February 1931

Abstracts of Title As Used in Cook County

Walter B. Smith

Follow this and additional works at: https://scholarship.kentlaw.iit.edu/cklawreview

Part of the Law Commons

Recommended Citation

Walter B. Smith, Abstracts of Title As Used in Cook County, 9 Chi.-Kent L. Rev. 78 (1931).
Available at: https://scholarship.kentlaw.iit.edu/cklawreview/vol9/iss5/10

This Article is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact dginsberg@kentlaw.iit.edu.
ABSTRACTS OF TITLE AS USED IN COOK COUNTY

Walter B. Smith*

An abstract of title in the sense in which the phrase is now used is a summary or compilation of all essential facts concerning the title to a lot or tract of land appearing upon the public records, which a purchaser of such land is required by law to search in order to learn the condition of the title to such land. The making of abstracts of title is a profession which taxes the knowledge and skill of experts of many years experience, and calls for great ability. Most makers of abstracts are attorneys at law, and indeed a legal education is almost essential, although it is possible for one to learn by application and long experience enough of the more usual rules of law to make a passable abstract.

It will aid one not versed in this branch of legal work to acquire some general knowledge of just what an abstract is and how it is made. In making these points clear, a resume of some matters in connection with the Conveyance Act and the laws regarding the recording of instruments concerning land title will not be amiss.

Section 29 of Chapter 30 of the Illinois Revised Statutes provides that "all deeds, mortgages, powers of attorney and other instruments relating to or affecting the title to real estate in this state shall be recorded in the county in which such real estate is situated." Section 31 of the same chapter declares that "all deeds, mortgages, and other instruments of writing which are authorized to be recorded, shall take effect and be in force from and after the time of filing the same for record, and not be-

*Professor of Law at Chicago-Kent College of Law; formerly Senior Title Officer, Chicago Title & Trust Company.
fore, as to all creditors and subsequent purchasers without notice; and all such deeds and title papers shall be adjudged void as to all such creditors and subsequent purchasers without notice, until the same shall be filed for record.” Chapter 115 of our Revised Statutes defines the duties of the Recorder, and Section 13 of this chapter requires the Recorder to keep, as well as the books of records, in which each recorded instrument is transcribed at length, the following: first, an entry book, in which each instrument is serially entered in the order of its reception; second, a grantor index; third, a grantee index, in which last two named books are indexed, alphabetically, each instrument received, with reference to the book and page of its recording; and lastly an index to each book of records.

With all this administrative machinery to aid him, it would seem to one not versed in such matters, a simple thing to trace the title to any piece of land in which he is interested. He knows the name of the present owner, who is offering it for sale. By reference to the grantee index it is possible to learn from whom the present owner purchased, and by following the same method each successive step in the devolution of the title may be traced. By examining the grantor index covering the time during which each owner held title, it may be learned whether or not the property was conveyed or mortgaged by the owner prior to his conveyance into the chain of title of the present owner, and, if mortgaged, the releases or discharges of such mortgages will be found in the grantee index entered in the name of the grantee in the instrument of release. The foregoing method is now in use in counties where the number of records is small, and it was also the method in use in early days in what are now our largest cities. This method, however, is entirely impracticable in the present day, where great numbers of transfers are filed, and hence it has become practically obsolete. It can be read-
ily seen that in a city like Chicago, for example, where from one thousand to twelve hundred deeds are filed daily, the search of the indexes could not keep up with the entering of new deeds in the index. Again, referring to a local catastrophe,—still called “The Great Fire,” which occurred in October 1871, destroying the entire business district of Chicago, all the records of every nature were burned as well as the Court House in which they were contained. As the destruction of the book containing the record does not destroy the legal effect of the record, every purchaser is charged by law with notice of what was contained in these burned volumes. As our Supreme Court said in a case concerning the destruction of the records, “The situation of owners of property in Chicago was appalling.” How the situation was met will appear later in this article.

When the first recorder opened his office in Chicago his first deed book was lettered “A.” The first deed was filed December 2, 1831, and Book “A” was not filled until July 26, 1834. The books were designated by letters until the letter “W” was reached. Still, the filings were light, and for nearly twenty years after the opening of the office many, if not most, of the title searches were made by search of the name indexes required by law to be kept. During the later part of this period such work was done by men who had become specialists in this work, and who, through their experience and skill, as well as their knowledge of local history, had accumulated a fund of information which aided them greatly in their line of work. Many of them were former employes of various of the recorders, and their work, while it would seem crude today, served the needs of that generation.

But with the growth of the city, and especially the opening of the Illinois and Michigan Canal, in the year 1848, the volume of conveyances multiplied, and the old method was found wanting. We are indebted to a Philadelphia conveyancer, J. Mason Parker, who arrived in
Chicago about 1848, for the introduction here of the method now universally in use, namely, the method of Tract Books. For the method of land surveys which made tract books possible we may thank Thomas Jefferson, who formulated the rules under which the whole of the Northwest Territory, as well as much of the remainder of this country, was surveyed. Under any other method of survey the difficulties in installing a system of tract books would be tremendously increased. This is not the place for a discussion of the salient points of this plan, and for the present it is sufficient to say that it involves the dividing of the area of the state into rectangles six miles in length and breadth, known as townships, these being divided into thirty-six equal parts, each containing one square mile or six hundred and forty acres, the townships being located by numbering north or south from an arbitrarily located base line, and east or west from another arbitrarily located meridian line. With these governmental divisions to work from in the matter of location, it will be seen that every square foot of land in the area so surveyed could be accurately described and located by reference to the official monuments so established by the government's surveyors a hundred years ago. So Mr. Parker abandoned almost entirely the use of name indexes as a method of following out chains of title, and boldly established a new system. A set of books was opened, with an account, as it might be called, for each section of land in a township. Where conveyances were more frequent, or where the land had been divided into city lots or small tracts, the division was carried further, but the point was that on each page, or account, every transfer was posted which described the land on that page, entirely without regard to whether or not the deed was made by anyone in the chain of title. By this method no name search was necessary for conveyances, as all deeds affecting the title to a tract of land could be found on the page of the book set apart for that
tract. From this origin came the system of tract books now universally in use. All deeds are now posted according to the foregoing method, except those deeds which describe the land conveyed in such general terms that the land cannot be located for posting in the proper book.

These indefinite descriptions make necessary a supplemental set of indexes in which are posted such deeds, indexed under the grantor's name. These books are known as the irregular books. In these indexes are also noted many other matters which are found on record elsewhere than in the Recorder's office, such as estates in the Probate Court, bankruptcy and insolvency matters, insanity cases, and others where no real estate is described in the proceedings.

So far we have noted little, save items to be found in the Recorder's office. Many other records remain to be searched before the true condition of the title can be ascertained. Taxes are liens on land, and the collection of the same is enforced by sale of the land delinquent, and followed in due course by a deed of an official conveying the land. Public improvements are made and paid for by a special tax or assessment collected in the same way. Judgments in the various courts in the county are liens on land from their rendition. Suits of various sorts are notice from their commencement. So, a complete set of abstract books will comprise, not only the tract books and irregular indexes, but a complete set of tax sale indexes, special assessment indexes, both laid out as are tract books, by description rather than by the owner's name, and full docket's of all suits filed in all the courts, as well as a judgment index. These are kept up-to-date by men skilled in this work, who list each day every deed and suit filed, every special assessment confirmed, tax sale had, and judgment entered. The data thus collated is posted by others in the various books, so that the indexes are never permitted to fall behind. This in itself is no small job, as the filing of 1700 deeds in a
single day is not unusual in the Chicago office, and over a billion instruments have been filed for record in that office in the last fifty-seven years, or since the Great Fire referred to above.

When the court house was burned in 1871, the entire business district which surrounded it was also destroyed. The firms engaged in the making of abstracts of title found their offices in flames that Sunday morning, October 8. But with a loyalty worthy of emulation, some of the employes of these firms succeeded in saving part of the books used by their employers, and in removing them beyond the reach of the flames. No one office succeeded in saving all of its plant, so when the city got its breath after the disaster, the three former competitors, Chase Brothers, Shortall & Hoard, and Jones & Sellers, found that by combining their salvage they would have a complete set of all the necessary books, with some duplications, as well as letter press copies of a large number of abstracts theretofore made. These, however, were not evidence of title under the existing law. In March and April, 1872, the legislature passed the statute known as the Burnt Record Act, under which, with proper restrictions, these books of original entry, indexes, and letter press copies, were made admissible in evidence in certain classes of proceedings and an entirely new method of resting title by short and simple suit was established. On this statute and these salvaged books rests the title of every foot of land in Cook County, with its billions of value and its limitless commercial and business activities.

The very word "Combination" has in many ears an odious sound. So when the three firms named above combined to render a service no one alone could give, competition sprang up. It seemed a simple thing to start such a business. There were no records to go over, as none existed, and everything was new. So several firms, with more hope than endurance, bravely started, "where angels fear to tread." Only one survived. Haddock,
Coxe & Co., afterwards Haddock, Vallette & Rickcords, continued in business until 1895 (when it became a corporation under the name of Security Title & Trust Company.) In 1884 Jerome J. Danforth, formerly a deputy recorder, procured skeleton copies of the tract books in the recorder's office, and organized the Cook County Abstract Company, which later became the Chicago Title and Trust Company. The three original firms, after changing name and partners, about 1887, became the Title Guarantee and Trust Company, and in 1901 these three corporations consolidated under the name of Chicago Title and Trust Company. In 1905 Mr. Danforth again ventured into his former business, and organized the Real Estate Title Guarantee and Trust Company. This company in 1911 merged with its competitor, the Chicago Title and Trust Company and said Chicago Title and Trust Company is now the only corporate maker of abstracts. In 1887 the legislature authorized the recorder to compile a set of tract books, which having fallen into disrepute was rewritten in 1906, and is still used by the recorder in making abstracts.

Thus far we have dealt only with the plant necessary for the making of an abstract. Most abstracts are continuations or extensions of one formerly made. Let us say, you make application for the extension which you need. The order is taken in writing, and with the former abstract is turned over to a clerk who writes on proper blanks the caption and the starting date to which the former search is brought. These in duplicate are turned over to clerks in the various departments, so that one searches the tract books for deeds filed since the former search, another for tax sales during the period, and a third for assessments during the same period. The tract book searcher, or chain maker, as he is called, lists all conveyances which he finds, and his work is revised by another. It is then sent to indexers, who search on the office list for copies of deeds which may be found in the
office, and who note the record book and page of any which may not be so found. This is then sent to the recorder's office, where such deeds are abstracted by men skilled in this branch of the work. In passing, it may be noted that there are now over 22,000 volumes of records in this office. While this is being done, the tax searchers have examined for tax sales, and if any are found, the sale record is scrutinized to see if redemption has been made during the time allowed by law for that purpose. The searchers for special assessments confirmed during the period have also been busy, and if their search shows any such assessments, examination is made at the various offices where payment may be made to cover any such assessment. When these are complete all are returned to the office for further compilation, and are given to the examiner, so called, who arranges the various items in the proper order, and lays out his judgment search and the search for irregular deeds above referred to. Should the chain show a suit describing the land in question, search is made in the chancery department, and proper abstract is made of the suit. The examiner makes a search of the title as disclosed by the abstract left for continuation, and, should he find any omissions or errors which are curable by affidavit, searches for any curative matters which may have been filed. When all searches have been completed they are returned to him, and the abstract is then finally arranged and transcribed by typists and compared for error. It is then scrutinized by the final reviser, and if approved is run through the letter press, signed, bound, and delivered to the customer. He, if a layman, should give it to an attorney who knows the law of real property, and employ him to render his opinion as to whether the title should be accepted. It must be borne in mind that the abstract company does not profess to tell whether the title is good or not, but merely gives a faithful summary of what the record discloses. To pass intelligently upon the questions which may arise.
in any abstract, an attorney must be experienced, careful and thorough. No branch of the law calls for greater knowledge or application than does that relating to real property.

Much has been said about the experience and reliability of an abstract maker. Only those who can qualify along these lines could make a "merchantable abstract," which has been defined above as being such an abstract as is accepted by attorneys familiar with local customs and requirements. It is easy to see that, upon the question of merchantability in connection with abstracts which he is called upon to examine, the general opinion of attorneys in Chicago is the basis for deciding whether or not abstracts made locally are or are not merchantable. The following list comprises all names of abstract makers whose work is universally accepted in Chicago by attorneys of experience:

Edward A. Rucker,
Rees & Rucker.
James H. Rees.
J. H. Rees & Co.
Rees, Chase & Co.
Chase Bros.
Chase Bros. & Co.
J. Mason Parker.
Bryan & Borden.
Greenebaum & Guthmann.
Page, Shortall & Co.
John G. Shortall & Co.
Shortall & Hoard.
Handy, Pasdeloup & Co.
Wilmans & Pasdeloup.
Fernando Jones & Co.
Jones & Sellers.
Handy, Simmons & Co.
Handy & Co.
Haddock, Coxe & Co.
Haddock, Vallette & Rickcords (except their abstracts relating to Hyde Park property purporting to be based on the books of Brackett & Waite).

Haddock, Vallette & Rickcords Co.
Security Title & Trust Co.
Cook County Abstract Co.
Cook County Abstract & Trust Co.
Title Guarantee & Trust Co.
Chicago Title and Trust Company.
Real Estate Title and Trust Company.

Copies by any of the foregoing firms of abstracts made by that firm or by any other firm in the above list.

Copies of copies, no matter how far removed, so long as all of the certificates are by one of the foregoing firms, are generally but not universally considered merchantable.

The same experience results in listing as unmerchantable abstracts or copies thereof made by the following:

D. O'Hara.
Wm. H. Haase.
Samuel Straus.
Hawley & Mueller.
A. F. C. Mueller.
A. D. Wilmanns.
Alexander Dixon & Co.
Robert C. Givins.
Brackett & Waite.
Campbell W. Waite & Co.
Otto Peltzer & Co.
Crawford C. Smith & Co.
Gillmore, Pollock & Co.
C. C. Gillmore & Co.
Wilmanns & Thielcke, after the fire of 1871.

Haddock, Vallette & Rickcords abstract purporting to be based on the books of Brackett & Waite.
Copies certified by a notary public or by any other than a firm or corporation whose abstracts are merchantable.

A thoughtful student of civic affairs will see that a good abstract company occupies an important place in the development of a community. No state ever grew upon its own capital, but relies always upon that of older communities. Capital is a shy child, and will keep away from neighborhoods where uncertainty is found. An outstanding instance may be found locally in the tract generally known as Streeterville, which, twenty years ago, was a waste, vacant and unsightly. The title was, and had been for years, in litigation and investors would have nothing to do with it. When the title was cleared capital leaped in, and the district now contains many large and impressive structures, among them being the beautiful buildings of Northwestern University, the noble Tribune Tower, the Furniture Mart, said to be the largest single building in the world, and the famous Drake Hotel. In anticipation of the needs of his customers, the abstract maker must constantly pour money into the maintenance of his plant. It must not be permitted to run behind. Constant use wears out any book, even the most endurable requiring replacement. Payment of assessments made in the various villages must be followed up at frequent intervals. The judgments entered in the many courts must be posted promptly. Tax payments must be checked and verified. Where an efficient abstract office is maintained uncertainty of titles is prevented and capital is found ready to enter and to aid development. Such an institution is worthy of loyal support.