeeding owners of both the burdened and the benefited properties.

It is not enough for draftsmen of easements to mean what they write. They must choose proper words and use them to create a definitely clear expression of intent so as not to leave the "probable intent of the parties" to the construction by a court at a later date.

The point of whether or not it is the intention of the parties that an easement be exclusively for the benefit of the holder of it and his successors is one ranking in importance with the matter of it being appurtenant, and is one quite often overlooked. Various litigants have presented their cases to our Courts for determination of intent because of this fact. As a result, the rule of law is that unless an easement is expressly stated to be exclusive it will not be held to be exclusive unless the intended use of the easement is of such nature as to make it obvious that the intent of the parties was to make the easement exclusive.

The question of whether an easement is to be exclusive or non-exclusive may be just as important to an owner of the property burdened by the easement as it is to the holder of the right. This could be true particularly in the case where an owner of a large parcel of land grants easements for driveway or roadway purposes to various persons to whom he sells portions of his large parcel. Obviously, the intent probably is to have all of his present and future purchasers use those easements jointly and non-exclusively. The best way to say that those easements are non-exclusive is to watch our language and say non-exclusive. On the other hand, if we want to make the benefit an exclusive one, we should say exclusive.

Consider Tomorrow

In these days when all about us large acreages are being subdivided into smaller acreages, we should be warned to be alert to the fture use of easements presently being created. In many instances, as these large acreages are cut into smaller acreages there will be granted to the purchasers of the smaller parcels easements for the benefit of those smaller pieces appurtenant to them.

What do the parties intend should happen to those easements when the purchasers of the smaller acreages in turn subdivide their properties into small building sites?

Well, here we are confronted with a present realization of a potential future application of the doctrine of increased burden affecting those easements. In the case of appurtenant easements, the law provides that the property benefited by the easement cannot be partitioned in such a way as to increase the burden originally imposed upon the property covered by the easement.

When we are presented with this kind of transaction, again we must call upon our imagination of future conditions. The recipient of an easement in such a case should receive also the right to increase the burden of his easement to whatever extent his subdividing his parcel may require. That necessitates some real use of words and clarity of expression in drafting the easement.

Generally, an easement is the right to a limited use or enjoyment of land, but in defining that limited use, our draftsmen of documents often do not state clearly what they mean. When they draw a document in which a seller reserves to his remaining property an easement over the property sold "for ingress and egress," what

happens when that seller desires to install a sewer line in the easement? No doubt he will either have to negotiate new easement terms or do without his new sewer line.

Let us learn from the past mistakes in the use of our language. Let us be ever alert to the problems which may confront future users of the easements which we create today. Maybe if we watch our language we will be of some help to those attorneys, right of way men and title men who will have to wrestle in the future with what we say now as applied to conditions existing then.

If we attempt to imagine tomorrow's uses perhaps we can better express today's intents.

REPORT OF JUDICIARY COMMITTEE

F. W. AUDRAIN, *Chairman*
Counsel, Security Title Insurance Company, Los Angeles 14, California

"Prefatory note: Most of us who speak informally or extemporaneously from the platform have long since found out that if there is a transcription of what was said, it needs revision for the printed page. Particularly the non-electronic transcription which can have one making some surprising, if not embarrassing comment. It is my hope that you did not read my judiciary committee report in the December, 1955 issue of this publication. Here is the written report that was intended for use as my judiciary committee report."

—F. W. A.

The judiciary committee members were quite responsive in 1955 and their comments and material were appreciated. It will be the continuing policy of the committee to find and report those cases which cross state lines and are useful to title men everywhere, such as federal court cases and the case with which I will conclude this report.

Title men are now mostly aware of the fact that federal tax liens are also regarded by the Supreme Court as senior to mechanic's liens which were filed before the tax lien, but which mechanic's liens remained inchoate until the liens are reduced to judgment.

Mr. Ray Potter, V. P. and Chief Title Officer of Burton Abstract Company, Detroit, Mich., sent a copy of the report of the Real Property Section of the American Bar Association. This report was a comprehensive summary of many recent and important cases.

Mr. Coppinger of the Washington, D. C. office of Lawyers Title Insurance Corp., wrote about the Berman vs. Packer case (U.S. S. Ct.) which was an important case dealing with the taking of property by eminent domain for ultimate use by private parties in slum clearance and urban rehabilitation. Some title lawyers have had some concern over the insurance of lands acquired by this process, where the ultimate ownership is to be non-sovereign.

Ralph Foster of Washington Title Insurance Co., Seattle, reported on a case in which his State's Supreme Court placed emphasis on the payment of compensation before possession could be taken from the owner on one of those orders for immediate taking of possession which sometimes occurs almost concurrently with the filing of a complaint in condemnation.

Ohio title men are now all familiar with the Burks vs. Louisville Title

Ins. Co. case (1954). For the rest of us, the case, from the summary I have of it, discusses the obligations of the insurer to the insured owner to correct a later discovered defect or restrain the perils of an action for breach of contract. Also, if a metes and bounds description is used which is in error, no help is found by the insurer in that its title evidence also referred to the source of the grantor's title. The case indirectly discusses the measure of damage to be considered if the title company does not or is unable to remove the defect not expected in the policy.

Interest continues in the cases relative to race restrictions. Every title man is now familiar with the cases withholding judicial enforcement of restrictions and the cases denying damages for breach of such restrictions.

William Wolfman, Chief Counsel of Title Guaranty & Trust Company, New York, N. Y., calls my attention to **Charlotte Park vs. Barringer,** Supreme Court, North Carolina, (6-30-55), 88 S. E. 2nd 114. Deeds for a park provided in substance that in the event the lands conveyed are not kept or used for the white race only "the lands hereby conveyed shall revert in fee simple, etc."

Cases from North Carolina, Connecticut, Massachusetts, Missouri, Indiana, Vermont, Tennessee, Oregon and others are referred to in the ensuing discussion of conditions subsequent and determinable fees. With reference to the federal cases, the Court said:

"The operation of this reversion provision is not by any judicial enforcement by the State courts of North Carolina, and Shelly vs. Kramer, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, has no application. We do not see how any rights of appellants under the 14th Amendment to the U. S. Constitution, Section 1, or any rights secured to them by Title 42 U.S.C.A. 1981, 1983 are violated."

Here's one to discuss among yourselves and to compare with the cases and practices that you now follow or those that you may be thinking of adopting.

I'm grateful to Mr. Wolfman and others who report such cases. Such cases as this one, which deal with an issue of national interest, are most welcome for judiciary committee reporting. Anyone need my address?

530 West Sixth Street,
Los Angeles 14.

In the digest of cases for title men which comes each month from the desk of Robert Mack Light, General Counsel for Pioneer Title Insurance and Trust Company of San Bernardino County, I found reference to:

Pioneer T. I. & T. Co. vs. Cantrell, 286 Pacific 2d, 261 (Supreme Court of Nevada, July 19, 1955).

In the chain of title to the parcel described in the policy one deed read "less a strip of uniform width of 60 feet off the westerly side of said parcel for public highway." Pioneer issued its usual owner's policy, wherein the insured was "insured against loss or damage which the insured shall sustain . . . by reason of any defect in, or lien or encumbrance on said title, existing at the date hereof, not shown in Schidule B, etc." This schedule provides in part:

"Liens and encumbrances to which said title is subject, etc." and in this schedule Pioneer said "Subject to the reservation of a strip of land of uniform width, etc. (same as above quoted)."

In an action prior to the cited case, it was determined against Pioneer's insured that this quoted language carved out a fee and that insured did not own it. This evidently displeased insured, and the more so when Pioneer persisted in pointing to its policy and insisting that insured took subject to the quoted exception.

Insured claimed that Pioneer vested the entire property in insured, subject only to certain liens, encumbrances and defects, that title to the strip was actually not in insured, and that the title to the strip was not subject to correctable defects.

These excerpts will be of interest:

"Plaintiffs' position is that the policy of title insurance by its ex-

press language shows the entire piece of property to be vested in plaintiffs subject only to such matters as 'liens and encumbrances' and 'defects'; that as a matter of fact it was not vested in them; that the state of the plaintiffs' title to the strip was not that of being subject to correctable defects; that there was complete failure of title. The intent of the policy, however, is clear. As to the strip the company did not intend to insure against the language of limitation contained in the Woodard deed to which the policy expressly referred. This intent cannot be affected by any determination as to whether that language resulted, in a technical legal sense, in a lien, encumbrance, defect or 'other matter' to which plaintiffs' title was subject."

" . . . plaintiffs contend that by the language of the policy the company has in effect represented and insured that the defect was in the nature of an easement for roadway purposes; that a complete failure of vesting was not covered by the exception and that the company under its policy is therefore liable for such failure of title. It would appear from the record that any plans which may have existed for use of the strip as a roadway have been abandoned and that it is now free from any such restriction as may previously have existed.

"We are unable to concur with the plaintiffs in their contention. Save for substitution of the words 'subject to a reservation of' for the word 'less,' the exception is phrased in the same language as the deed to which it refers. Whatever the significance of that language may be, it remains the same whether expressed in deed or in insurance policy. The company's choice of the word 'reservation' as a denomination of the defect is not in itself determinative . . . "

"It may be noted that the 'reservation' as expressed in Schedule B was not of an easement, dedication, use or right of way; it was of the 'strip of land' itself. Furthermore it was 'as reserved' in a specified proper interpretation of the expublic document. In our view the pressed exception is that it purported to be only a paraphrase for purposes of identity of the defect to which it expressly referred; that it was not intended to constitute a representation or a binding expression or opinion as to the legal nature or extent of that defect. Certainly it could not be said reasonably to justify one, without inquiring further, in accepting or relying upon it as a clear and binding representation that the defect amounted only to an easement or like encumbrance."

* * *

A Ninth Circuit Court of Appeals decision, **Donovan, etc. vs. Sampsell,** reported in 226 F 2d 804 (1955), will bear most careful reading, in that a bankruptcy sale to an officer bankrupt was deemed a contributing prejudicial aspect to a sale confirmed by the referee.

Another factor in the case was a fiduciary relationship found by the Court to have existed in the case of this officer as to the bankruptcy estate. Enough was said, however, about the peculiar status of a former officer of a bankrupt corporation, that should he be a purchaser at a bankruptcy sale, and a basis were to be sought to void the sale, this case affords a premise for an attack even if the other fiduciary feature of this case were not present.

For my company's title officers, any bankruptcy sales to a former officer is to be referred to counsel for the Company, and possibly the sale may not be insured because of the perils suggested by this case.

* * *

Bankruptcy again:

In the case of **Saper vs. Viviani,** 226 F 2d 608 (1955), the bankrupt, after filing his petition in bankruptcy in 1936, failed to advance the money to enable the administration of his estate to proceed. Hence the whole thing ground to a halt. No further attention was given to the matter until 19 years later when questions

arose as to who should receive a condemnation award. At that time an effort was made to reactivate the bankruptcy proceedings.

The case involves more discussion of the procedural aspects than of the point of most concern to title men—i.e., how seriously was this title clouded for 19 years by the bankruptcy? Nevertheless, a trustee claimed that in 1935 property vested in him (although appointed 19 years later), and that it would take action of the court to dispose of the property. The proposed further administration was not approved by the court. He was not the first trustee to suggest an interest in an apparently long abandoned asset. This case may give slight help to a title man in his study of the risk in insuring a property that should have been the subject of bankruptcy administration many years ago in a long closed proceeding.

* * *

Some states, for example California and New Hampshire, have legislation that certain of the taxes of the state have the force, effect, and priority of a judgment. In California this effect arises upon the recording of a certificate of lien by the State.

This legislation has again had judicial attention because of Federal Revenue Code provisions relative to the priority of federal tax liens and liens held by judgment creditors. In **United States vs. Zuetell,** 138 F. Supp. 857 (February 29, 1956), the matter was stated as follows:

"The question is whether or not such lien of the State is the lien of a 'judgment creditor,' under the terms of Section 3672(a) of the 1939 Revenue Code [now 26 U. S. C. A. Sect. 6323(a)], and thus prior to the above-mentioned liens of the United States. Sect. 3672(a), in its material part, provides that the lien provided for in Sections 3670 and 3671 [26 U. S. C. A. Sections 6321 and 6322] 'shall not be valid as against any . . . judgment creditor.'

"The matter is clearly settled by United States vs. Gilbert Associates, 1953, 345 U. S. 361, 73 S. Ct. 701, 703, 97 L. Ed. 1071, construing a New Hampshire statute which provided that tax assessments were '"in the nature of a judgment."' The court held that the meaning and application of the phrase 'judgment creditor' in Section 3672 was a Federal question. It also held that the words 'judgment creditor,' as used in Section 3672, were to be construed to give uniformity to them in all States, and that: 'In this instance, we think Congress used the words 'judgment creditor' in Section 3672 in the usual conventional sense of a judgment of a court of record, since all states have such courts.'"

The court found in favor of the priority of the federal tax lien.

* * *

I wish to here acknowledge the regular assistance of my associate counsel, Bruce M. Jones, in assembling material for these reports. Like many lawyers in many law offices, we divide up the reading of incoming materials and call the attention of each other to selected items.

The Judiciary Committee has a number of members and their letters as well as those from all other title men are hereby again solicited relative to title problems of general interest.

The ownership of oil under a railroad right of way granted by an Act of Congress and the right of the railroad to give an oil and gas lease has had considerable attention by title men, as well as having the attention and interest of the railraods, the United States and the oil companies.

In United States vs. Union Pacific Railroad Company, 230 F. 2d, 690 (10th Circuit) decided Feb. 24, 1956, the Court noted that in this case the grant occurred under an act prior to the 1875 Act of Congress.

By the 1875 Act, a basic change of federal policy occurred, in that under subsequent grants to railroads, minerals were retained by the sovereign. This case arose out of a grant authorized by an earlier act, whereby minerals were not reserved to the sovereign. Hence inquiry as to the ownership of minerals called for consideration of the kind of title acquired by

the railroad under acts prior to the 1875 Act.

This paragraph from the syllabus summarizes the result of the discussion as to the nature of the title acquired by the railroad, i.e., right of way, limited fee, determinable fee, fee simple determinable, etc.:

> **"Estates.** Because of possibility that limited fee may endure forever, owner of such estate, so long as it exists, though title may revert upon happening of condition, has same rights as owner in fee simple and may remove underlying minerals."

Several weeks subsequent to my preparation of some of the foregoing material, and particularly the comments on Donovan, etc., vs. Sampsell, CCA 9, etc., and in fact on May 10, 1956, a local legal paper in Los Angeles carried an opinion by a Referee in bankruptcy involving the trial of an issue of title between the trustee and a buyer at a bankruptcy trustee's sale, where the buyer may have a fiduciary relationship to the estate, the Referee said:

"In the case of Donovan & Schuenke vs. Sampsell, 9, 226 F. (2) 804, generally referred to as the 'Ridgecrest' Case, it was held that a sale of the assets of a bankrupt estate to an employee of the trustee was void. In view of that decision, it was vital for the Referee in our case here to determine just what interest if any, Matthews had in this sale and the assets purchased, and if he did have any interest it would then be the duty of the referee promptly to set aside the order confirming the sale and annul the same."

In this case, Matthews was one of the two sole stockholders of the bankrupt corporation.

ROMANCE IN LAND TITLES

JAMES E. SHERIDAN, *Executive Vice President*
American Title Association, Detroit, Michigan

The Lord God Almighty created the universe. One of the infinitesimal segments of the universe is the earth we trod. He gave us that which we call land. It was His decision to give us a free will to treasure the land, or, the reverse, to abuse the land.

Over the scores and centuries of time, man lived off the top six inches of the land. In his boastful pride and his refusals to accept his limitations, man strove to seize more and still more land containing those precious tix inches of top soil which contained all the wealth of the land his finite mind could understand.

Man let nothing stop him in those seizures of land. And thus every generation of boys grown into adulthood became cannon fodder.

Civilization appeared on the horizon, or that which we are pleased to refer to as our intelligent civilization. It is not much in the way of "civilization" or "intelligence." But, such as it is, we have a degree of civilization, and a mode of life which, more or less, extends itself into land, the holding of land, the ownership of land.

For centuries of time, man fought over that which, in his ignorance and arrogance, he described as ownership of land.

Those struggles over the holding of the land, or, as we describe it, ownership of land, brought forth students, specialists in studies of land ownership. And thus we find today, in 1956, a well defined branch of the law relating to that which we call the Law of Real Property, with provisions in the statutes of the various jurisdictions of our country covering said real estate, covering ownership of land. We have decisions of the

Courts interpreting those statutes. We have a method recordation of legal documents and instruments and Court actions directly affecting the title to said land, or real property, handled by specialists of the Bar interested primarily in the Law of Real Property. We have financial institutions of great money strength, operating under strict supervision of a department of the State, willing to guarantee and insure peaceful occupancy and use of the land, corporations able and willing to respond in money damages in case that peaceful use of the land be impaired.

Accordingly, by carrying our thinking through to its conclusion, there is but one logical determination we can reach. We find in our alleged civilization, in our Society of Law and Order, we do not own the land at all; we own title to land. Or we hope we do.

By law, by decisions of the Courts, by custom of the community, by investments both of brains, education and money, there are performed professional services to assure safety of title to land—brains in the never ending education by seniors in management and training programs for the juniors, all for the sole purpose of submitting accurate readings of the documents affecting title to land.

And, by the investment of capital in huge amounts, corporations known as title insurance companies subject that capital in full support of those readings, those opinions on title.

Thus we assure to the holder of the title that he holds a type of title which cannot be successfully challenged. And if the company has erred and loss should result to the assured, the company, under the law and the terms of its contract of indemnity, stands ready and willing to pay damages up to the face amount of its policy of title insurance.

Those financial institutions create, and constantly s u p p l e m e n t, title "plants," so-called, containing all the records and all the documents and instruments and litigation within the purview of the various Courts which have to do, favorably or adversely, upon the quality of title. All this data is failthfully and accurately set forth, geographically a r r a n g e d, so that there is quickly available a compilation of those instruments, documents and Court actions, to the examiner of titles.

Thus, we of the title profession, live and work in the past. We delve into the musty records and minutes of the past. We search diligently to interpret those recordings with safety to the title holder; we weight with care the full effects of all the provisions and terms of deeds, of mortgages, or judgments and liens, and sales and suits of one character or another transferring, or affecting, or encumbering or involving title to real property.

And we find ourselves described as being in a dry, prosiac profession, devoid of anything which might be described as even remotely touching human emotions, t o t a l l y without glamour or any feature of interest.

Years ago, a 16-yearold boy read something I had written relating to the Soldiers and Sailors Civil Relief Act. His comment to one of the girls in the office was "No wonder he goes to sleep in his chair."

As is the case with so many, he was unable or unwilling to look behind the scenes into the world shaking events that brought the law into the Federal Code. To him the words themselves told all; and they were dry, uninteresting and prosiac. He felt sorry for the one who was missing so many of the interesting facets of the diamond we call life.

In our human nature, He placed all emotions known to man, the emotions or attributes or facilities, of wit, of humor, romance and glamour, of avarice, hatred, of venom, of irony and sarcasm, of peace and honor, of cupidity, malice and distrust, of joy, selfishness and pathos.

Every single solitary last one of these is documented in the Law of Real Property and collateral subjects.

We of our profession have the nerve racking and soul torturing task of working out into the fruition of a completed abstract or title insurance file some of those odd hap-

penings in our pursuit of accuracy and brevity.

BREVITY

"Last night Sir Dwight Piddles, guest of Lady Pooley, complaining of feeling ill, took his hat, his coat, his departure, no notice of his friends, a taxicab, a pistol from his pocket, and finally his life. Nice people. Regrets and all that sort of thing."

—(London Times)

MOUSE - TRACKER

"A meticulous lawyer is sometimes derisively called a 'mouse-tracker' by those who would like to be known as 'elephant-hunters,' but no one can lay claim to being a competent real estate lawyer, or even a conveyancer who is not a 'mouse - tracker.' "

—(Case & Comment)

And, when finally we can complete the file, we dwell in an aura of self satisfaction over a difficult job well done, a task which, at the inception of the work, seemed a hopeless task.

Yes, within those musty, dusty, dry records, if we but pull the curtain a trifle and use our imagination, we move into a vista of high and lofty horizons. And we find documentary evidences that it is not a world of fantasy in which temporarily we dwell, but a world in which we see, accurately portrayed, all the joys and pleasures, the trials and tribulations, which gladden or sadden the human heart.

We have the nightmares of wierd descriptions:

"Beginning at a point on the South Side of Cherry Street, just a short brisk walk from the C. B. & O. Depot.

Rope around wheel — to measure distance.

Where the North and South Keokuk boat makes the turn around.

Measure by lariat—set or dry.

The final paragraph of a boundary agreement:

"WHILE IT IS believed however, by each of the parties to this agreement, that the other is the better "hoss trader" for the purpose of fully and finally determining the boundary line controversy heretofore existing and the retention of the everlasting friendship between said parties all concessions in this regard shall remain latent." —From Frank K. Stevens, Brazoria County Abstract Co., Angleton, Texas.

From a blanket deed:

" . . . It being my intentions to convey all my interests in said grants especially any interest and all interests that I acquire through my Father who died a bachelor . . . " —From Frank K. Stevens, Brazoria County Abstract Co., Angleton, Texas.

From the deed of a man to his wife:

"In accepting this conveyance, the Grantee herein promises to Grantor that she will faithfully respect and comply with Grantor's wishes not to permit certain of her kinsmen well known to Grantor and to Grantee to come upon the premises herein conveyed." —From Frank K. Stevens, Brazoria County Abstract Co., Angleton, Texas.

For a demonstration of love, what better can we read than this:

Second mortgage, 1 year, $200—probate shows birth of second child.

More than love. Acceptance by the father and a full awareness of the responsibilities of parenthood, even to the extent of risking the loss of his land.

Quotes from an Agreement:

Agreement made and entered into on this the 12th day of November, 1947.

To whom it may concern:

Mary L. Churchill and John V. Churchill, Sr., husband and wife, being of sane mind and of their own free will and accord hereby agree that John V. Churchill, Sr., shall have full charge and custody of John V. Churchill, Jr., hereafter. That the parties hereto agree to take John V. Churchill, Jr., to Church and Sunday School and every Sunday God willing.

That both parties hereto agree to use no alcohol in any form accept for sickness. That both parties hereto agree never to say an unkind word to each other again. If at any time the above parties are not together for any reason, John V. Churchill,

Sr., will pay Mary L. Churchill the sum of $10.00 (Ten Dollars) per week or $40.00 (Forty Dollars) per month while he is gainfully employed, provided Mary L. Churchill is a true wife and provided she keeps her agreement to abide by Mutual Aid (May Association) recorded in Yuma County, Arizona.

It is hereby understood and agreed that John V. Churchill, Sr., will build a home on the property of the parties located in the Redlands, California, as soon as possible. It is understood this property shall remain in the name of the parties hereto and that Mary L. Churchill will live thereon and manage any business in connection therewith. Both parties agree to sign any papers necessary for financing the erection of buildings on said property.

It is hereby understood that in the case of separation of John V. Churchill, Sr., and Mary L. Churchill, that Mary L. Churchill will not be deprived of seeing her son at any time and will have him with her for visits provided this agreement is kept. Both parties agree to pay $5.00 (Five Dollars) to Mutual Aid every time they fail to keep this agreement and further to be fully liable under the law for damages. It is understood this agreement does not mean a separation of the parties listed above; however, it does mean each party may come and go and, if true, as husbands and wives must be, retain their marriage status. If either party hereto desires to put away the other party it is understood no objections will be raised provided such is on a Scriptural basis and this agreement shall be binding after such separation.

It is understood that John V. Churchill, Sr., will pay all debts contracted previously hereto; however, hereafter debts shall be the responsibility of the party who makes them and will not be contracted by one party for the other.

It is hereby understood that while the parties listed above are living together, that Mary L. Churchill will not work out and will care for the home which will include cooking good and nutritious meals of what both parties like, airing bed clothes once per week, washing the dishes after each meal, having a place for everything and keeping things put away, mopping the kitchen and bedrooms with disenfectants once per day, keeping plenty of ventilation, keeping the top of her dresser clean, keeping clothes hung up, brushed and mended, budgeting money and making continuous study of how to operate a home. John V. Churchill, Sr, will bring his check home and plan the use of it with his wife, will care for the laundering, putting away and keeping up his own clothes, will do all the heavy work about the home, will shave, bathe and keep himself clean and neat, will find not fault, will keep a cheerful disposition, will see to advance himself in his work and will try to do whatver else is necessary.

Mary L. Churchill and John V. Churchill, Sr., together will take part in all physical culture programs, beneficial to the health. Will play tennis, swim, hike, roller skate, waltz, picnic, fish, hunt and in general enjoy life. Each party agrees to study the Bible and have family worship each day.

Witness our signatures the date and year above written.

MARY L. CHURCHILL
JOHN V. CHURCHILL, SR.

Recorded February 7th, 1949, Records of Clerk of Court, McCormick County, South Carolina. —Forwarded by Ralph L. Horine, Vice President, Pioneer Title Insurance & Trust Co., San Bernardino, California.

* * *

A Power of Attorney from an Unhappy Man to his Wife:
Dewey:

I can't take any more of your crap —and am not going to. You can use this authority to sign my name as power of attorney and do anything with joint property as you wish. I want nothing but to get away.

I have but few years left and by God I am going to find them in peace—Best of luck, and what happens from here on out—I don't care.

You have asked for it for years—Now you've got it. Take it and see

if you can find some one else to wipe your shoes on and take your lying criticism.

J. L. RICKENBRODE.

This authorizes Mrs. J. L. or Dewey H. Rickenbrode to sign my name on any document requiring such signature.

J. L. RICKENBRODE.

(duly acknowledged)
Recorder Vol. 616, Page 338,
Brazoria County, Texas.

From Frank K. Stevens, Angleton, Texas.

* * *

"AFFIDAVITS"

In abstracting titles to real estate one occasionally runs across some rather curious instruments which have been recorded.

An abstracter in Southeast Missouri sent in the affidavit below and stated it was recorded in his County in 1940. He had just extended an abstract on property belonging to the makers of the affidavit, but decided that the affidavit wouldn't affect the title to the real estate, so of course, it was not shown in the abstract. Since parties are still living it will be obvious why names have been omitted from this publication.

I, ..., swear that I will stand by my wife and uphold all she says and will never speak a wrong word to her. I will allow my wife to buy what she deems necessary and I will give her money without her asking for it. I further swear that I will never go back to Knob Lick, Mo., and if I should ever meet ..... I will not acknowldge her presence. I also swear that I stayed a night and took meals with above mentioned Mrs. ————, she and I were alone in the house; which fact my wife never found out for over a year. I also had indecent dealings with Mrs. ————, before I married my wife and will swear by whatever my wife should say in regard to this affair. I swear that my wife is, and has always been, a true and virtuous wife.

Signed: .....

Subscribed and sworn to before me this October 21, 1940.

Signed: .....

(SEAL) My term expires 6-1-43

Notary Public

I, ... swear that I will never bring up the subject of above paragraph; I will trust my husband and do all I can to help him to bring about peace, if he abides by above.

Signed: .....

Subscribed and sworn to before me this 21st ..... 1940.

(SEAL) My term expires June 1st, 1943.

Signed: .....

Notary Public.

Witness: .....

From C. J. McConville, Vice President, Title Insurance Co. of Minnesota, Minneapolis, Minnesota.

(To Be Continued)

COMING EVENTS—

Date	Meeting	Where to Be Held
June 1-2	Central States Title Insurance Regional	Edgewater Beach Hotel Chicago, Illinois
June 1-2	Tennessee Title Association	Riverside Hotel Gatlinburg, Tennessee
June 4-5	Idaho Land Title Association	Challenger Inn Sun Valley, Idaho
June 8-9	New Mexico Title Association	Alvarado Hotel Albuquerque, New Mexico
June 15-16	Wyoming Title Association	Townsend Hotel Casper, Wyoming
June 21-23	Colorado Title Association	Hotel Colorado Glenwood Springs, Colo.
June 21-23	Michigan Title Association	Sheraton-Cadillac Detroit, Michigan
August 3-4	Montana Title Association	Florence Hotel Missoula, Montana
Sept. 16-18	Missouri Title Association	Hotel Robidoux St. Joseph, Missouri
September 20-22	North Dakota Title Association	Grand Forks, North Dakota
September 20-22	Oregon-Washington Title Association—Joint Meeting	Gearhart Hotel Gearhart, Oregon
Sept. 20-22	Wisconsin Title Association (50th Anniversary)	Lorraine Hotel Madison, Wisconsin
September 22-25	New York Title Association	Whiteface Inn Lake Placid, New York
September 23-24	Kansas Title Association	Allis Hotel Wichita, Kansas
October 8-11	Mortgage Bankers Association of America (43rd Annual Convention)	Conrad Hilton Hotel Chicago, Illinois
Oct. 12-13	Nebraska Title Association	Lincoln Hotel Lincoln, Nebraska
October 16-20	**National Convention—American Title Association (50th Anniversary)**	**Hotel Fontainebleau Miami Beach, Florida**
November 12-13	Ohio Title Association	Deshler-Hilton Hotel Columbus, Ohio

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CONVENTION

American Title Association

October 17 - 20, 1956

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MIAMI BEACH, FLORIDA