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A CITY ACQUIRES TITLE TO 7,000 ACRES

This article was originally carried in a company publication of the Chicago Title and Trust Company, Chicago, Illinois, in 1955. As many of you may know the land under discussion here is already being used extensively in the Chicago area. The problems reflected in this article can well arise again in different locals—particularly with increased air travel. Thus we believe it well worth reading. Our thanks to the Chicago Title and Trust Company for their permission to reprint this intriguing presentation. —Ed.

To bring O'Hare Field into existence required the acquisition of huge tracts of land—and in that acquisition Chicago Title and Trust Company played a vital and fundamental role.

As a natural center for the country's traffic in the air, Chicago has not only a civic but a national responsibility to provide the facilities necessary to keep pace with the ever-increasing demands of aviation—and the inadequacy of our airport facilities had long been recognized.

The phenomenal growth of air traffic through Chicago during the past few decades has imposed a burden on the facilities at the municipal airport on Cicero Avenue far in excess of their normal and safe capacity. Because of the heavily populated residential and industrial properties surrounding the boundaries of Midway Airport, the only solution was to acquire new land at a new location.

Following long and careful studies conducted by city, state and federal officials along with representatives of the scheduled airlines, the old Douglas Airport—owned by the U. S. Government—was selected as the location for Chicago's principal air terminal. One of the primary reasons for choosing this site was that it could satisfy present demands and adjust to future needs for expansion of facilities. Located 18 miles northwest of the loop, it consisted of a nucleus of nearly 1,400 acres of government owned property which was surrounded on all sides by many acres of farmland.

In March, 1946, the City of Chicago acquired from the government, without cost, the 1,080.60 acres comprising Douglas Airport and later changed the name to O'Hare Field.

Plans were then made to enlarge the existing airport to approximately 7,000 acres.

Before the City could commence negotiations for acquiring title to more than 5,000 acres of adjacent land, it first had to find out the names of all parties who had an interest in the hundreds of parcels involved. Only in this way could city officials be absolutely sure that they were obtaining the necessary deeds and releases from the right people.

It was at this point that Chicago Title and Trust Company provided its services in "clearing the field" for the construction of Chicago's new international airport. Here, as in other major city developments such as the Congress Street Expressway, governmental agencies turned to this company for the rapid services and information we can provide because of the detailed records we maintain concerning the ownership of land and the rights or claims that exist in connection with every single parcel.

Fifteen Hundred Lots

Our first task was to draw maps of the entire area, showing precisely what parcels of land were involved. From these maps a list of over 1500 separate lots, including 25 subdivided areas, was made by Henry J. Mrozinski in Tract Book, who then prepared chains of title for each one—showing the names of all owners, holders of mortgages and any other parties who had rights in or claims on the property involved which would have to be acquired or satisfied in order that good title might be obtained.

Examinations of each individual chain were then made under the supervision of Sigmund V. Kacz, Title Officer. Because part of the land to

be acquired was located in DuPage County, records of the DuPage Title Company were also consulted.

To expedite the job of preparing these preliminary reports of title, a special Unit within the Title Division was set up to handle this single assignment. Work on this phase of the project was completed in a record period of two and a half months.

Both Simple and Difficult

Some of the examinations were simple and 20 or more could be handled in one day. Others were more complicated, requiring several days to make a single examination. For example, title to some of the property located along the eastern end of the field was held by the Wisconsin Central Railroad which had been in bankruptcy. Because the bankruptcy proceedings had occurred in Minnesota, it was necessary for our company to obtain transcripts from Minnesota sources before we could arrive at our own conclusions concerning the condition of the title to this particular property.

In addition to the necessary legal information, our title searches also brought out some interesting facts about the community life of this area which greatly facilitated the City's negotiations for the purchase of the land.

It was obvious from our chains of title that much of this land had been handed down in the same family from generation to generation and a good number of the farms were owned by people of German descent. Part of the property wanted for the enlarged airport included the site of a 100-year-old Evangelical Lutheran Church.

The result was remarkable! Of the approximately 1,500 parcels of land involved, over 95% were purchased through direct negotiations with the property owners.

The Problems of the Tracks

Although initial work on this project was conducted in 1948, the overall acquisition of land continued through 1954. Some of the land acquired included property needed for the relocation of two Chicago &

North Western and the Chicago, Milwaukee, St. Paul & Pacific.

As had been realized, part of the additional land brought into the airport development included the right-of-way of these two railroads, whose tracks virtually ran down the center of the airport as enlarged.

Following a two-year period of negotiations with the railroads, the City drew up contracts which provided for "substituted facilities." In simple terms, this involved a direct exchange of land for rights-of-way. What the City proposed to do was to take a strip along the **outer edge** of the new land acquired to enlarge the airport, and give it to the two railroads in exchange for their old rights-of-way. In this manner, the tracks could be relocated to swing around and down the west side of the airport instead of cutting directly through the middle of it.

This meant that the City had to furnish a Title Guarantee Policy to each railroad covering its new right-of-way, and again the services of Chicago Title and Trust Company were called upon. Attorneys for the City and the railroads told us where they wanted to relocate the tracks and once more we went to work. The preparation of these reports of title to the new lots wanted by the City was handled by William W. Laiblin, Unit T.

The moving of the two railroads one mile west of their previous location, as far as CT&T was concerned, was one of the most difficult phases of the project. Examining for a railroad right-of-way, which cuts a narrow strip through parcel after parcel of land on an angle or curve, can be very complicated.

Our first problem was to determine the exact legal descriptions involved in the right-of-way land, which ran in a great curve around the outer edge of the enlarged airport. In order to do this, we had to superimpose the proposed new paths of the railroads on plats of the existing property and figure out the legal descriptions which applied to this long and narrow right-of-way.

Because some of this new land had

originally been intended as a subdivision, there were a number of title objections which had to be cleared before we could guarantee title to the right-of-way for the railroads. These included matters of prevailing building restrictions, the vacating of the streets, and releases from various utility companies of their easement rights across some of the property.

The railroad tracks have already been moved to their new location and the acquisition of land is now nearing completion. From the small nucleus of 1,080 acres originally acquired in 1946, O'Hare Field has been developed to its present area of approximately 6,000 acres, bounded on the north by Touhy Avenue; on the south by Irving Park Road; on the east by the Soo tracks to the east of Mannheim Road; and on the west by York Road.

Early this summer the enlarged airport will be prepared to handle the initial transfer of 30 per cent of present Chicago air traffic. Based on the use of existing runways—others are soon to be added—it can already accommodate 120 planes an hour, the same number of plane movements now handled at Midway Airport. Present facilities include a partially completed terminal building, ample apron area surrounding the building to accommodate 16 airplane loading positions; taxiways connecting the apron area with the existing runways; an auto parking area for approximately 1,400 cars; and a new and modern control tower fully equipped with electronic controls.

Twenty-year Plan

The facilities at O'Hare Field as they exist today represent the first stage in the development of a 10-stage Master Airport Plan, which was designed by Ralph H. Burke, Airport Consultant for the City of Chicago, to cover a period of 20 years. The second stage is already underway with the building of a new 8,000-foot runway, which will be completed sometime this summer.

The principal aim in designing Chicago's new airport was to plan a long-range project in which required expansion of facilities was possible, yet

provide for a gradual program of construction which would be part of and consistent with the ultimate development.

Important features of the new international airport are the designs of the terminal building and the unique system of runways. To obtain the capacity needed for Chicago's future, a scheme was designed to use a pattern of six runways arranged tangentially around a central terminal area, which in appearance represents the spokes of a wheel.

Safety Features

This tangential scheme offers the greatest possible expansion possibilities and the most economy of time and space. By locating the terminal building at the hub or in the center of the converging runways, all plane movements take place either away from or in the direction of the terminal building, thus providing greater distances between aircraft making final approaches or initial climbs.

By their location, the runways at point of takeoff or landing are located as much as 1½ miles apart and there can be no danger of accidents even under instrument flying conditions. This permits the handling of bigger volumes of traffic by allowing simultaneous landings and takeoffs, which is difficult at Midway.

Following the adoption of the tangential runway pattern, the "split-finger" design was selected for the terminal building, which consists essentially of two levels. The ground or "transportation" level on the same plane as the flying field will be devoted to the working side of the airport. The second floor is for passengers and gates to the planes. Escalators will service the two floors.

Covered passageways or gang-planks, leading directly from the second floor, or passenger level, of the terminal building to the airplane will allow passengers to pass to and from the planes without descending to the ground and without exposure to the weather. Many of the utilities needed for servicing the airplanes will be located completely underground. Fuel tanks, power and water supply as well as air-conditioning and sewage

disposal units will be located underneath the aprons.

Estimated to cost \$75,000,000 upon future completion of the master plan, O'Hare Field will ultimately be the largest airport in this country and will be the busiest in the world. It will occupy 10 square miles of land and accommodate 360 planes an hour.

When completed, each of the six new runways will have a minimum length of 8,000 feet and one runway will have the possibility of being extended to 17,000 feet to accommodate increased landing speeds and future improvements in mechanical operations. Space will eventually be pro-

vided for the parking of 6,500 cars and the employee population alone of the terminal area will approximate 25,000 people.

The development of Chicago's new international airport presents another example of the important role played by Chicago Title and Trust Company in virtually every major civic improvement involving the use of land. We have facilitated negotiations for acquisition of the land, and ultimately the City's title to the whole area will be protected by a master CT&T Guarantee Policy.

We might say—both visibility and title will be clear at O'Hare Field!

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LOTS OF AIR — A SUBDIVISION IN THE SKY

JAMES J. BRENNAN, *Associate Counsel*
The Prudential Insurance Company of America
Chicago, Illinois

Members of the American Title Association have daily contact with rare descriptions of land. But it isn't often we come across the methods of describing areas of air. In its original form this material was presented before the American Bar Association Meeting of 1956. This shorter version was carried in the publication of the Lawyers Title Insurance Corporation, Richmond, Virginia, "Lawyers Title News" for January-February, 1957.

Our thanks to the author, Mr. James J. Brennan, and to the Editor of the "Lawyers Title News," Mr. R. K. Maynard for use of this interesting paper. Ed.

Air Rights is a subject with many facets. The term Air Rights is a popular expression with a legal connotation. As such it has had a relatively short existence—less than 50 years. In principle it goes back to early English common law and has its basis in the legal maxim—*cupus est solum ejus est usque ad coelum et ad inferos . . .* "To whomsoever the soil belongs, he owns also to the sky and to the depths."

Air Rights is a misleading expression. It conjures in the minds of laymen, realtors and even lawyers a variety of different ideas and concepts. As a matter of fact it is not air that is involved at all but space. Land is the most corporeal of things. It is real estate. It can be bought and sold. It can be leased. Air obviously is not susceptible of such legal treatment. Space, however, separate and apart from land, can also be conveyed and leased.

The case law, both English and American, establishes the right of an owner of real estate to divide his ownership into various horizontal strata or layers and to convey ownership and the right of possession of space between or above certain levels above the surface of the ground while retaining title to the land itself. This is not surprising when upon consideration we realize that any lease of an upper story apartment or office space in a skyscraper is really a lease of air space and that the difference, if any, between such a situation and

what is popularly visualized as an air transaction is one of degree rather than of kind.

The term Air Rights was probably first applied to the commercial use of the space over railroad terminals and the tracks leading thereto, beginning with the development of the Grand Central Terminal area in New York City about 50 years ago.

In the development of Air Rights there have been four different legal methods used. First, there is the lease method. In the Park Avenue Development in New York City, which was the first great air right development, the lease method was used. The lease was for space above various inclined and horizontal planes at varying elevations. In addition there was granted an easement for supporting columns and foundations. In most other respects, except for specific reservations to operate a railroad below the space demised, the leases were typical of the usual form of 99-year lease.

The second method involves the conveyance of the fee simple title to all of the space above certain inclined or horizontal planes with a right or easement for supporting columns and foundations. The Chicago Union Station—Chicago Daily News Development in Chicago, consummated in August of 1927, is an example of this method.

A third legal method, used in the development of the Merchandise Mart in Chicago, involved the conception

and recording of a three dimensional plat of subdivision and from a legal standpoint was unique. Reference to the property conveyed in the deed was made by individual lot number, not only for the air space conveyed but for the area in which caissons and columns for the support of the building were to be located.

In two other air right transactions in Chicago a fourth legal method was used, one in June of 1931 involved the new Chicago Post Office, the other in 1948, the site for the new Sun-Times Newspaper building. The deeds conveyed a complete parcel of land reserving, however, a permanent easement below certain planes for the construction, operation and maintenance of railroad tracks and other improvements. The purchaser was given a permanent and perpetual right for the supports and foundations of buildings and structures through the reserved easement.

The fifth and most recent air right development in Chicago is the Prudential Building located over the Illinois Central tracks on Chicago's lake front. It was determined that the only feasible legal method of working out the Prudential development was an elaboration of the subdivision pattern and an integration therein of other and novel features to meet the special circumstances of this unusual case. Unquestionably, it would have been more desirable to use the method of conveyancing worked out in the Chicago Post Office and Sun-Times deal, where the entire fee was conveyed to the air right developer and an easement for railroad purposes was reserved by the seller.

First, a horizontal delineation of the site was laid out on a plat, which when finally completed and recorded, measured approximately 16 feet by 3 feet. The lots for the caissons were represented on the horizontal delineation by circles and super-imposed on each of these circles was a quadrangle representing a column lot. Each circle represented land, property and space within a vertical cylinder formed by projecting the circle vertically downward from a horizontal plane at various elevations.

The quadrangle represented the land, property and space within a vertical quadrangular prism of the dimensions set forth on the plat extending vertically between two horizontal planes. The entire air space was composed of several lots above various horizontal planes. A system of north-south parallel lines and east-west perpendicular thereto, called range lines, cover the plat. The intersections of these range lines represent the centers of the caisson lots as well as the column lots above them. The novelty of this subdivision method lies not only in the fact that a three dimensional subdivision plat is created but the third dimension is obtained by projecting vertically upward and/or downward, from the surface of the earth, the circles representing the cylinders and the quadrangles representing the prisms to the extent required to form the vertical and horizontal dimensions of the particular lots in question. The tract was then divided into various parcels, designated A through N, inclusive.

Each parcel was first subdivided horizontally by planes which are horizontal or inclined from the horizontal into primary lots which are given a number and letter designation, thus Parcel A is subdivided into Lots 1A, 2A and 3A, each designating a particular horizontal stratum. Lot 1A embraces the area below the top of the caissons and with the exception of the caisson lots located therein, belongs to the railroad. Lot 2A is the area between the top of the caissons and the bottom surface of the air lot. This is the area through which the trains of the railroad are operated and title thereto, except as to certain column, girder, utility and other lots, is also in the railroad. Lot 3A comprises the air space within which the building is located and title is in the Prudential. Each parcel, except one, is also divided vertically into various functional lots. As indicated in the various legal descriptions of these lots, which form a part of the plat, some, but not all, of these lots are formed by vertically projecting upward and/or downward the plane geometric figures representing them on the plat.

Functional lots are given a letter and number designation (e.g., K1, U-), the letter immediately preceding the number indicating the function of the lots as follows: K, indicating caisson; C, column, G, girder; H, hanger; S, strut; B, bracket; F, floor; U, utility; P, pier or buttress; E, escalator; W, waiting room and concourse; and T, tie. Range lines serve the purpose not only of determining the location of the center of symbols representing lots formed by the vertical projection of symbols but also serve as reference lines for the description of lots bounded by planes and surfaces.

While we realize that the vertical projection of any two points on the surface of the earth will form lines that are not parallel lines but vertical lines which intersect at the center of the earth, it didn't occur to us at first in naming the various geometric figures composing the lots, such as horizontal and vertical prisms, that two vertical parallel planes are a geometric impossibility and although the outer walls of the 41-story Prudential Building might be plumb they were farther apart at the top than at ground level. A note was, therefore, added to the plat to the effect that for practical purposes vertical lines and planes formed by the vertical projection of parallel lines, within the subdivision are considered to be parallel in the general vicinity of the surface of the earth and that the downward vertical projection of the circles and quadrangles representing caisson lots will result in the formation, not of cylinders and prisms, but of cones and pyramids having their vertices at the center of the earth. In order to describe the various lots as they are commonly conceived, the minute difference in dimensions involved were disregarded and the terms "cylinder" and "prism" were used instead of "cone" and "pyramid."

There is a total of 627 lots described on the plat.

The following is a description which combines 77 caisson lots and is an example of the vertical projection of symbols method:

All the land, property and space within seventy-seven (77) com-

plete vertical circular cylinders, the top surfaces of which are in the horizontal plane five feet (5') above Chicago City Datum and the lateral surfaces of which are formed by the vertical projection of the circles at their locations and of the dimensions shown on the plat, representing the following lots, namely, Lots K63 to K79, inclusive, K81 to K110, inclusive, and K113 to K142, inclusive.

The following is a description which combines 14 bracket lots:

All the land, property and space within fourteen (14) horizontal triangular pyramidal frustums, each such frustum being bounded by five planes, the first being the inclined plane forming the bottom surface of Lot F1, the second, third and fourth being the vertical planes forming, respectively, the west, north and south faces of the column lot upon which such frustum abuts, and the fifth being the inclined plane determined by the horizontal line in said second plane one foot (1') below the point of intersection of said first, second and fourth planes and by the point in the line of intersection of said first and fourth planes one foot (1') west of said second plane, said frustums forming the following lots, namely Lots B1, B2, B4, B5, B6, B8, B10 to B13, inclusive, B15 and B17 to B19, inclusive.

You can see, therefore, that here we have truly not only a subdivision in the sky composed of lots of air but also a subterranean subdivision composed of lots of earth. Interesting and intriguing as this subdivision method may be, it is expensive, it is time-consuming and it is inflexible, requiring a resubdivision to reflect new lot locations and sizes brought about by architectural and engineering changes made not only before but during and after construction. It is, however, an added step in the creative law of real property, prompted by the economic pressure to provide more growing space in the congested commercial area of our large cities.

RECOVERY OF TITLE COMPANY LOSS FROM SELLER

This article was prepared by William Cahall, Esquire, of the Montgomery County Bar of Pennsylvania, and was published in the August, 1956, issue of *Pennsylvania Title Policies*. We thank Mr. Cahall, the writer, and Mr. James M. Hart, Chairman of the Publications Committee. This has also been carried in *Ohio Title Topics*, a publication of The Ohio Title Association.

Attorney searching title failed to discover tax liens; purchaser paid the liens and was reimbursed by title company insuring attorney. The title company sued seller, who had given general warranty deed, in an equity action.

Held: Title company may recover on the theory of unjust enrichment. *Zurich Gen. Acc. & L. Ins. Co. v. Klein*, 181 Pa. Super. 48.

The defendant contended that this action should have been brought in assumpsit in the name of the purchaser. It is clear that the action was properly brought in the name of the title company, since Pa. R.C.P. 2002 requires that the plaintiff be the real party in interest, except that, by R.C.P. 2002d, a subrogee may use its name as the real party in interest or that of the subrogor. Since this was a subrogation case involving unjust enrichment, it could be brought either in equity or in assumpsit and in name of either the vendee or the title company: *Franklin Fed. S. & L. Assn. v. Superb Realty Co.*, 53 D. & C. 186; *Hess v. Hess*, 54 Lanc. 13; *Hardner v. Greene*, 32 Northam. 133. The Supreme Court in the Zurich case permitted recovery by the title company on the theory that it was obliged by contract to reimburse the grantee for the cost of removing the lien, that the grantor by general warranty deed had covenanted to pass a title free of liens, and that the grantor was thereby unjustly enriched under the theory of liability set forth in the Restatement of Restitution.

Warranty Irrelevant When No Eviction

The fact that the grantor gave a deed of general warranty is irrelevant in this case where taxes were incurred during ownership of grantor,

since liability could equally have ensued under a deed of special warranty. However, the covenant of general or special warranty could not form a basis for suit in this case by either the grantee or his subrogee, the title company, because, in order to recover damages thereunder, there must have been an eviction of the grantee or his heirs or assigns: *Litmans v. O'Donnell*, 173 Pa. Super. 570; *Herbert v. Northern Tr. Co.*, 269 Pa. 306. The covenant of warranty be it general or special runs with the land and is available as a remedy against the original grantor by any subsequent grantee whenever an eviction, actual or constructive, occurs: *Williams v. O'Donnell*, 225 Pa. 321. The measure of damages in a suit on a breach of warranty by eviction is the value of the land at the time of the conveyance plus interest: *Cox's Admrs. v. Henry*, 32 Pa. 18.

Effect of "Grant, Bargain and Sell"

Since there was no eviction in the Zurich case, a suit on the general warranty was unavailable. However, the title company had two alternative theories on which to impose liability. The first is a suit for the breach of the covenant contained in the words "grant, bargain and sell." The Act of May 28, 1715, 1 Sm. L. 94, Sec. 6, 21 PS 8, imports to these words in a deed an express covenant that the grantor was possessed of a fee simple title free of encumbrances done or suffered from the grantor. This covenant is breached if there is an existing encumbrance at the time the deed is delivered: *Litmans v. O'Donnell*, supra; *Memmert v. McKean*, 112 Pa. 315. Since the Act of 1715 provides a covenant to the grantee, his heirs and assigns, it would be appli-

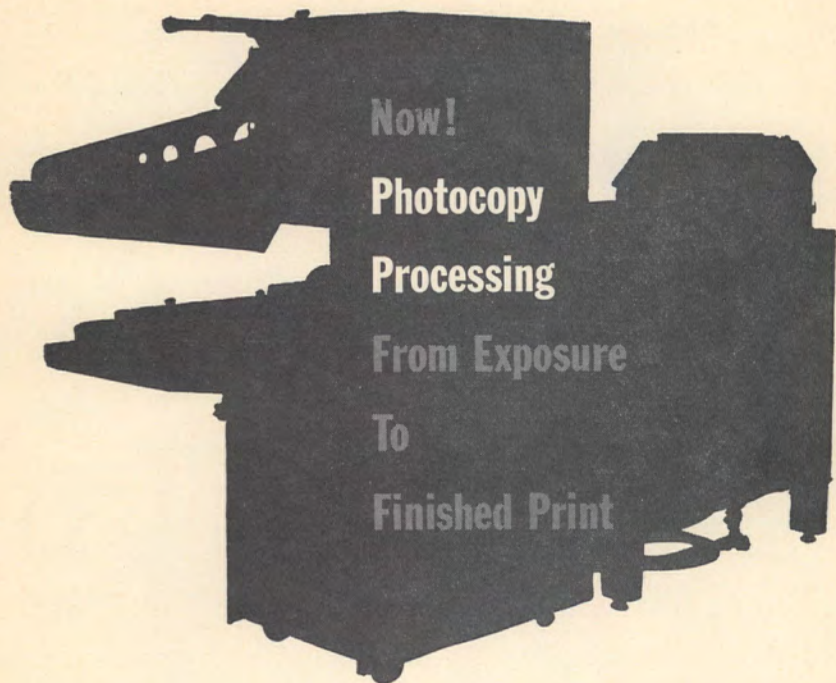
cable to a title company as subrogee of the grantee's rights. Liability under the covenant is equally available under a short form deed, by virtue of the Act of April 1, 1909, 21 PS 4; *Wood v. Evanitzky*, 168 Pa. Super. 484. Since the Act of 1715 refers to "incumbrances done or suffered from the grantor," the question arises as to the liability under this covenant of a grantor who conveys land subject to a lien entered against a predecessor in title. In *Taylor v. Allen*, 60 Pa. Super. 503, the grantee recovered from the grantor for tax liens paid by the grantee which were entered against the property during the grantor's ownership, but which were assessed prior thereto. The court allowed recovery on the theory that the encumbrances were done or suffered by the grantor by permitting the liens to be filed and neglecting to discharge them. In *Litmans v. O'Donnell*, supra, recovery was denied to a grantee who paid a tax lien and sued on a general warranty clause, since the tax was invalid because filed in the name of grantor's predecessor at a time when grantor was the registered owner. The court stated that the grantee's cause of action, if any, was under the Act of 1715, but that there was no cause of action because the tax lien was not "done or suffered" by the grantor. The case of *Fein v. James*, 61 D. & C. 176, implies that the grantor will be liable only for tax liens "imposed during his ownership": See *Bean v. Steltz*, 4 Montg. 105; 16 T.L.Q. 421.

Equitable Subrogation

In addition to the remedy of a suit in the covenant under the Act of 1715, the title company may invoke the doctrine of equitable subrogation. This doctrine is stated in the Restatement of Restitution, Sec. 162: "Where property of one person is used in discharging an obligation owed by another or a lien upon the property of another, under such circumstances that the other would be unjustly enriched by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee or lienholder." Under this doctrine he who is required to pay unpaid taxes may recover from

the record owner at the time the taxes were assessed: *First National Bank of Ashley v. Reily*, 165 Pa. Super. 168. Recovery will be denied, however, against one who, although benefited by the plaintiff's payment of taxes, was under no obligation to pay them. Thus in a suit in assumpsit on the theory of subrogation no recovery can be had for taxes assessed before the defendant became personally liable as registered owner: *Roma E. Provincia B. & L. Assn. v. Penza*, 115 Pa. Super. 201; *Theobald v. Sylvester*, 27 Pa. Super. 362. In *Home Owner's Loan Corp. v. Murdock*, 150 Pa. Super. 284, a mortgagee, which purchased at foreclosure sale and mistakenly paid taxes due on an additional tract, could not recover from a judgment creditor who had bought in the additional tract at execution. Thus, also, water rents are not recoverable from the registered owner not in possession because there is no personal liability therefor: *Roma E. Provincia B. & L. Assn. v. Penza*, 115 Pa. Super. 201; *O'Donnell v. Neely*, 66 Pa. Super. 351; *Provident Trust v. Judicial B. & L.*, 112 Pa. Super. 352. See also *Girard Tr. Corn Ex. Bk. v. Ermilio*, 178 Pa. Super. 216.

The right to a subrogation action for taxes has long been recognized in favor of those who pay taxes owed by another in order to protect a legitimate interest of the payor. Thus, mortgagees, owners of ground rents, remaindermen, vendees, tenants, and landlords, in proper cases, may pay the taxes due and recover against the person primarily liable. See cases collected in *First National Bank of Ashley v. Reily*, 165 Pa. Super. 168, 170; *Guerrein v. Pelham Manu. Corp.*, 2 D. & C. 2d 802, and, it is not defense that he who was required to pay the taxes, for which the defendant was primarily liable, was therefore reimbursed for a portion thereof: *Wood v. U.S. Nat'l B. & L. Assn.*, 105 Pa. Super. 184. Although the Superior Court in the *Zurich* case cited no precedents for the right of a title company to recover unpaid taxes from the vendor, the right to do so was recognized in *United Sec. T. Ins. Co. v. Moskowit*, 95 Pa. Super. 597.



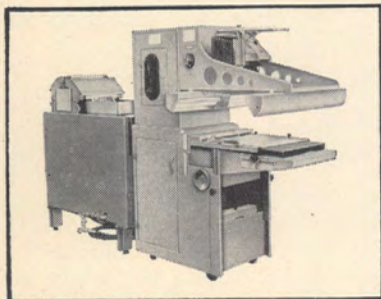
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THE PIECE OF LAND THAT WAS NOT THERE

Reprinted from an issue of The Oklahoma Titlegram, published by the Oklahoma Title Association

The following was lifted from the Oklahoma City Times:

They say quite a few suckers made down payments on the Brooklyn Bridge. At least they were dealing for something tangible.

Courthouse records here are replete with transactions involving a piece of real estate that never existed. It's not even a hole in the ground. There are no mineral rights below or sky rights above.

Yet there are 223 instruments on file at the courthouse to dispute any claim of non-existence.

"This is one of the most unusual quirks in real estate titles that has come to my attention," observed William A. Jackson, President of Coates-Southwest Title Co., who discovered the error.

Jackson was searching the official records for names of property owners in a new city paving district. Included in the district were lots 24 to 50, inclusive, block 16, Carney Heights addition.

These lots are on the north side of the 600 and 700 blocks of SE 50. The two blocks are not divided by a cross street. Actually, it's just one long block.

With a single exception, Jackson found all of the lots listed on a plat filed at the courthouse in 1909. The exception was lot 28. It was never platted and thus never existed.

Abundance of records in the registrar of deed's office were found to dispute the plat. Jackson turned up 223 separate instruments showing existence of the 25-foot strip of land.

The missing lot was involved in more court and other actions than the average piece of property you can see with the naked eye.

"For a piece of nonexistent property, the lot seemed to have quite a history," remarked Jackson. Woody Baker, city engineer, readily agreed.

Official records show the missing lot was first assessed for taxes in 1910. The then county assessor valued it at \$15 and the county treasurer collected 16 cents taxes.

In 1915, the missing lot was involved in a district court foreclosure suit. Judgment was rendered and the lot was sold to the highest bidder.

The new owner failed to pay taxes on his property in 1920, 1921 and the missing lot was sold in 1924 at a tax resale for \$2. Records show a resale tax deed was issued on the "lot."

Meanwhile, in 1922, the missing lot was distributed in county court probate case after court appointed appraisers allegedly viewed the non-existent property and valued it at \$5.

In 1944, the missing lot was back in court, so to speak.

Title to the missing lot was involved in a quiet title suit in district court. Its non-existence still had not been discovered.

Jackson established the missing lot was last assessed for taxes in 1947. It was valued at \$45 and the owner paid \$1.62 taxes.

No further assessments were made, indicating someone in the county assessor's or county treasurer's office had discovered the error.

The last of the 223 instruments on file was a warranty deed given Olga Sanders on the missing lot. The deed was filed June 12, 1947. Presumably, she still "owns" it.

Persons who attempt to file instruments in the future will be notified by Joe Pitts, county clerk, there is no such property in Oklahoma County.

THE ABSTRACT EXAMINER

Mr. Walter Breen, Glenwood, Iowa, submitted the following poem which he copied from a printed copy of the poem found attached on the fly leaf of Land Tract Book No. 1, Ranges 40 and 41, Mills County, Iowa, records of the Mills County Abstract Co. of Glenwood, Iowa. The author's name is unknown.

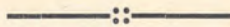
This delving into musty lore,
'Midst legal cobwebs I deplore
And yet am bound to snoop around,
Where buried errors may be found,
And as the antiquarian rakes,
So I must search for old mistakes,
And though my own would keep from sight
Bring those of wiser men to light;
Like deeds not executed right,
Or misdescribing land or lot,
Or wife or husband who forgot
To sign or state was married not;
Or notary who omitted to
Affix his seal when he got through
Or have a witness, witness to;
Or will some fine old banker drew,
But failed to tell how to construe;
Or mortgage that has not been seen,
Or taxes, or a judgment lien,
Or mortgage paid, but not released

And held by assignee deceased;
Or corporation deed not sealed;
Or law amended or repealed
Or by decision nullified;
Or case on which we had relied
Just overruled or modified
So as to raise some questions new
Of jurisdiction or venue;
Or case we chanced to overlook
Back yonder in old shelf-worn book.
And though John Doe had acted for
And thought he was executor
Of the estate of Richard Roe
Cum testamento annexo
Was ab initio de son tort
As held by the Court of last resort,
For no petition for probate
Was ever filed in the estate
And though he made a full divide,
And all the heirs were satisfied,
And all the creditors have died
And fifty years have passed beside,
And though the statute has begun
For the third time its course to run
The Court may yet make dough of
Doe
And all proceedings had below
Though I'm inclined to think the will
Will be the will of Richard still.

—From "Lawyers Title News"
Jan. Feb., 1957

DATES TO REMEMBER:—

OCTOBER 13 - 17, 1957



**51st ANNUAL CONVENTION
AMERICAN TITLE ASSOCIATION**

**JOHN MARSHALL HOTEL
RICHMOND, VIRGINIA**



A Visit to the Heart of Historyland

COMING EVENTS—

Date	Meeting	Where To Be Held
April 10 - 13	Atlantic Seaboard Regional Conference	Skytop Lodge (In Poconos) Skytop, Pennsylvania
April 14 - 16	Arkansas Land Title Association	Little Rock, Arkansas
May 2, 3, 4	Pennsylvania Title Association	Haddon Hall Hotel Atlantic City, New Jersey
May 9, 10, 11	California Land Title Assn. (50th Anniversary)	Biltmore Hotel Santa Barbara, California
May 12 - 14	Iowa Title Association	Savery Hotel Des Moines, Iowa
May 16 - 18	American Right of Way Association	Conrad-Hilton Hotel Chicago, Illinois
May 23 - 25	Texas Title Association	Shamrock-Hilton Hotel Houston, Texas
June 12 - 14	Illinois Title Association (50th Anniversary)	Chicago, Illinois
June 23 - 25	Michigan Title Association	St. Clair Inn St. Clair, Michigan
August 2 & 3	Montana Title Association (Tentative)	Billings, Montana

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CODE OF ETHICS

The American Title Association

The foundation of the American heritage of personal Freedom is the widely allocated ownership and use of the land. Upon the furtherance of that heritage, depends the survival and growth of free institutions and of our civilization. The Land Title Profession is the instrumentality through which titles to land reach their highest accuracy and attain the widest distribution.

The Title Profession having become such a vital and integral part of our country's economy, there are imposed on each member of the American Title Association obligations above and beyond those customarily required of participants in ordinary commercial pursuits and a code of ethics higher and purer than ordinarily considered acceptable in the market-place, to the fulfillment of which the Title Profession is dedicated. Each member of the American Title Association shall be ever zealous to maintain and improve the quality of service in his chosen calling, and shall assume personal responsibility for maintaining the highest possible standards of business practices, and to those purposes shall pledge observance and furtherance of the letter and spirit of the following Code of Ethics.

FIRST

Governed by the laws, customs and usages of the respective communities they serve, and with the realization that ready transferability results from accuracy and perfection of titles, members shall issue abstracts of title or policies of title insurance only after a complete and thorough investigation, founded on adequate records and learned examination thereof, and shall otherwise so conduct their business that the needs of their customers shall be of paramount importance.

SECOND

Every member shall obtain and justifiably hold a reputation for honesty and integrity, always standing sponsor for his work intellectually and financially.

THIRD

Ever striving to serve the owners of interests in real estate, members shall endeavor (a) to facilitate transfers of title by elimination of delays and unnecessary exceptions and (b) to make their services available in a manner which will encourage transferability of title, provide adequately for obligations which they assume in connection therewith and afford a fair return on the value of services rendered and capital employed.

FOURTH

Members shall support legislation throughout the country which is in the public interest and will unburden real estate from unnecessary restrictions and restraints on alienation.

FIFTH

Members shall not engage in any practices detrimental to the public interest or to the continuing stability of the Title Profession.

SIXTH

Members shall support the organization and development of affiliated state title associations founded and maintained upon the Principles set forth in this Code of Ethics.

SEVENTH

Any matter of an alleged violation of the principles set forth in this Code of Ethics may be submitted to the Grievance Committee of the American Title Association.