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Albert S. Isbell

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By ALBERT S. ISBELL*

Before pointing out some of the more common defects and my conclusions with reference to them, I believe a few remarks concerning the term "marketability" are necessary.

Unfortunately, each individual examiner has his own idea of what constitutes a marketable title, and usually in Denver, the examining attorney's opinion of a marketable title is one, not which a reasonable attorney will pass, but which all examining attorneys must pass; and the examination is made on the theory that the title must pass the most technical examiner.

Patton on Titles defines a marketable title as one "so free from all fair and reasonable doubt that a purchaser would be compelled by a court to accept it in a suit for Specific Performance," and an unmarketable title as one "with such a material defect as would cause a reasonable doubt in the mind of a reasonable, prudent, and intelligent person, and cause him to refuse to take the property at its full or fair value." The statement is made that while examiners should be cautious in advising clients as to the acceptance of a title, they must remember that a purchaser cannot legally demand one absolutely free from suspicion or possible defect, but may require only such a title as prudent men well-advised as to the facts and their legal bearings should be willing to accept.

Many defects are found in titles to Denver property which arose many years ago, often before a plat was filed, and generally it is apparent from an examination of the title, not only that the particular title has changed hands many times, but that many other titles affected by the same difficulty also have changed hands many times. Some attorneys have felt called upon to record documents which they felt were necessary to complete the record on the particular title in which they were interested, disregarding the fact that the recording of such a document might affect thousands of other titles and could result only in additional abstract expense to many other property owners.

Almost every examiner, at one time or another, has come to the conclusion that the title he has examined is safe from attack, but from a technical standpoint, is not marketable; that is, that his client will

*Of the Denver Bar.

run into difficulty on a sale of the property because the next examiner may refuse to pass the title. He is not afraid of the title, but of the next examiner; the big bad wolf, technical objections.

I am firmly convinced that the examiner should concern himself more with the fact that the title has been examined many times and that the title has in fact, been accepted many times by prudent men, well advised as to the facts and their legal bearings. In this manner, he at least will have a firm foundation not based on guess work.

In actual practice, however, the examining attorney has disregarded those things by which he has every right to be guided and has concerned himself only with what he thinks some future examiner might require, which leads only to confusion.

Defects in titles, for the purpose of my discussion at least, may be divided into two classes: real and technical, and the technical defects might better be called imaginary. In the first class would come forged instruments, deeds executed by an attorney in fact after the death of the principal, deeds executed by insane persons, deeds executed by a person who describes himself as single, but who was in fact, married, and a homestead claim appears of record, and various other defects which may actually exist, but which might not be disclosed by an examination of the records. This class of defects should hardly be included in the more common defects in Denver titles, and have no place in this discussion.

It is the second class with which we are now chiefly concerned, and I have tried to classify these more common or technical defects into two groups: First, those affecting entire additions, or large groups of lots, and second, errors or mistakes in conveyances affecting only the particular title.

Before the plat of Bellevue was filed, Richard I. Whiteford acquired title in 1878. Shortly thereafter, Richard John Whiteford executed a deed of trust and in 1885 Richard J. Whiteford conveyed by warranty deed. We assume, of course, that the initial in the original deed was *J*, but it is clearly an *I* on the records. If such a discrepancy appeared recently in any particular title, I believe most examiners would strenuously object to the title. I do not know of any attorney, however, who has made any objection to any title in Bellevue because of the above situation.

In the title to Honneckes Addition, Charles Hannecke owned the property. Title comes through the estate of Carl Honnecke, deceased. In the proceedings, the name, Charles and Carl are shown to be names of the same person, as also are the names Honnecke and Hannecke. Jeremiah Martin Honnecke was one of the heirs while Jerry Honnecke joins with the other heirs in conveying most of the property in the

addition. An affidavit signed by Sophia M. Honnecke Latkovich was recorded in 1926, which recites that Jerry Honnecke was Jeremiah Martin Honnecke. If the examiner required the identity to be established by documents admissible in evidence under the rules of evidence, he could not pass the title. However, I do not know of any titles in this addition which have been rejected because of this situation.

In the title to Lake Park, William Nickerson acquired an interest in 1888. Title comes through the Will of William Wilkinson and an affidavit was recorded in 1909 stating that the grantee in the original deed was, in reality, Wilkinson and not Nickerson. This situation affects at least all of Block 6, Lake Park. I am advised that the entire block is improved and do know that several examiners have passed titles in this block.

In the title to Inslee's Addition to the City of Denver Amended Map, Joseph A. Inslee had title. Conveyance is made by his heirs but there is no proper recital in the deed and no determination of heirship so far as I know. An affidavit stating that the grantors are the sole heirs has been of record for many years. The objection covers the entire addition and generally is not even mentioned in the opinions of most examiners.

In 1893, a race occurred between representatives of The American National Bank of Leadville and The Carbonate National Bank of Leadville. Each bank had a judgment and the representative of The American National Bank won the race from Leadville to Denver. An attachment under the judgment of The American National Bank of Leadville was recorded on July 11, 1893, at 10:10 A. M., followed by an additional attachment recorded at 11:10 A. M. At 12:40 P. M. an attachment was recorded under the judgment held by The Carbonate National Bank of Leadville. Suits with reference to these attachments were carried to the Supreme Court and are reported in 22 Colorado at pages 37 and 44, respectively. The attachments were held to be valid as attachments against the property of Richard Cline. Richard Cline had executed a deed dated March 18, 1890, but not recorded until July 12, 1893, conveying the property to John L. Jerome. A certificate of sale under the attachment by The Carbonate National Bank of Leadville was issued to Charles Cavander, Trustee, recorded May 5, 1894. This certificate of sale remains outstanding on the records.

Title comes through certificate of sale under the first attachment by sheriff's deed issued to The American National Bank of Leadville, recorded March 8, 1898. This situation affects some lots in H. C. Brown's Second Addition and in Central Capitol Hill Subdivision, also a large number of lots in Bohm's Subdivision Second Filing.

I believe that all of the property is improved at the present time, and know that many purchasers accepted the title for many years.

Finally, however, some attorney brought a quiet title suit which lighted the fuse. The first suit was followed by several others.

My own opinion is that the record title was good in the first place, and that the title was not objectionable. Even, however, if the situation could be considered to be such as would render the title unmarketable if it affected only one parcel of property, it would seem to me that any purchaser would be justified in taking into consideration the fact that the situation did affect a great deal of property, and that many other purchasers had, in fact, previously accepted the title. The attorney who brought the first quiet title suit should have been willing to consider the definition of a marketable title, and should not have taken it for granted that he was the first to find the situation, or that his opinion was better than that of a large number of his predecessors.

A great deal of property comes through the Estate of Frank Palmer, deceased, No. 379, in the Denver County Court. In 1939, someone felt called upon to record certified copies of receipts for legacies in this estate, probably because the estate was never closed. These receipts now appear on many abstracts and serve merely to call attention to the estate which had been passed by examining attorneys for many years. Stebbins' Heights has been passed to the map, not hundreds of times, but literally thousands of times, yet recently a letter was recorded concerning the patent. A short time ago, someone recorded inheritance tax receipts in the Margaret B. Berger estate and in the Horace B .Hitchings estate. These instruments combined undoubtedly will appear on ten thousand abstracts. Figure it out. We had the Boston Tea Party because of taxation without representation. What about the property owners who pay the bill?

A defect which commonly occurs in individual titles is shown by a quiet title suit, No. 46019, recorded May 24, 1909, in Book 2091, page 199, affecting lots in Berkeley. Unknown persons were not named as parties defendant, and service was had by publication on all parties. I believe examining attorneys generally will reject titles based upon this and similar quiet title suits, not because they are unwilling to rely on the seven year statute, but because there may be parties interested in the subject matter who were not made parties to the suit as required by the Code; and the decree, of course, could be considered effective only as against the defendants named. Since service was had by publication, there is no proof that the defendants were alive and, therefore, unknown parties were necessary parties defendant.

Another common objection arises due to the fact that in many cases, the ages of minors are not shown in estates. This situation appears in the title to Lots 22 and 23, Block 19, Bergers Addition to Denver. In the Estate of David A. Wilkie, No. 52852, and the Estate

of Anne MacKay Wilkie, No. 49330, Charles Edward Wilkie was shown to be a minor. He joined in a conveyance recorded April 4, 1938. Inquiry from the Bureau of Vital Statistics disclosed the fact that he was born June 18, 1915. The question arises as to whether proof should be required that the grantor is no longer a minor.

Every examiner has found a deed wherein the grantee is shown to be a man followed by a deed executed by a woman as grantor with the same name as shown in the first deed. Probably the easiest way out of such a difficulty would be to have a deed executed by the grantee leaving out any reference to gender of the party. George Winters' experience in this connection is rather interesting. A. Jones presented herself stating that she was the owner of a piece of property which was conveyed to A. Jones, a man. Investigation disclosed that her husband had died recently, and that his initial also was *A*. George drew his own conclusions.

Many defects occur in acknowledgments. In some cases the acknowledgment is dated prior to the date of the deed and in other cases, the acknowledgment is dated subsequent to the date of recording. Some attorneys object to these deeds, while others pass them. In most cases there is no real doubt in the examiner's mind that the deed was in fact executed and acknowledged. Why, then, is the title unmarketable? The fear of the next examiner.

Many objections have been made to titles where the defect is apparent but not real, such as a defective description where the correct name of the addition is not given and the addition as it appears in the description could be easily confused with some other addition; but the description is followed by the street address or by the location by section, township and range. If an examination of the entire instrument leaves no ambiguity, the title should not be rejected because of an immaterial imperfection.

No discussion of common defects would be complete without a reference to descriptions in downtown Denver where the lots do not run north and south or east and west, but at an angle. Many downtown titles are described as perhaps Lot 4, and the south ½ of Lot 3, or perhaps, the southwest ½ of Lot 3, without any indication that the half indicated is the half adjoining the full lot described. In the chain of title, probably some of the deeds will indicate that the half lot is the adjoining half lot. While some attorneys still are seriously objecting to such descriptions as being ambiguous, ordinarily an examination of the entire record and the chain of title should be sufficient to dispose of any ambiguity in the description.

In conclusion, let us remember that titles and whiskey have this in common—both improve with age.