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Table of Contents

TITLE INSURANCE*

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This comprehensive account of the background and development of title insurance is reprinted with permission of the University of Florida Law Review, where it was originally carried in January, 1955. Our thanks to the author, Mr. Hart McKillop, and to the University of Florida for this fine presentation. All footnote references are located at the conclusion of the article.

Title insurance did not abruptly burst forth upon the economic scene as a novel device summarily innovated for the better assurance of land titles. On the contrary, title insurance is only a forward step in the evolutionary process of land title assurance which began with the colonization of this country and has progressed with the growth and needs of our economy.

From a legal standpoint title insurance may be defined as a contract of indemnity against loss or damage arising out of defects in or liens upon the title to real property,[1] but such a definition is grossly inadequate for a comprehensive understanding of the subject. An understanding of title insurance requires inquiry not only into what it is but also why it is. This article will therefore treat, within space limitations, the historic, economic, and legal aspects of the subject. It will undertake to trace the evolutionary processes of land title assurance that preceded and led to the advent of title insurance.

Since the earliest days of our civilization land has stood apart from other forms of property. The early philosophers and economists accorded it a separate and special category, and lawyers and jurists were so intrigued with its peculiar characteristics that they formed a separate body of law applicable to it. Unlike other forms of property, land is permanent, immovable, and indestructible. These physical features, together with its adaptability to use, have resulted in land occupying a pre-eminent position in civilized economy. These characteristics of permanence and immovability make it possible and convenient for numerous people to hold different but simultaneous and concurrent interests in the same land. Its adaptability to use has resulted in the creation of innumerable rights, interests, and estates, many of which are decidedly abstruse and elusive.

As the social and economic orders have progressed, land has been required to serve more ends. As the utilization of land has increased, its title aspects have become more intricate and complex. The heterogeneous maze of concurrent rights and interests in land increases in direct proportion to use and values. It would be rather difficult to find an instance in which all rights and interests in a piece of real property are vested absolutely in one owner. If there are no others, the paramount rights and claims of government — manifested most frequently in the forms of taxes, assessments, police power, zoning, and eminent domain — are ever present. In rural areas it is not uncommon for numerous individual title rights to exist in a single property, and in highly developed urban areas and in oil and mining territory individual rights and interests in a single property may at times be counted in the hundreds.

The early colonists recognized the importance to their economy of the free alienability and the unfettered vendibility of land,[2] and a significant exception to the general adoption of English law in this country was the abandonment of feudal tenure in favor of allodial tenure. The Land Act of 1785 provided that lands of the public domain should be freely alienable.[3] The several states have steadfastly adhered to this principle and have enacted volumes of legislation to this end, and our courts have brought their weight to bear in the preservation and advancement of this concept.

Rules of law alone cannot accomplish the free alienability of land, for in a broad sense the freedom of alien-

ability requires unfettered vendibility and unimpeded exchange. A right that cannot be exercised is **brutum fulmen** and devoid of virtue. Any legal instrumentality or process that makes land more readily transferable contributes to its vendibility and is complementary to the doctrine of free alienation.

The vendibility of land has always depended in some degree upon assurance of title. As land values have increased, title assurance has become more important. As the number of concurrent rights and interests in land has increased, the processes of title assurance have become more difficult. As the utilization of land has increased, transfers and the accumulation of muniments of title have accelerated. The progressive utilization of land has been a two-edged sword, enhancing the features of wealth on one hand and maiming vendibility on the other. It has been an essential concomitant to our economy that the processes and mediums of land title assurance keep pace with the higher utilization of land.

Development of Land Title Assurance

In the early days of land transfer in this country the processes of title assurance were simple and perfunctory. Formal conveyances were frequently omitted and when executed were often left unrecorded.[4] One writer graphically describes the situation as follows:[5]

> "In a community where everyone knows everyone else, where land is a commercial asset, where the facts of possession, family history and heirship, and whether or not the owner has made any mortgages on the land are matters of common knowledge, which can be as accurately determined at the general store or blacksmith shop as from the public records, no necessity is felt for any extensive examination of title . . ."

In many areas the first formal practice in land title assurance was reliance upon a written statement from the vendor and the covenants of warranty, together with such facts as might be ascertained from observation and inquiry.[6]

Recording Acts

The Colony of Massachusetts enacted a registry act in 1640, an excerpt from which reads as follows:[7]

> "For avoyding all fraudulent conveyances and that everone shall know what estate or interest other men may have in any howses, lands, or other hereditaments they are to deal in, it is ordered that after the end of this month no morgage, bargaine, sale or graunt hereafter to bee made of any howses, lands, rents or hereditaments shalbee of force against any other person except the graunter & his heires unless the same bee recorded as is hereafter expressed."

This act, which has no exact foreign prototype, was a cornerstone in the development of the American recording system.[8]

The early recording acts sought to establish the priority of rights and the protection of subsequent purchasers against *all* secret and unknown rights and encumbrances, but the courts have pared down considerably the broad purports of such statutes. Generally speaking, recording acts are construed to relate only to *valid* instruments and rights; they afford no protection when the estate or interest dealt with is invalid, even though the parties are unaware of the invalidity.

The American Conveyancer

As the economy progressed and statutes were enacted under which recordation constituted constructive notice, the need developed for a more reliable process of land title assurance, and the American conveyancer made his appearance. By and large the early American conveyancer was an individual better equipped by station, occupation, and intelligence to give advice regarding land title matters than the average citizen in the community. The squire, the justice of the peace, the real estate dealer, the notary public, the judge, and the lawyer were often engaged in this vocation. The opinion or assurance of the early conveyancer was often verbal, but as time passed and the con-

veyancer's search of the public records became more extensive the practice of reducing his conclusions to writing came into vogue and the opinion of title was evolved.

The Certificate of Title

Experience soon brought to public attention the pitfalls and hazards of land titles, and there was a progressive demand for more security. Conveyancers were generally without substantial financial responsibility, and their legal obligations were not clear. There was little that the typical American conveyancer could do to increase a customer's security. He could create a better impression, however, by dignifying and formalizing the evidence of his labors. To the layman the word **opinion** lacked something in the way of responsibility, but the word **certificate** had more substance. As a result the opinion of title was transformed into a rather formal document with embossed borders, entitled "Certificate of Title."

The Abstract

As the business of title assurance became more lucrative and competitive, the public justifiably began to regard those conveyancers with a legal background as better qualified to deal with the growing maze of title entanglements. With this encouragement, the lawyer members of the guild began to successfully challenge the right of lay conveyancers to issue opinions or certificates of title. There was one aspect of the process of title assurance, however, which lay conveyancers were well equipped to perform. This was the searching of the records and the compilation of data evidencing that segment of the group of title rights reflected by the public records. Thus the abstracter was born, and his handiwork, known as the "Abstract of Title," came into use.

The early abstracter usually teamed up with a lawyer. The abstracter searched the records and compiled notes and memoranda, and the lawyer reviewed the notes and wrote the opinion or certificate of title. This practice still prevails in a few places, the abstracter being sometimes referred to as a "searcher" and the lawyer as a "reader" or "examiner." Under this arrangement the abstracter and his product frequently lost their identities. His only liability, if any, was to the lawyer with whom he was associated. As time passed, abstracters began working with more than one lawyer and finally became independent operators whose services were available to all lawyers of the community. When the identity of the abstracter as an independent operator emerged, the public began dealing with him directly for title searches. The report of a search to be sold to the general public obviously had to be prepared in a more orderly and permanent form than the informal notes prepared for a reader or examiner. Also, the abstracter, for the first time, was confronted with direct liability to the customer for the quality of his work. The formal commercial abstract, bearing a certificate of coverage and limitation, was the outgrowth of these circumstances.[9]

Abstracts were originally made from a search of the name indices of the public records. These indices were often inaccurate, deficient, and carelessly kept. Under these circumstances abstracters were naturally concerned over their exposure to liability. The doctrine of **idem sonans,** together with the rise in population and the ever-growing mass of difficult names and their variables, constantly increased the hazard. The abstracters' solution was the "Abstract Plant," which indexed the public records geographically.

In order to meet the public demand for greater financial responsibility and to finance abstract plant construction, abstracters began incorporating. There are now approximately two thousand abstracting operations in this country,[10] ranging all the way from the individual who has little if any capital outside of a small amount of office equipment to companies with resources of several hundred thousand dollars.

Deficiencies in Early Methods of Title Assurance

The public records are only one of

three reservoirs of facts that must be reckoned with in the process of title assurance. A recording system, however perfectly devised and executed, is not an absolute assurance of the state of the title.[11]

For purposes of analysis, rights in land may be divided into three categories:

(1) Rights reflected in documentary or written form—the public records, for instance.
(2) Those rights that are not evidenced in writing but, while ascertainable to a certain extent, exist only as the consequence of constitutions, statutes, rules of law, or precedents. Matters of survey, use, possession, implied grants, and homesteads are examples of this segment.
(3) Rights that are undisclosed but are as potent and firm as any others. Rights originating or existing under forgeries, insanities, unknown heirs, secret marriages, legal disabilities, and false personations are phases of this segment.

If the earlier methods of title assurance are considered in connection with the foregoing aspects of title, the deficiencies of those methods are apparent.

The Abstract

Just as previous methods of title assurance served the requirements of their eras, the commercial abstract with an attorney's opinion was generally found satisfactory during the nineteenth century, and in a good many areas its use has carried over into the twentieth century. The abstract as an instrumentality of title assurance, however, has some basic and fundamental deficiencies; these have become more obvious and material with the increase in the utilization of land.

Limitations Upon Abstracters' Liability. Being human, abstracters make errors. To what extent, if any, is an abstracter liable when he makes a mistake, omits reference to some vital matter, or incorrectly analyzes a document with a resulting loss?

The abstracter is not liable for every mistake or omission resulting in a loss. He is not liable for an honest error of judgment,[12] nor is he liable as a guarantor or insurer of the correctness of his abstracts.[13] By the great weight of authority the liability of an abstracter for damages resulting from his mistakes is based on contract and not on the principles of negligence.[14] The contract is not to be found in the printing on the abstract or the certificate appended thereto but rests on an implied obligation assumed by the abstracter when he is employed to search the title.[15] The implied contract merely obligates him to perform the search with reasonable care and skill.[16] It follows that he probably would not be held liable for mistakes honestly made in dealing with abstruse and perplexing situations that require more than an average degree of care and skill.

The average abstract is composed of an original section, supplemented by a varying number of "extensions," "continuations," or "supplements." Each part of the abstract, as a rule, is ordered by and made for a different person. Each person is in privity with the abstracter with respect only to the particular continuation, extension, or supplement that he ordered or that was ordered in his behalf. Since the abstracter's liability is based upon contract, courts generally hold that there must be privity of contract before there can be a recovery against the abstracter.[17] One writer has stated: "Due to a lack, in most cases, of any privity of contract between the abstracter and the purchaser, the vendor having furnished the abstract, the result . . . is that there is seldom any legal responsibility of the abstracter to the party injured by his mistake or omission."[18]

Statutes of Limitations. An abstracter's liability may be barred by a statute of limitations. The statute begins to run from the date the mistake was made rather than from the time of discovery of the error.[19] Liability upon substantial portions of the average abstract will often be barred before the owner realizes that he has a right of action.

Lack of Financial Responsibility. It has been pointed out that the capital assets of abstracters range from zero to several hundred thousand dollars. The average abstracter is probably capable of responding to his liabilities in the average case—but an average is composed of cases both above and below the mean. An abstracter capable of responding to damages when a $10,000 vacant lot is involved might be entirely incapable of responding when a $300,000 building has been erected upon the lot. Generally, abstracters are not required to publish financial statements, and their financial affairs are not subject to supervision or regulation.[20] In the past most dealers in real estate had to rely primarily upon the reputation and integrity of the abstracter and gambled on not having losses in excess of the abstracter's ability to pay.

Defunct Abstracters. It is not uncommon to find abstracts the early parts of which were prepared by abstract companies now defunct or by abstracters long since deceased. One may sermonize that no such abstract should be accepted or relied upon, yet the overpowering influence of custom and precedent frequently demands the acceptance of such abstracts. It is needless to comment upon the lack of responsibility or liability in such instances.

Some of the undesirable aspects of an abstract prepared by a corporation or abstracter now defunct could be cured by having the abstract recertified from the beginning when each continuation is prepared, but this is not the general custom and practice.

The Title Opinion

Title examiners, taken as a group, cover a wide range of capability. Some are able and conscientious; others are neither. As an instrumentality of title assurance, the title opinion can be accorded only an uncertain value.

There are several fundamental weaknesses in the title opinion:

(1) A title opinion can be no better than the abstract upon which it is predicated.
(2) The title opinion covers only that segment of title rights reflected by the public records.
(3) Title examiners make mistakes. Liability under a title opinion is limited to losses arising from failure to exercise a reasonable degree of care and professional skill. If the opinion is rendered in good faith, a title examiner cannot be held for damages if it proves to be erroneous either as to the law or as to its application to the particular facts involved.[21]
(4) Many title examiners lack financial ability to respond to liability of any consequence.
(5) Statutes of limitations run from the rendition of the opinion and not from the discovery of loss.[22]

The Survey

During the early periods of the nation's development and down to the latter part of the nineteenth century, surveys of each ownership were generally considered unnecessary. But again the increase in land values, the higher degree of utilization, and the multiplication of rights and interests relating to the physical condition of property resulted in demands for better assurance with respect to rights not apparent in the public records. The survey and personal inspection came into vogue as a partial answer to this need.

The survey has deficiencies parallel to those of the abstract and title opinion with respect to legal liability, financial responsibility, privity of contract, and statutes of limitations.

The Advent of Title Insurance

The weaknesses and deficiencies of the abstract, the title opinion, and the survey were of little consequence or concern when such instrumentalities first came in vogue. For several generations they served well the cause of title assurance; but, like the methods and mediums that they supplanted, their weaknesses and deficiencies became more apparent and material as the social order progressed and the utilization of land increased.

In many localities, during the latter part of the nineteenth century and

the early part of the twentieth a ground swell of public apprehension and dissatisfaction began to develop with respect to the insecurity of existing forms of title assurance. State legislatures, responsive to public sentiment, began experimenting with state-supported title assuring processes.[23] By 1932, however, it was apparent that the acts were not a solution, and most of them were repealed.

The need for a more secure medium was first felt in the larger cities, and it was there that lawyers and other title specialists who opposed the venturing of the state into private industry created and introduced title insurance. By 1925 most of the sizable cities throughout the country had local title insurance companies. Since that date a considerable number of companies have extended their operations state-wide, and a few operate nationally.[24]

Local title insurance company operators were rugged individualists. Each had his own peculiar ideas with respect to the theory of title insurance, the coverage of risks that should be undertaken, the forms and provisions of policies, rate structures, and the underwriting principles that should be pursued. Some held the view that they were issuing contracts of suretyship. Others viewed their undertakings as covenants against defects and encumbrances. Some insisted that they were only "guaranteeing" the existence of a given state of facts, while others held to the theory that their contract was one of indemnity against loss or damage. There were about as many different kinds and forms of policies as there were companies; some related only to the record title, while others excepted varying liabilities and premised their undertakings upon various conditions. These contracts were known by several different names, such as Title Guaranty Policies, Guarantee Title Certificates, Records Title Policies, and Title Insurance Policies.

The courts at an early date recognized the evil and confusion that would eventually develop from these conflicting underwriting theories and took a firm hand in bringing order out of chaos. Today it is definitely established that a contract guaranteeing a title is one of insurance rather than of suretyship, [25] and for purposes of construction the rules applicable to other insurance contracts govern.[26] Although a contract of title insurance partakes of the nature of a covenant of warranty or a covenant against encumbrances, it is in fact essentially and solely a contract of indemnity[27] and not a wagering policy or an expression of opinion backed by a forfeiture.[28] Companies issuing contracts guaranteeing titles are in the insurance business and come under the control of state insurance regulations.[29]

Title insurance has characteristics peculiar to it alone. It is the one insurance that undertakes to indemnify against loss or damage arising out of matters that have occurred in the past rather than those that may occur in the future.[30] The risks of title insurance end where the risks of other types of insurance begin.[31] For the purpose of applying a statute of limitations, a cause of action under a title insurance policy accrues at the time the loss or damage occurs and not at the date of the policy.[32] Such policies are enduring and have no term or time limitations.

There are other similarities to ordinary insurance. In dealing with title insurance policies the courts have applied the same general rules of evidence as are applied to other types of insurance policies.[33] A title insurer's liability is dependent upon the terms of the policy.[34] The rule of liberal construction in favor of the insured that obtains in respect to insurance policies generally applies equally to policies of title insurance,[35] and the general rule that an express exception excludes the implication of other similar exceptions is likewise applicable.[36] An exception will not be given a broader effect than the language requires,[37] and in case of ambiguity or uncertainty exceptions are strictly construed against the insurer and in favor of the insured.[38] The measure of recovery under a title insurance policy is ordinarily the amount of the actual loss or damage sustained, limited to the face amount

of the policy.[39] By negligence the insurer, however, can incur liability for amounts in excess of the face of the policy.[40] Like other types of insurance, false or fraudulent representations made by the insured to the insurer may void liability[41] unless the falsity is known to the insurer at the time the policy is issued.[42]

Types of Policies

There are two general types of title insurance policies: owners' policies, sometimes called fee policies; and mortgagee policies, sometimes called loan policies.

Owner's Policy. This type of policy is generally used in insuring all estates of ownership, occupancy, and possession, including leaseholds. There are some estates or interests, however, that the common form of owner's policy does not fit. Some local companies have a separate form of leasehold policy, and some have owner's policy forms that insure only the record title. In areas in which so-called land purchase contracts are in vogue there is a form of policy that insures the contract purchaser against loss or damage arising from defects in or liens upon the title of the vendor. While varying to some extent in phraseology, the owner's policy forms of most companies afford substantially the same coverage. In some areas where title insurance is virtually the exclusive medium of title assurance, owners' policies insure against unmarketability of title, while in those areas in which the abstract and attorney's opinion method still prevails title underwriters generally refuse to insure marketability clauses. The subject of marketability coverage is discussed later.

Mortgagee Policy. This policy is used to insure estates or interests held by lenders as a pledge or security for the payment of a debt. Such estates or interests exist in many different forms, depending largely upon the laws and customs of the individual state. Mortgages, deeds in trust, and loan deeds are the most common types of such securities.

The coverage of mortgagee policies is designed to meet the security needs of mortgage lenders. This coverage, while entirely consistent with sound underwriting principles, is broader than that of standard owners' policies. The basic differences between the two are:

(1) Liability upon a mortgage policy is reduced as payments upon the mortgage are made and terminates upon satisfaction of the debt, whereas liability upon an owner's policy is perpetual and indeterminate.
(2) There is a theoretical salvage value in the equity between the amount of the mortgage debt and the actual value of the property.
(3) The estate or interest of a security holder is not transferred with the frequency of an estate of ownership, and the nuisance element of petty claims is thereby minimized.

Loss payable under a mortgagee policy is automatically transferred to the assignee of the debt and security. In the event of foreclosure and purchase by the holder of the security, the policy automatically becomes an owner's policy; it insures the purchaser, as owner of the fee, against loss or damage arising out of matters existing prior to the effective date of the policy.

Coverage

A title insurance policy in practical effect (1) insures the accuracy and sufficiency of the abstract; (2) insures the correctness and sufficiency of the examination of the title; (3) insures against matters outside the scope of the abstract, such as matters of survey and facts disclosed by a personal inspection of the premises and in some instances municipal taxes and assessments; and (4) insures against unknown and hidden hazards such as rights originating or existing by reason of forgeries, insanities, unknown heirs, pretermitted children, secret marriages, legal disabilities, false personations, and numerous other claims and interests of similar nature. One company has compiled a list of over sixty different causes of loss or damage in this hidden hazard category.

Mechanics' Liens. While coverage against unfiled mechanics' liens has

for many years been considered appropriate in mortgagee policies, title underwriters have generally excluded such coverage in owners' policies. The reason for this distinction, when first evolved, was simple underwriting logic. Theoretically the margin of equity between the amount of a mortgage and the value of the property widens as each mortgage payment is made. This gives the underwriter a cushion for the recoupment of loss in the event it has to take over the mortgage and pay off mechanics' liens. This factor is not present in the case of owners' policies, since they insure the property for its full value.

Normal title insurance rates on owners' policies do not contemplate the assumption of mechanics' lien risks. For mechanics' lien coverage, casualty companies charge a premium almost equal to the title insurance premium for coverage of the entire field of title risks. The risk incident to mechancs' liens varies from state to state, depending upon statutory provisions. The risk in Florida at present is inordinately high on account of the iniquitous and ambiguous statutes relating thereto.

Marketability. Mortgagee policies insure against unmarketability of title, while most owners' policies do not. For all practical purposes, marketability of title means acceptability of title. The occasion for a mortgage holder to test the acceptability of the encumbered title seldom arises unless the title is taken by foreclosure and offered for sale.

If the term **marketability** meant something universally definite and tangible, title underwriters would have a great deal less hesitancy in undertaking such risks. At one time in this country there were only good titles and bad titles. Courts of equity coined the expression **marketable title** to cover titles in that vast and foggy twilight zone between the good and the bad, and ever since the courts have been trying without too much success to define the term. The most commonly accepted definition is "such a title as prudent men, well advised as to the facts and their legal bearings, would be willing to accept."[43] If this is a correct definition, it is obvious that marketability is an ethereal sort of thing enshrouded in the mist of conflicting minds, whims, prejudices, ignorance, and capricious viewpoints. It is also affected by the manner in which customs, habits, and practices vary from one community to another. There are communities in Florida, not fifty miles apart, one of which considers seasoned breaks in the chain of title and certain types of tax titles acceptable and marketable while in the other such irregularities or defects are held to render the title utterly unmarketable. All that is certain about marketability coverage is that when someone raises an objection, frivolous or not, to an insured title, the insured expects the title company to bring a specific performance suit or a suit to quiet title, either of which usually costs several times the premium.

Until a more definite and uniform yardstick is devised by which marketability can be measured, title underwriters will be reluctant to undertake such risks in owners' policies. In some communities, in order to dispel the uncertainty involved in the term **marketability,** the practice of providing in sales contracts for the delivery of an "insurable title" rather than a "marketable title" is developing. This practice is apparently proving sound and satisfactory to both buyer and seller, and it has the virtue of eliminating capricious bickerings over title technicalities.

The Fine Print — Conditions and Stipulations. Title insurance policies begin by contracting to pay all loss or damage, up to the face amount of the policy, arising out of defects in or liens upon the estate or interest of the insured; but, as in the case of all insurance contracts, the policies contain conditions and stipulations to clarify the manner and conditions upon which claims will be recognized.

These fine print provisions specifically exclude certain types of risk. Since the inception of the industry title insurers have felt that within the broad field of title interests there were certain areas that were not properly the subject of title insurance

coverage. Space requirements do not permit elaboration upon these excluded areas; suffice it to say that they principally involve those rights inherent in the various governments and paramount to all private and personal rights and interests. The determination of these rights is considerably removed from the ordinary processes involved in the determination of insurability, and coverage is not contemplated under title insurance rate structures.

Evolution. Title insurance coverage has progressively broadened because of public pressure and a gain of risk experience by the industry. The so-called national underwriting rate, which is the part of the title insurance charge allocated to risk undertaking, has not increased in over twenty years; yet policy coverage has been considerably expanded. Among risks originally excluded and now covered are insurance against errors in and the insufficiency of surveys and personal inspections, against municipal improvement liens and assessments, and against the effects of bankruptcies and federal tax liens. Insurance of title to submerged and filled-in lands and of various types of tax titles is also included. As more risk experience is acquired, the coverage of title policies will doubtless be further extended.

Title Insurance Rates

There is no other line of insurance in which such a high proportion of the rate or charge is expended in determining and effecting insurability. The charge for title insurance is composed of several elements, including examination fee, agent's commission, underwriting premium, abstracting services, and in some instances escrow or closing fee. The greatest portion of the charge for title insurance is allocated to abstracting, examining, and closing services, which are normally incurred in all real estate transactions. In Florida the underwriting premium averages from eight to twenty per cent of the charge if all of the above services are included.

Title insurance rates do not contemplate a high loss ratio. Such rates are not paid annually as in other insurance lines, and the coverage that the single premium purchases has no annual term but runs indefinitely. Recent statistical studies indicate that with the increasing use of title insurance the amount of the average claim and loss has risen substantially.

The title insurance rate structure is somewhat involved. Starting with the basic rate for original insurance, there are more than a dozen rate reduction formulas, all designed to give the customer a reduced cost whenever such reduction is consistent with reduced exposure and cost of processing. These reduced rates relate to reissue policies, subdivision policies, simultaneously issued owners' and mortgagee policies, substitution mortgage policies, increased owners' policies, and many other situations.

*The author expresses his indebtedness to Daniel D. Gage, Jr., from whose book LAND TITLE ASSURING AGENCIES IN THE UNITED STATES much valuable information for this article has been obtained.

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1Foehrenbach v. German-American Title & Trust Co., 217 Pa. 331, 336, 66 Atl. 561, 563 (1907).

2MORRIS, STUDIES IN THE HISTORY OF AMERICAN LAW 69-120 (1930).

3TREAT, NATIONAL LAND SYSTEM 36 (1910).

4Stone, *History of Title Records*, Lawyer and Banker, Jan.-Feb. 1926, p. 70.

5White, *The Title Game*, Title News, Nov. 1929, p. 6.

6*Ibid.*; see also PATTON, LAND TITLES 113 (1938).

7 Records of Massachusetts 116, adopted Oct. 7, 1640, Colonial Laws 33 (ed. 1672). This act was originally in the nature of a registry act requiring entry of only the names of the parties, the date, the property, and estate conveyed. It was later amended into a recording act. STAT. 1783, c. 37, §4.

8Pidge v. Tyler, 4 Mass. 541 (1808); Den v. Richman, 13 N.J.L. 43, 49 (Sup. Ct. 1832).

9In some areas, particularly the original colonial states, the use of commercial abstracts did not develop extensively. In many urban areas of these states there has been a transition direct from the certificate to title insurance.

10See Directory, American Title Association (1955).

11NICHOLSON, LAW OF REAL ESTATE 295.

12Dodd v. Williams, 3 Mo. App. 278 (1877); Watson v. Muirhead, 57 Pa. 161 (1868).

13Dundee Mtge. & Trust Inv. Co. v. Hughes, 20 Fed. 39 (C.C.D. Ore. 1884); PATTON, LAND TITLES 131 (1938).

14See Sickler v. Indian River Abstract & Guaranty Co., 142 Fla. 528, 195 So. 195 (1940).

15White, *Legal Liability of Abstracters and Title Companies*, Title News, Oct. 1930, p. 5. This article contains a digest of cases on the subject.

16Smith v. Holmes, 54 Mich. 104, 19 N.W. 767 (1884); Gilman v. Hovey, 26 Mo. 280 (1858); Stephenson v. Cone, 24 S.D. 460, 124 N.W. 439 (1910); Dickle v. Abstract Co., 89 Tenn. 431, 14 S.W. 896 (1890).

17*E.g.*, Savings Bank v. Ward, 100 U.S. 195 (1879); Dundee Mtge. & Trust Inv. Co. v. Hughes, 20 Fed. 39 (C.C.D. Ore. 1884); Shine v. Nash Abstract & Inv. Co., 217 Ala. 498, 117 So. 47 (1928); Sickler v. Indian River Abstract & Guaranty Co., 142 Fla. 528, 195 So. 195 (1940); Thomas v. Guarantee Title & Trust Co., 81 Ohio St. 432, 91 N.E. 183 (1910); Equitable Bldg. & Loan Ass'n v. Bank of Commerce & Trust Co., 118 Tenn. 678, 102 S.W. 901 (1907).

18PATTON, LAND TITLES 131-32 (1938).

19Sickler v. Indian River Abstract & Guaranty Co., 142 Fla. 528, 195 So. 195 (1940); Arnold v. Barner, 91 Kan. 768, 139 Pac. 404 (1914); Provident Loan Trust Co. v. Wolcott, 5 Kan. App. 473, 47 Pac. 8 (1896); Garland v. Zebold, 98 Okla. 6, 223 Pac. 682 (1924).

20Some states have statutes providing for the bonding of abstracters and regulating the abstracting business to some extent, *e.g.*, IDAHO CODE ANN. §53-101 (1947); KAN. GEN. STAT. §67-243 (1949); NEB. REV. STAT. §76-601 (1950); OKLA. STAT. ANN. tit. 37, §§8513-8524 1941).

21Sellers v. Knight, 185 Ala. 96, 64 So. 329 (1913); Citizens Loan Fund & Sav. Ass'n v. Friedley, 123 Ind. 143, 23 N.E. 1075 (1889); Caverly v. McOwen, 123 Mass. 574 (1878); Hill v. Mynatt, 59 S.W. 163 (Tenn. Ch. App. 1900); PATTON, LAND TITLES 165 (1938).

22Lilly v. Boyd, 72 Ga. 83 (1883); Maloney v. Graham, 171 Ill. App. 409 (1912); Sullivan v. Stout, 120 N.J.L. 304, 199 Atl. 1 (Ct. Err. & App. 1938).

23These laws are sometimes called "Torrens systems," after Sir Robert Torrens, who promulgated a fairly successful compulsory title registration system in Australia. At least 19 states passed some Torrens system law; see GAGE, LAND TITLE ASSURING AGENCIES 135 (1937); McCall, *Torrens System After 35 Years*, 10 N.C.L. REV. 329 (1932).

24See Directory, American Title Association (1955).

25De Carli v. O'Brien, 150 Ore. 35, 41 P.2d 411 (1935); Foehrenbach v. German-American Title & Trust Co., 217 Pa. 331, 66 Atl. 561 (1907).

26Minnesota Title Ins. & Trust Co. v. Drexel, 70 Fed. 194 (8th Cir. 1895); Sala v. Security Title Ins. & Guarantee Co., 27 Cal. App.2d 693, 81 P.2d 578 (1938); Stensgaard v. St. Paul Real Estate Title Ins. Co., 50 Minn. 429, 52 N.W. 910 (1892); Trenton Potteries Co. v. Title Guarantee & Trust Co., 176 N.Y. 65, 68 N.E. (1903); Joint Stock Land Bank v. New York Title & Mtge. Co., 172 S.C. 435, 174 S.E. 402 (1933).

27*E.g.*, Purcell v. Land Title Guarantee Co., 94 Mo. App. 5, 67 S.W. 726 (1902); Chase Bank v. Wayne Junction Trust Co., 258 Pa. 272, 101 Atl. 979 (1917); Pennsylvania Co. v. Central Trust & Sav. Co., 255 Pa. 322, 99 Atl. 910 (1917).

28Empire Development Co. v. Title Guarantee & Trust Co., 171 App. Div. 116, 157 N.Y. Supp. 68 (1st Dep't 1916).

29United States v. Home Title Ins. Co., 285 U.S. 191 (1932).

30Atlanta Title & Trust Co. v. Inman, 42 Ga. App. 191, 155 S.E. 364 (1930); see State v. Minnesota Title Ins. & Trust Co., 104 Minn. 447, 116 N.W. 944 (1908); Metropolitan Life Ins. Co. .v Union Trust Co. 283 N.Y. 33, 27 N.E.2d 225 (1940).

31See Trenton Potteries Co. v. Title Guarantee & Trust Co., 176 N.Y. 65, 68 N.E. 132 (1903); Foehrenbach v. German-American Title & Trust Co., 217 Pa. 331, 66 Atl. 561 (1907).

32Title Ins. & Trust Co. v. Los Angeles, 61 Cal. App. 232, 214 Pac. 667 (1923); Purcell v. Land Title Guarantee Co., 94 Mo. App. 5, 67 S.W. 726 (1902).

33Atlanta Title & Trust Co. v. Allied Mtge. Co., 64 Ga. App. 38, 12 S.E.2d 147 (1940); First Nat'l Bank & Trust Co. v. New York Title Ins. Co., 171 Misc. 854, 12 N.Y.S.2d 703 (Sup. Ct. 1939); Buquo v. Title Guaranty & Trust Co., 20 Tenn App. 479, 100 S.W. 2d 997 (1936); Guaranty Title & Trust Corp. v. Virginia-Carolina Tie & Wood Co., 152 Va. 698, 148 S.E. 815 (1929).

34Sala v. Security Title Ins. & Guarantee Co., 27 Cal. App2d 693, 81 P.2d 578 (1938); Holly Hotel Co. v. Title Guarantee & Trust Co., 141 Misc. 861, 264 N.Y. Supp. 3 (Sup. Ct. 1932).

35Minnesota Title Ins. & Trust Co. v. Drexel, 70 Fed. 194 (8th Cir. 1895); Purcell v. Land Title Guarantee Co., 94 Mo. App. 5, 67 S.W. 726 (1902).

36See Wheeler v. Real Estate Title Ins. & Trust Co., 160 Pa. 408, 28 Atl. 849 (1894).

37Holly Hotel Co. v. Title Guarantee & Trust Co., 141 Misc. 861, 264 N.Y. Supp. 3 (Sup. Ct. 1932).

38Leslie Apts., Inc. v. Title Guarantee & Trust Co., 42 N.Y.S.2d 686 (Sup. Ct. 1943); Marandino v. Lawyers Title Ins. Corp., 156 Va. 696, 159 S.E. 181 (1931).

39Banes v. New Jersey Title Guarantee & Trust Co., 142 Fed. 957 (3d Cir. 1906); Place v. St. Paul Title Ins. & Trust Co., 67 Minn. 126, 69 N.W. 706 (1897); Palliser v. Title Ins. Co., 61 Misc. 490, 115 N.Y. Supp. 545 (Sup. Ct. 1908); Wheeler v. Equitable Trust Co., 206 Pa. 428, 55 Atl. 1065 (1903).

40See Quigley v. St. Paul Title Ins. & Trust Co., 60 Minn. 275, 62 N.W. 287 (1895).

41Stensgaard v. St. Paul Real Estate Title Ins. Co., 50 Minn. 429, 52 N.W. 910 (1892).

42Quigley v. St. Paul Title Ins. & Trust Co., 60 Minn. 275, 62 N.W. 287 (1895).

43PATTON, LAND TITLES 141 (1938).

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THE MARK TWAIN HOME AND MUSEUM—A LEGAL OPINION

HARRISON WHITE
Attorney at Law, Hannibal, Missouri

"The gold from all the dross!"—such is the expression of the author after reading the abstract of title to the Mark Twain home in Hannibal, Missouri. We are indebted to the author, Mr. White, and to Mr. Don Hughes, Secretary of the Iowa Title Association, who secured necessary permission and submitted it to TITLE NEWS for publication. An insight into the past of a famous personality is always of interest to those in the field of land titles.

January 20th, 1947

To the Mark Twain Home and Museum Board of the City of Hannibal, Missouri
Gentlemen:

In re: The west twenty and one-half feet of Lot No. One (1) Block No. Nine (9) City of Hannibal, Missouri.

The accompanying abstract of title to the above described property, as last certified by Wells Abstract Company, January 16, 1947, in my opinion shows good and merchantible title now vested in John D. O'Brien and Cora May O'Brien, his wife, as shown at No. 18, with all state, county and city taxes for 1946, and all prior years paid; there are no liens or encumbrances, special assessments, judgments, transcripts of judgments or mechanic's liens of record in the Hannibal Court of Common Pleas or in the Circuit Court of Marion County, affecting the property or the parties; no search for such matters is shown in the Federal Court for this jurisdiction, and the purchaser should satisfy himself as to that.

This abstract begins in the year 1836, showing title then vested in Stephen Glascock, who is generally accepted here as head title to certain parts of Hannibal, including this lot, and since the earlier title from the government into Glascock has often been examined and approved, it is not required that it be supplied in this instance, particularly in view of the fact that this property is being acquired by you, to become a part of the Mark Twain Home, and will not, therefore, be again sold, certainly at least so long as the City of Hannibal shall endure. The title in its present form and as shown by this abstract is approved.

Respectfully submitted,
HARRISON WHITE

Examination fee—No Charge.

P.S. The examination of this title has led to other matters, outside of the abstract proper, which may be of interest to you under the circumstances, or may not be—in which latter case this may be detached and disregarded.

Abstracts of title come and go continually across the desks of Hannibal lawyers; generally they are the most uninteresting, the driest reading, of all the work they do. But today, after many years of dull and drab examinations, of sifting titles, comes the unusual—the Gold from all the dross!

Beginning, as do so many titles in Hannibal, with — "No. 1. Stephen Glascock to Moses D. Bates, 1836, all of lot (1) block nine (9)" . . . it is just another abstract; "No. 2. Moses D. Bates to Ira Stout, 1836— same property, etc.," . . . and it is boresome; "No. 3. Ira Stout to John M. Clemens, 1839, all of lot one (1), etc., consideration $7,000.00 . . . " and I am struck with the thought that John M. Clemens was the father of Mark Twain, and that this must be a part of the Home Property; the abstract begins to become interesting. Going on—"No. 4. John M. Clemens to James Kerr, deed of trust, all of lot one (1)—to the use of creditors—

1841," . . . and it becomes more interesting; "No. 5. John M. Clemens by James Kerr, trustee's deed to Hannah B. Fisher, 1943, conveying only the west twenty and one-half feet of this lot—consideration $360.00," . . . Then, wondering what story is hidden between the lines, I start out to try to discover what turn of events could have come within the four eventful years, 1839 to 1843, to so affect the lives and fortunes of this famous family."

LOT ONE (1) BLOCK NINE (9) CITY OF HANNIBAL, MISSOURI

This is not intended as that which would be so useless a thing as an attempt to give, or to add to or detract from, the history of the Clemens family, except as it relates to the eventful and stormy title to this piece of ground, which already has become a part of, and will forever go hand in hand with, the life of Mark Twain—a bit of history gleaned from the scant and ancient records of Marion County, Missouri.

At whatever time it may be considered, things in 1839 when John M. Clemens purchased this property were different, even as from the present date of 1947. It was 1839, a century and eight years ago, when Saint Louis was a small country town and Hannibal was merely a village. Only twenty years earlier, Hannibal was in Pike County—Marion then being a part of Pike County. Salt River, in Ralls County, was fancied to be a navigable stream, and its possibilities, as such, attracting the always visionary John M. Clemens, induced him to bring his wife, Jane, and his four children, namely: Orion (1825), Pamela (1827), Margaret (1830) and Benjamin (1832), as well, as his slaves, to the village of Florida, in Monroe County, Missouri.

In Florida things did not prosper and another dream dimmed out. His store did not succeed and the going was rough. There "in bleak November," November 30th, 1835, another child, Samuel Langhorne, a seven-months-baby was born. Mr. Paine in his splendid biography, relates, "There was no fan-fare at his coming, and perhaps there was no real need, under the circumstances, of his coming at all," although, he continues, "he seemed never to be of his own race or kind." In 1838 another son, Henry was born, and in 1839 the daughter Margaret died—the first death in the family, and this it seems, was the last straw—so far as the father's decision to leave Florida was concerned. According to this biographer, in the meantime other misfortunes came to the family in Florida and the partnership in the store business had proved a disaster.

So, in 1839, John M. Clemens gathered up the family, consisting then of the mother, five children, and at least one slave-girl, Jennie, according to Mr. Paine, with the remnants of his store, and came to Hannibal, purchasing all of lot one (1) block nine (9), which fronted 65½ feet on Second Street (Main Street) by 142 feet westwardly on Hill Street. The record indicates that the $7,000 paid for this lot was a cash transaction, as there is no mention of a deed of trust or other encumbrance against it at the time.

The oldest son, Orion, was established in the store, on a part of the lot fronting on Main Street; the father attempted to practice law and was a Justice of the Peace, having his office on the Hill Street side of this lot somewhere between the present home and the Main Street corner, the family living in a nearby hotel, probably the building still standing at the southwest corner of Hill and Main Streets in Hannibal.

Here in Hannibal things again did not go well. The law business was not good. Mr. Paine says that prosperity came laggingly enough to the Clemens household. The year 1840 brought hard times; in that year Jennie, the slave-girl, had to be given up, and by the year 1842 the Clemens "tide of fortune touched low-water-mark," and John M. Clemens at age of 42 found himself without business, without means, and his creditors descending upon him.

It was during this troublesome

period (1841) that the records show the transfer (No. 4 of the abstract) to James Kerr, for the use of creditors, and the sale of the property the following year.

THE SHERIFF'S (?) SALE

It is related by authority considered reliable, that the home of John M. Clemens was sold at sheriff's sale; indeed the reference is made under one of the old photographs hanging in the Home today, as multitudes have seen. The cold records of Marion County, the most reliable authorities in such matters, do not substantiate this. In justice of the rectitude of this family—of this father—and in honor of the memory of the famous son, it is fitting that this impression be at least clarified and be made to conform to the record in the case.

There is something about a sheriff's sale (for debt) particularly of one's very home, which leaves a distinctly bad taste. It implies an involuntary parting with the most precious of one's possessions; it signifies the judgment of a court; a writ commanding the officer to levy upon, to seize and to sell to the highest bidder, property sufficient to pay a just debt, together with the costs of the proceeding; it is an extreme action or remedy! None of these things happened in the case of John M. Clemens. A sheriff's sale carries with it a stigma, an uncomplimentary reflection upon a debtor; suggests a carelessness and not only a lack of ability to pay (which in itself is no discredit) but a lack of desire to pay an honest debt; a want of plain honesty and uprightness. It is a forcing of one to do that which he should do willingly. All of which is exactly opposite to the character of John M. Clemens. Down through time yet to come, the insinuation will, unless corrected, live and grow—as such things do.

This thought or s u g g e s t i o n of something amiss in the make-up of this man, finds expression in no less authority than Collier's National Encyclopedia, wherein it is stated in Vol. 6, page 434, 1933 edition, that "He" — referring to Mark Twain, "came of a family gifted with wit, ingenuity and intelligence, **but with very little else.**" (Emphasis mine.) This not only allows the reader, but invites him, to make any disparaging inference which m i g h t meet his fancy, and carries along the very idea attempted to be refuted here, that is—that the family had "very little else." (If one is to accept this version of it.) The characterization is quite consistent with the so-called sheriff's sale, but is totally inconsistent with the real John M. Clemens, and his family.

What does the record say about all this? That John M. Clemens was a man of the most stalwart integrity, and of unbending honesty, is not to be questioned by anyone who will trouble to look into the facts. He has been described as sober, industrious and unswervingly upright. The records show this. When the going was hard, and when prosperity for this man with a large family was at the "low-water-mark," what did he do? He did not attempt to hide his property, nor did he evade his creditors nor did he go into bankruptcy. True to his genuine character and rugged honesty (which he imprinted upon his famous son, who himself labored hard and discharged honest debts), when the creditors came, John M. Clemens offered everything he had, according to Mr. Paine, his real estate (this same lot Number One [1]) —not only this, but his household furniture and goods, his silverware down to his knives, forks and spoons, and last but not least, his cow.

The creditors, described as Saint Louis Merchants (among whom was one James Clemens, Jr.,) appear not to have had the heart to accept more than this lot one (1), and so the conveyance was voluntarily made to Mr. Kerr as trustee for the use of creditors. (Record O, page 539 and Book H, page 374, Marion County deed records, where a list of the creditors and the amounts owing may be found.)

In the darkest year, 1843, the trustee duly advertised lot one (1) block

nine (9) and on the appointed day offered it for sale. But there was no sale! The record says that the bids were "inadequate." Can it be said that there was no one present who wanted to buy this man's home at public sale? The property was valuable; he had paid $7,000 for it only a short time before. One wonders what happened. The sale was called off.

Then it was that lot one (1) was subdivided. It was cut up by the Trustee of the creditors into seven small parcels; three lots, each 21½ feet fronting on Main Street and running back 60 feet, and four lots fronting on Hill Street 20½ feet in width and running northwardly 65½ feet. Again, in October 1843, the sale was readvertised and was duly had, as follows: The seven lots were sold to the following persons at the prices named, respectively, beginning with the northermost lot on Main Street, coming thence south on Main Street and running westwardly on Hill Street: To George C. Hayes, the first lot together with the first one or easterly lot fronting on Hill Street, $885.00; to William Briggs, second lot, $630.00; to George Wooden, the corner lot, $1,415; to James Clemens, Jr., the second lot fronting on Hill Street (the present Home lot) $330.00; the next lot, where the museum now is, to William T. Christy, $300.00 and the west parcel covered by this abstract, to Hannah B. Fisher, $360.00. Total $3,920.

The sale price exceeded the amount of the debts, but whether John M. Clemens received anything after the payments of costs incident to the sale, is not shown. Suffice it to say that the creditors were paid in full, manifesting that the "very little else" over "wit, ingenuity and intelligence" was quite enough to effect the discharge of all obligations.

When this father stripped himself of all his possessions to satisfy his creditors, and when his son—many years later, when the shadows of life were lengthening and his health frail, and misfortune and grief had all but overcome him, willingly set out for a 'round-the-world lecture tour, for the sole reason—not of trying to retrieve a lost fortune — but for the purpose of paying debts at a full 100% of nearly $200,000.00 (for which his creditors, except one, were not pressing, and had offered to settle at 50%) and when, within about three years, this son actually paid his debts in full, and thereafter built another independent and most honorable fortune—such conduct, such ambition, energy, ability and plain honesty and integrity, reflect infinitely more than that which is implied in "wit, ingenuity and intelligence, but with very little else." Such a characterization should be deleted from any and all accounts of such a remarkable family and man.

In the later years of his life, Mark Twain was acclaimed as no man has ever been—he was greeted by tumultuous throngs and ovations wherever he went, and he went everywhere. Whenever one lone individual, beginning in obscurity, and within the span of ordinary life, can number in his train and trail of fame and friendship, Kings and Emperors, Rulers and Royal Families, Statesmen and Financiers, Artists, Publishers, Authors, Theologians and Philosophers, Scientists and Inventors, the Rich and the Poor and the High and the low, of all the world, as he did, then it can be said that he is truly great, and that for such greatness to have been accomplished, it must have been deserved and had to spring from a background of genuine uprightness.

THE EARLY "PRESERVATION OF THE CLEMENS HOME"

It is related, again, and with the same possible inuendo which attaches to the sheriff's sale, and other suggestions, that after the splitting up into parcels and the sale of lot one (1) the property was "preserved" to the family by a "rich cousin in Saint Louis." The records disclose something about this also. In book N, page 16, Marion County Missouri Deed records, there is the record showing a lease of a parcel of said lot, being that upon which the Mark Twain Home is now located, and being the

same parcel which was purchased at the sale by James Clemens, Jr., for $330.00, the lease being dated October 16th, 1846, three years after the sale, from said James Clemens, Jr., to Orion Clemens—then twenty-one years of age, and while the father, who died in 1847, was still living, which lease—even measured by present standards of investment—has all the earmarks of a careful business transaction. It was a ground lease only, and was carefully drawn, providing, among other things, for a rental of $28.00 per year for the first five years, and $25.00 per year for the next twenty years, the rent payable semiannually, plus the payment of all taxes and assessments—something near an eight percent investment; it also stipulated that at the end of the term the lessee might purchase the ground for $350.00, providing that all rent, taxes, etc., had been promptly paid; further that any improvements made by the lessee might be removed, in the event the lessee did not buy the land. (The present Home was later built upon this ground.)

In book V-2, page 38, dated October 8, 1866, there appears a quit claim deed from James Clemens, Jr., to one Christopher Hanssler for a consideration of $350.00—and a cancellation of the lease. A rather careful search of the records does not disclose that anyone by the name of Clemens ever afterward owned or occupied any part of said lot one (1). So much for the "preservation" of the home for the family.

THE REAL PRESERVATION OF THE HOME

Going back to the sale, and to the cutting up of lot one (1); it is a long time ago — when the titles to the seven parcels of this lot (not unlike the several members of the Clemens family) went out into the world, to become a part of it, to become grist in the mills of the Gods which grind so slowly, but so surely. These parcels, during the following century, like the family whose name they honor, became just common citizens, attracting little or no attention; they were shuffled about in the ways of the world, in the marts of trade and commerce, little dreaming that even then Fate was sowing the seeds of Fame—the same as for one of their early tenants. The list of the various owners of these parcels includes the names of many prominent families of Hannibal.

Changes came. Time went on. One of the members of the Clemens family attained great fame, as later did a particular part of this lot one (1). It is of comparatively recent years that certain public-spirited citizens conceived the idea of really preserving the old home, of retrieving the different parts of this lot, and of creating a fitting and lasting memorial to the distinguished son. As a result of this ambition and of the praiseworthy efforts of the Mahan family of Hannibal, these dfferent parcels (figuratively as errant and varied in ownership as were the activities of the one whose memory they attest) have slowly, one by one, been gathered back into the fold of a single ownership.

This parcel, covered by **this** abstract, is the last to return, and like the Prodigal Son, the manner of its returning is spectacular, and is the reason for this bit of extra attention. It would seem that under the law of Nature, there is a plan which would not be thwarted — the immutable blue-print of Fate, and that Time ironically plays tricks upon the doings of unsuspecting people. The Home, long ago lost and abandoned, has been restored and is being maintained—on one of the parcels of the original lot one (1); the other parcels, eastwardly along Hill Street, and the three northwardly on Main Street, have all come back; they have become a flower-garden, with spacious walks and appropriate improvements, all enclosed by substantial fences and by a great wall of stone, as if to forever insure against their again becoming separated; the parcel to the west of the Home (the Christy lot) has become a museum of surpassing interest and inspiration. Only **this last twenty and one-half feet,** the extreme west parcel, has been out.

Today it, too, takes its place in this enchanting heritage.

—AND CREDITORS BECOME DEBTORS

It is a matter of record that at this date on an average of about 6,000 people go through the Home every month, and that in the year 1946 there were 61,276 persons actually registered there. (Some 25% of the visitors do not register.) From every state and from every nation they continue to come. Near the guest-register is a small glass coin-container for the reception of voluntary contributions, for the general welfare and upkeep of the Home and Museum. Into this receptacle, men, women and children, from everywhere have deposited their nickels, dimes and pennies; not only this, but slugs, counterfeits, foreign coins and what-not — all contributors reacting, it would seem, to an almost universal instinct to do something to promote a worthy cause. From this world-wide contribution has come a very substantial part of the funds with which to purchase this last, the seventh, small parcel of lot one (1) block nine (9) of the Original City of Hannibal—the west twenty and one-half feet.

And thus it is that the pendulum of time has swung. Once he and his family owed the world and gave their home, their all, in full payment. Then the world was the creditor. Now the reverse is true. The world, the whole world, is the debtor—with a debt impossible of payment in kind; a burden so overwhelming that it is being paid back, neither in literature, nor wit, nor humor, nor in lasting cheer to all the inhabitants, but in nickels, dimes and pennies, by the appreciative souls who crowd through this shrine to his memory; not only by the youths who have thrilled to his tales of Tom Sawyer and his gang, but by the adults, the elite, the educated and the knowledge-seeking ones who have found enlightenment and entertainment in his many famous writings.

So—it is reasonable to suppose that as time goes on, by the same process, this last parcel (now quite humble and unsightly, as if weary and worn from its century of waiting) will be made beautiful; that it will be revived and rehabilitated; that it will become a part of an enlarged and growing museum; and that all this will be accomplished by the same host of world representatives — as they return, year after year, to make their small payment on the everlasting debt to the Clemens family, and to the illustrious son, Samuel Langhorne Clemens—MARK TWAIN.

Very respectfully,
HARRISON WHITE.

OWNERSHIP OF THE AIR

"It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe—*Cujus est solum ejus est usque ad coelum.* But that doctrine has no place in the modern world."—Douglas, J. in *United States v. Causby,* 328 US 256, 90 L ed 1206, 66 S Ct 1062.

—CASE & COMMENT.

COMING EVENTS—

Date	Meeting	Where To Be Held
April 26 - 27	Southwest Regional Conference	Adolphus Hotel Dallas, Texas
April 14 - 16	Arkansas Land Title Association	Hotel Marion 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 7 - 8	Central States Regional Conference	Edgewater Beach Hotel Chicago, Illinois
June 7 - 8	New Mexico Title Assn.	LaFonda Hotel Santa Fe, New Mexico
June 12 - 14	Illinois Title Association (50th Anniversary)	Drake Hotel Chicago, Illinois
June 19 - 22	Oregon Land Title Assn.	Bend, Oregon
June 21 - 22	Colorado Title Assn.	Glenwood Springs
June 23 - 25	Michigan Title Association	St. Clair Inn St. Clair, Michigan
August 2 & 3	Montana Title Association	Billings, Montana
Sept. 13 - 14	Washington Land Title Assn.	Wenatchee, Washington
Nov. 4 - 7	Mortgage Bankers Assn. of America	Statler Hilton Hotel Dallas, Texas

DATES TO REMEMBER:—

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