Denver Law Review

Volume 24 | Issue 1 Article 3

January 1947

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During the past year, a syndicate undertook to purchase a piece of downtown Denver real estate. The preliminary contract having been executed, the seller who had owned the property for more than thirty-five years, had the abstract of title continued to date and delivered same to the title examiner for the buyer.

The attorney made a record examination from the original source of title, and concluded the title was merchantable. Before the deal was finally concluded, the buyers decided to refinance the loan on the property, and for that purpose the abstract was delivered to the title attorney for an insurance company who was to make the new loan. This examiner likewise made a record examination from the original source of title, and presented his opinion that the title was not merchantable because of some defects of record prior to the present ownership. A suit to correct these defects was brought, and the transaction was completed.

This actual but not unusual episode is presented not in a critical sense, but because it pointedly brings to mind difficulties of our present procedure in the transfer of real estate. These are: First, the duplication of effort in requiring a record examination from the original source of title each time a property is sold, mortgaged, and nowadays when often leased—this among a people whose byword throughout the world is efficiency. Second, the uncertainty of the quality of title.

This seemingly depends on the philosophy of the title examiner. If he demands 100% theoretical perfection, the title all too often is bad. If he requires only a present indefeasible title, it usually is good.

Moreover, the philosophical state of mind on any particular day is subject to the circumstances of that day. The lawyer on one day while waiting for his street car is picked up by the blond next door and driven to his office; the mail includes a check from a client to cover an account long charged off; inspection of a pleading he dictated yesterday discloses no mistakes; he examines the abstract, finds a discrepancy in names but immediately decides it is *idem sonans;* hurries through a probate proceeding and excuses the mistakes he finds under the statute relieving against irregularities when conveyance is made by an executor, or sold pursuant to order of court; skips thru a foreclosure with both eyes closed because the sheriff's deed has been on record more than nine years, and declares the title good.

The next day he over-sleeps; misses his street car; reaches in his pocket

†An address before the Colorado Bar Association, Oct. 19, 1946.

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to buy a paper and finds he has a hole through which his change has disappeared. He finally reaches his office, examines the abstract, the same discrepancy in the names he concludes is not *idem sonans* because this discrepancy appears in the letter "s" being the terminal letter in the name. The probate proceeding he cannot pass because no court has defined the meaning of the word "irregularities" as stated in the statute; the foreclosure proceedings he combs with an eagle eye because some day the Supreme Court may change its mind and declare the nine year statute unconstitutional, and so the title is not merchantable.

Upon such chances of circumstances all too often rest the quality of title.

Mindful of these defects over the years, a pattern for the protection of titles and the alleviation of technical objections has been woven through legislative and progressive action.

The design thus created rests upon the following:

a. The adoption by the legislature of the curative act of 1927.

b. Innumberable statutes of limitation enacted prior and subsequent to the before mentioned curative act.

c. The passage of the so-called Torrens System Act.

d. The promulgation of real estate standards by various bar associations of the state.

A brief consideration of these steps is necessary to express the extent of our success, the limitations and defects involved, and to give some slight prophesy of what future steps may be taken to strengthen those links in the chain of title which in no way makes the title indefeasible but affords opportunity to timid and unpractical lawyers to offer technical objections which are difficult and costly to correct.

The Curative Act

In 1927 the state legislature passed what is known as the curative act. This act is not one solely of limitation, but is also designed to afford a maximum of benefit to those titles which present technical rather than substantive objections. Each provision of this act is aimed at removing an otherwise particular weakness in the chain of title.

This curative act is most important for it covers many of the objections to titles which can only be relieved against by statutory action. Such statutes, however, can only cover comparatively narrow problems and to become really effective must be revised from time to time to broaden their scope and bring them up to date. The method of accomplishing this is too difficult and tortuous to make it a complete or satisfactory answer to the problem.

There is, however, one provision in this curative act which is all too often overlooked by title examiners when applying remedial statutes to alleviate defects. This is section 151, chapter 40, 1935 C. S. A., and reads as follows:

"It is the purpose and intention of this article to render titles

to real property and every interest therein, more secure and marketable, and it is hereby declared to be the policy in this state that this article and all other acts and laws concerning or affecting title to real property and every interest therein and all recorded instruments, decrees and orders of court of record (including all proceedings in the suits or causes wherein such orders or decrees may have been entered or rendered) shall be liberally construed and with the end in view of rendering such titles absolute and free from technical defects, and so that subsequent purchasers and incumbrances by way of mortgage, judgment or otherwise, may rely on the record title, and so that the record title of the party in possession shall be sustained and not be defeated by technical or strict constructions."

Professor Aigler of the University of Michigan, in an article recently appearing in the Michigan State Bar Journal, commenting on this section, writes, "This may not be good English, but the spirit is highly commendable."

It is important not only as related to the curative act but as expressing the legislative intent that all acts and laws concerning real property and all recorded instruments, etc., shall be liberally construed so as to render titles absolute and free from technical defects. Thus it applies to all statutes of limitation of every kind and character and expresses the will of the people of our state that a title shall not fail because of technical objections. Our Supreme Court has also expressed itself in connection with this section. In the opinion in the Schmidt case,* it said: "Section 151 declares the public policy and purpose of the action to be such that the record title of the party in possession shall be sustained and not defeated by technical or strict construction. . . . The purpose of this act was to make real estate titles more safe, secure and marketable. To this end a liberal construction is required . . . In interpreting the act, it is necessary to construe its various sections harmoniously. With this purpose in mind *which undoubtedly expresses the legislative intent* we proceed to a consideration of judgment before us."

Here is sure armament for courageous application in the broadest sense of the provisions, not only of the curative act of 1927, but also of the many statutes of limitations, and provides safe ground for the promulgation and realistic use of our title standards.

Statutes of Limitations

The many statutes of limitations enacted over the years provide much the same benefits and are subject to much the same difficulties as the provisions of the curative act heretofore noted. In addition thereto, our legislature has given birth to these statutes with all the biological urge of guinea pigs. We have enacted limitation upon limitation, and imposed one statute

*Federal Farm Mtg. Corp. v. Schmidt, 109 Colo. 467.

upon another. They are to be found attached and inserted in the most unusual manner to an in other statutes which seemingly have no affinity until one may well say "it is a wise little lien that knows all its limitations."

Again these varied and multitudiness statutes have no rational, practical or comparative periods as to the limitations imposed. By way of example, an unreleased deed of trust or mortgage ceases to be a lien after it has remained of record more than fifteen years subsequent to the due date of the indebtedness secured, unless an extension appears of record. If however, suit is brought on the indebtedness, judgment obtained, and levy made in aid of execution, the levy remains a lien for a period of twenty years, but if the trust deed is foreclosed in accordance with its terms and certificate of purchase issued, application for the deed pursuant to said certificate must be made within fifteen months after the issuance of said certificate, or the certificate ceases to be a lien.

The Torrens System

The Torrens System has been on our statutes books for more than forty years. It is the method of title transfers in use in many foreign lands in which property ownership reaches back for many centuries. It has some few ardent supporters who feel that the transfer of land should be made no more difficult or expensive than the transfer of an automobile. On the other hand there are many skeptics. It is quite apparent, however, that the plan has not generally become too useful. Recently a survey financed by a grant from the Carnegie Foundation recommended against the adoption of the Torrens plan for the state of New York.

The difficulties arising out of the implimentation of this plan in Colorado is two-fold. First, the initial cost to the owner in registering his land under this system is too expensive, especially in a state in which so much of the property ownership is rural. Second, the records necessary for proper registration and the issuance of proper certificates require knowledge, capacity and ability upon the part of the county clerk and recorder beyond that of the incumbant in such office in many of the counties in this state.

Standards of Title

The principal of promulgating and adopting standards of title to give uniform and conclusive answers to many questions commonly found in titles has thus far proven to be of inestimable value to the legal fraternity as well as to their clients. The importance of implementing a plan which presents uniformity, practicably and good common sense in the formulation of conclusions of lawyers concerning marketability of titles cannot be overestimated.

Much of the difficulty heretofore experienced in title examinations has arisen from the view point of the lawyer in respect to his duty as a title examiner. He often fails to realize that he is asked for an opinion as to the marketability of the title rather than as to its perfection or imperfection. He

is protected under the law if he has used the care of a usually prudent title examiner. When on any particular point there is no controlling statute or specific law in decided cases, the common practice of lawyers in the community may and should be properly considered in the determination of the marketability of the title. Through the adoption by the bar association of these standards, he has at hand, so far as the questions covered by the standards are concerned, the certainty of what that common practice is. Necessarily then, the failure of his protection comes from his own associates who fail to exercise an independent judgment in respect to particular irregularities in the title. The opportunity of affording such protection arises from the promulgation and operation of standards of title. The success of such a plan depends upon the backing of the bar as a whole.

In Denver and in other communities where the principal is in operation, accomplishments of great importance have been obtained. The standards adopted have been based upon actual problems, all taken from the experiences of members of the bar; none are hypothetical cases. Some may seem altogether too simple and to many may appear to be unnecessary, but it must be remembered that what seems negligible in importance to many may appear of great importance to the few, and through the action of those few become important to all, and so we must seek to eliminate as many differences as possible, be they great or small.

In operating this plan, reliances must be had upon the presumption that lawyers engaged in this branch of labor are reasonably prudent title examiners. If this premise be accepted, it follows, that the standards which are set up more or less in the form of a code after careful study and investigation by representatives of the bar association selected for that purpose should and will be accepted by all title examiners. That they will be given practical effect by the courts and received in evidence as the common practice of lawyers in their community, I have no doubt, and once in evidence, it will take considerable temerity upon the part of a lawyer to risk his professional reputation by testifying as an expert witness that those standards cannot be relied upon and followed by reasonably prudent examiners, especially in this state wherein the will of the people by legislative action has shown their determination that titles shall not fall upon technical objections.

Notwithstanding the fact that some of the standards which have or hereafter may be set up are based upon no statute or decision of court to sustain the conclusion, yet this should not defeat their effectiveness or purpose. Unless and until ultimate decision is rendered they will stand as the common practice among examiners in their community and can be relied upon with safety by all title examiners. Other than the fact that these standards apply only in matters not requiring legislative action, the apparent weakness in the plan lies in the possible failure of members of the bar generally to support these standards once they are set up. But so far as they are adopted and relied

upon, they will to a large extent bring harmony and understanding among ourselves and between ourselves and the public. It perhaps should again be emphasized that reliance upon these standards does not involve the assumption of new risks but rather eliminates the constant fear hanging over the heads of everyone of us.

A review of the benefits in the use of these standards during the past four years will demonstrate the practicable usefulness and benefit of this plan.

Suggestions

In concluding, may I offer the following suggestions, not for affirmative action at this time, but for consideration and study by members of the bar.

1. That a committee be appointed, with needed funds available, to codify the many statutes of limitations affecting real estate titles, with the end in view of establishing a rational uniform and workable codification of limitation statutes.

2. That a committee be appointed to give study and consideration to such general and all inclusive statutes of limitations as are now incorporated in the laws of the states of Michigan and Wisconsin, which in effect permit reliance on record titles covering a period of thirty years prior to date of transfer.

3. That annually (probably in connection with the yearly convention of the Colorado Bar Association) a conference be held of delegates of all bar associations in the state operating under the title standard plan, to co-ordinate and unify the standards adopted by the various associations to facilitate the promulgation of further standards, and to discuss ways and means to further the benefits obtainable from the use of this plan.

4. That effort be made to give effective publicity to the standards adopted so that all lawyers throughout the state may have ready access to the standards in use.

Decalogue Society Essay Contest

The Decalogue Society, an organization of more than 1400 lawyers and jurists of Jewish faith, and devoted to professional and communal interests, announces an essay contest for students in American law schools who have finished their first year of law study. The subject is: "With Due Regard for the Constitutional Guarantees of Freedom of Expression, What Can Be Done to Protect the Community from Tension and Violence Arising from Defamation or Abuse of its Minority Groups, Such as Negroes, Catholics and Jews?"

The three prizes are $300, $150 and $50. Manuscripts are to be 1500 to 3500 words. For further information write Benjamin Weintraub, president, 176 W. Adams St., Chicago 3, Illinois.