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The Making of An Abstract

By MINNIE H. OAKES

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No authentic information is obtainable as to the exact time abstracts of title were first made. Many authorities claim that the making of abstracts of title originated in England in the latter part of the eighteenth century, but we may go back even to the Bible, where we read that Jeremiah bought from his cousin, Hanameel, a field in Anathoth for seventeen shekels of silver, "subscribed the evidence and sealed it and took witnesses" and was instructed to take "this evidence of the purchase, both which is sealed and this evidence which is open and put them in an earthen vessel, that they may continue many days".

Formerly, land was passed on by the law of descent or distribution, and the deeds or evidences of purchase, documents and mementoes were safely kept in urns or metallic boxes, labeled, and handed down from one generation to another. When values were low, and transfers were few, this plan was practicable. Later, as both increased, and the buyer became more concerned as to his property rights, a system of registration of these metal boxes containing the muniments of title was adopted. About 1875, it became an English practice for the Vendor to have his solicitor prepare a synopsis or chain of title from these documents, together with family histories, pedigrees and genealogies, thus keeping the documents from going out of his possession, and at the same time permitting the Vendee to examine the title at his leisure. Owing to the great loss of the solicitor's time in arranging the documents, this practice led to the making of abstracts of title as a separate business. The legal profession took to this method more readily in America than in England

where the idea originated, hence the abstract and attorney system.

Abstracting of titles as a business is now essentially American. The methods used in operating abstract plants are constantly being modernized and the standards raised.

An abstract should be a complete, accurate, epitomized history of a title to a designated tract of land between two specified dates. It should be a condensed collection of material information from recorded evidence free from any opinion as to the legal effect of any instrument or as to the rights of any parties named therein. The progressive painstaking abstracter observes a concise, systematic method. He compiles material data only, giving exact facts for the convenience of the attorney, who is to determine the relative rights and legal questions involved. He must not infringe on the attorney's rights, but, at the same time, he must eliminate irrelevant and distracting details, thus affording the examiner a convenient and speedy means of ascertaining the state of a vendor's title.

The competent abstracter should have some knowledge of law, also of conveyancing, descent, inheritance and such branches of law as affect real estate. He should be able to construct a diagram or plat of any property. He must be familiar with local records, changes in names of streets, etc. If, for instance, he runs across a description of the block bounded by Clancy and Wapoola and F and G streets he must know that this describes the Court House block bounded by Court Place, Tremont, 15th and 16th streets. He should be able to trace a description which "begins on

the dividing line between the lands of John Doe and Richard Roe where it joins an irrigating ditch now used to run the old mill, running thence to a maple tree on the bank of the old bed of the South Platte river, from thence to the fence dividing the land of Geo. Smith and Mary Jones etc." and he must figure out the description from maps and conveyances in existence at the time the instrument was given.

Many advantages result from a harmonious relationship between the abstracter and the examining attorney. Each should consider the other's rights. Too many technicalities, too much dictation, on the part of either causes resentment. Honest, conscientious co-operation is essential to mutual success. Their relation to their clients is similar. They both possess confidences of vital importance, and they are aware of the defects and weaknesses of titles as well as clients.

The Denver records show the "Block Book" where squatters claims were registered as early as May 1859, but the first Probate deed was not recorded until August 1865.

The City Charter was issued September 10, 1861, when the little towns of Auraria, on the West side of the junction of the South Platte river and Cherry Creek, and St. Charles, on the Eastern bank consolidated, and Denver sprang into existence. Then the question of taxation came up, and gold dust was considered legal tender by order of the Legislative Council. A portion of the old City Hall was swept away in the flood of May 10, 1864, together with the municipal safe and all valuable documents, and was never recovered.

Mr. Hal Sayre of this city who is the oldest abstracter in the State, began making abstracts in 1863, in Central City, when the gold excitement was so great that it kept the receiving clerk in the recorder's office busy

every minute, the recorder's fee being \$2.50 for each deed. Mr. Sayre tells of a mining deed conveying the Gunnell Lode placed of record actually reading: "For and in consideration of one hat (and d—d glad to get the hat) I hereby convey" etc.

The big mining excitement in Gilpin County began in 1863. Bela Buell was County Clerk and Recorder, Hal Sayre was his Deputy, and Horace Atkins, Assistant Deputy. Mr. Buell dabbled in mines and made quite a little money, then he decided to go to New York to spend it. He left Sayre and Atkins to run the place. Upon Buell's return three months later, he found \$14,000 in fees deposited in the bank, and a force of 19 clerks. That fall, Sayre, Atkins and Ed Parmelee decided to start a *regular* abstract office at Central City. Sam Landon was their clerk. Later they established an office at Georgetown with Sam Landon in charge. In 1874, Sam Landon took his pay check and his bride and moved to Denver. He went to work for Daniel Witter, abstracter, on one of the two sets of books now in use by The Landon Abstract Company. The Pueblo people then wanted an abstract office, so Mr. Parmelee left Georgetown and made a set of abstract books in Pueblo, which are in use to-day.

About this time mining quieted down, and the abstract business went to the wall. Sayre and Parmelee locked up their Georgetown office, and the books, numbering about 20 volumes, remain stored there to-day, and may be had at a reasonable figure. The Gilpin County books, of Central City, numbering about 30 volumes, are now in the basement of Mr. Sayre's home. They are complete down to 1873. Mr. Sayre has offered them to the State Historical Society where they will be placed in the Museum at 14th Ave. and Sherman St. In looking over the Gilpin County records, one finds deeds

and powers of attorney, a few scattered mortgages, numberless pre-emp-tions, but no wills. Men "died with their boots on" in those days and had no time to draw Wills.

One very interesting document of record in Gilpin County, is a pledge, signed by four or five prominent lawyers who had all been hard drinkers. They mutually agreed to abstain from drink, and moreover, should one of them violate the pledge, he was to be "ostracized, and considered incapable of any respectable action thereafter".

John Howard, an old lawyer, a unique character, in the early days married a woman he met in Prescott, Arizona. Later she took a fancy to another man, it is reported, and came to Denver with him. Howard wrote out a Bill of Sale to the wife in favor of the fellow she ran away with, "quit claiming, releasing, transferring and forever renouncing her in his favor". Suggestion: possible substitute for divorce.

Some very unusual and amusing incidents occasionally enliven the dull routine of the abstracter. He is asked such questions as: "Do you furnish abstracts of character? Neighbors have been talking about me and I want an abstract". Not long since the questioner "wrote her title clear to mansions in the skies".

In the damp days of yesteryear, a mixer of liquid refreshments of the famous old Tortoni called and said, "Rod Kavanaugh sent me for the extract". He was handed a pink covered document. He studied it a moment, then burst in laughter and explained that he supposed what Kavanaugh wanted was some syrup for the bar.

Formerly it was not unusual to be asked if we sold "extracts" by the quart, gallon or barrel.

The abstracter is frequently berated for not showing title in some one who has failed to record his deed, for not

showing a release of a certain trust deed (also unrecorded). A buyer agreed to "consume" the mortgage on the property he acquired.

On one occasion, a colored man brought back his abstract on which there appeared an outstanding tax sale on improvements—covering the taxes of the year prior to the date of his patent. He objected vehemently and vociferously argued that any assessment prior to the time he actually received his patent was all wrong. "No sah, no sah, 'taint right. Yo' 'caint *recess* a man's land till after he done gits his *Pattern*". Another man bought a lot on the edge or bank of Cherry Creek and when asked if he wanted an abstract on his lot replied, "Well, I hardly know. I suppose it would be all right unless the high water should come up some time and vash it all away".

The abstracter's duty of uniting the past with the present is not entirely an unpleasant one.

*"For he lives twice, who can at
once employ*

*The present well, and e'en the past
enjoy".*

One Way to Get Good Title

Hamilton's recipe for obtaining good title in ejectment, which he scribbled on the margin of a brief, in the case of Livingston vs. Brown, in which Chancellor Livingston claimed title to a large tract of land in the possession of the defendant and appeared in the case in his own behalf, evidently was intended to describe Livingston's title:

"Two or three void patents, several old exparte surveys, one or two cases of usurpation acquiesced in for a time, but afterwards proved such; mix well with half a dozen scriptural allusions, some ghosts, fairies, elves, hobgoblins, and a quantum suf. of eloquence".

—*Estabrook* 1901