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Real Estate Title Standards

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term be initially imposed, with power in the judge to modify the sentence later.

"3. Provide a board of corrections with power to make recommendations to the judges as to sentence in cases where sentence is for more than a year, but with power in the judge to fix the sentence notwithstanding the recommendation of the board."

Every judge intends that the sentence imposed shall be fair and just. Disparity in sentences does not necessarily mean injustice. Each case is an individual case, calling for such sentence as the facts warrant. The report of the federal judges above referred to recommends giving the judge full and complete information before final sentence is passed. No doubt every judge would welcome this.

This is a field which challenges the sincere efforts, the deep thought, and the hard work of every police officer, district attorney, and judge in the State of Colorado.

I believe that this group is properly qualified by experience, intelligence, and sincere interest to lead in the doing of this job.

We are called upon to do our part in an ageless process of administering justice today. Justice should be a strong and firm but also a humane thing. We now serve as public officers. Yesterday others served, and tomorrow still others will take up the work where we leave off. If through patient industry our service leaves the state a little better than we found it, then indeed will we be amply repaid.

Real Estate Title Standards†

BY EDWIN J. WITTELSHOFER*

No greater opportunity has presented itself to the Colorado Bar Association in many years for beneficial and constructive service to the members of the legal profession as well as to their clients than will result from the establishment of uniform standards concerning the examination of titles, provided these standards are uniformly accepted and courageously applied. This is not mere fantastic thinking or conjecture, but is based upon the practical results obtained by the Denver Bar Association and the bar associations in other parts of the State where standards have been promulgated and applied.

Not only in our own state but in five or six other states like plans have been established and with like results. The Real Estate Section of the American Bar Association has given attention to this plan and last year the chairman of the Denver committee was invited to attend a meeting of that section at which time the plans was under discussion.

†An address before Colorado Bar Association, October 13, 1944.

*Of the Denver Bar, Chairman Real Estate Title Standards Committee

The importance of constructing a working plan which will bring uniformity, practicability and good common sense in the conclusion of lawyers concerning the marketability of real estate titles cannot be over-estimated. It is probable that more people come in professional contact with the members of the bar and the operation of law in connection with the sale or mortgage of real estate than in any other branch of legal jurisprudence. The Recorder of the City and County of Denver reports that for the first six months of 1944 over 8,000 trust deeds, warranty deeds, and quit claim deeds were placed of record in his office alone. It seemingly follows that the prestige, respect and consideration of our profession is established in no inconsiderable degree upon the fairness, uniformity, practicability and sanity with which we carry on the work of title examinations.

The situation which confronts the conscientious and responsible title examiner in this regard is pretty well known and experienced by all lawyers whose practice includes title examinations. The extent to which lawyers are now magnifying mere irregularities in titles and demanding correction by suits to quiet title has reached a point almost beyond belief. By way of illustration, recently title was rejected and corrective suit required because in the legal description of a deed the word "addition" was used in place of "subdivision" there being no other addition or subdivision of like or similar name. Again, a resident of the City of Denver purchased a home thirty-three years ago, had his title examined by one of the most reputable legal firms of that day, and lived in the house continuously since the date of purchase without change in its ownership, but on attempting to sell the same was informed that his title was defective and he was asked to bear the expense of a suit to quiet title—this because of some trifling irregularity in an estate through which title was deraigned administered over fifty years ago. What can such a man think—what faith can he have in law and lawyers? How can the prestige of the legal profession be maintained in the light of such circumstances? These illustrations are not hypothetical but actual cases. They are not isolated incidents but have been repeated in the practice of all of you present here today time and time again.

Not so many years ago a lawyer in examining an abstract spent his time and effort in determining if for all practical purposes the title was good and merchantable, but now he must project himself into the field of prophecy and attempt to determine what other lawyers will do in regard to the merest irregularity or purely technical objection in connection with the title in question. There has come to be little distinction between mere irregularities and vital defects. All too many lawyers now seem to believe that they are employed to find out what is wrong with the title rather than to determine if the title is good.

No so many years ago a suit to quiet title, even among those lawyers whose practice consisted principally of title examination, was considered a strange interlude, but today it has become a mere commonplace. Nor can it be said that the supertechnical viewpoint above expressed is now limited to a few lawyers. It may have begun with a few but from necessity the circle widens. From a few it encompasses all, for the practical lawyer must protect himself when all standards of practicability are removed. Unless such a situation is cured, we may logically be charged with being either unmindful of our responsibility or ignorant or forgetful of our duties.

It now frequently happens that a title is rejected by one examiner for no other reason than that it may be rejected by a subsequent examiner. If, however, it could be determined in advance what attitude will be taken by such subsequent examiner, no objection would be made. It is the prime purpose of the plan of setting up title standards now in operation in some parts of the state to determine in advance what that attitude will be.

Again, much difficulty arises from a lack of uniformity among examining attorneys in regard to what is or should be required of record to make a merchantable title. By way of illustration: some lawyers insist that a certified copy of letters be placed of record in sales of property under order of court, notwithstanding the order of confirmation of sale; or that the assignment of a public trustee's certificate of purchase be required of record in passing title, while other lawyers desiring to relieve against the steady increase in cost of abstract entries are not requiring such recordation. It is perhaps not of supreme importance whether such instruments be recorded or not, but it is important that uniformity be established with reference thereto. Many a lawyer has been subjected to his client's criticism because he has applied common sense and sane judgment in his endeavor to save for his client unnecessary cost and expense.

Much of the difficulty of the present situation arises from the viewpoint of the lawyer in respect to his duty as a title examiner. He fails to realize that he is asked for an opinion as to the marketability of a title and not as to its perfection or imperfection. He is protected under the law if he has used the care of a reasonably prudent title examiner. When there is no controlling statute or specific law in decided cases the common practice of lawyers in the community may be properly considered. Necessarily then, the failure of his protection comes from his own associates who fail to exercise an independent judgment in regard to particular irregularities in the title. The opportunity of affording such protection arises from the promulgation and operation of standards of title such as are now in operation in Denver and in other communities

of the State. The success of such a plan depends upon the backing of the bar as a whole.

In Denver and in the other communities where said plan is now in operation, accomplishments of great importance have been obtained through the setting up of standards for the guidance of all title examiners. These standards have been established based upon actual problems all taken from the experiences of the 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 may seem 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 should seek to eliminate as many differences as possible with respect to all problems, be they great or small.

In undertaking a plan for setting up standards reliance 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, investigation and conference among the 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 court and received in evidence as the common practice of lawyers in that community we 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.

Notwithstanding the fact that some of the standards which have or may hereafter be set out are based upon no statute or decision of court to sustain the answers, yet this should not defeat their effectiveness or actuality. 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.

The only apparent weakness in the plan proposed may be the failure of our members generally to support these standards once they are set up. If 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 be again emphasized that reliance upon these standards does not involve the assumption of new risks but rather eliminates the constant fear now hanging over the heads of every one of us.

It is quite likely that the inspection of some of the standards now promulgated and in use in Denver will demonstrate the practicability and usefulness of this plan.