

TITLE SEARCHING AS RELATED TO SURVEYING *

By Carl A. Lundgren, *Attorney at Law, President of Valley Abstract Co., Ansonia.*

MY subject has to do with that branch of your profession which measures, establishes describes and plots the area of the earth's surface which we ordinarily consider an Owner's lot or an Owner's parcel of land; and the relationship of that branch of the legal profession which renders opinions as to the extent of the Owner's interest, rights or privileges therein. In an absolute wilderness where the law of the mighty or of the jungle prevails, your services perhaps would be more in demand than would ours. Boundaries were generally established between most warlike tribes, but as long as a man's rights or interests in a parcel of land depended on the strength of his arm or the length of his spear there was not a need for a system of recording or of opinions as to a man's right to the cave he occupied or the land on which he hunted or harvested his wild fruits or berries.

Man's relationship or what we call his "ownership" of land becomes increasingly complex in direct proportion to the growth of human society. The path between two caves was as important to communal life in the dark ages as the Connecticut Throughway is to us, but the maintenance of the path between was easier to charge to the owners of the cave than the cost of the Throughway is to charge to the farmer of Oxford, the estate owner in Greenwich or Broadcast House in Hartford.

In the sense of absolute control no man can be omnipotent as to a parcel or lot of land because land is indestructible and man is not in absolute control of that which he can not destroy. Left to himself, man can abuse terribly his land. He can fill it with junked automobiles, he can strip it of its soil and he can demean it with hideous buildings and architecture. In his many and various activities and in his relationship to the ever-increasing demands of the communal life we call civilization, a man's interest in his plot of land becomes more and more restricted and more and more subject to the reciprocal rights and duties of every other man's plot of land. A man's land must share in society's cost of maintaining the roads between all his neighbors' lands and as the roads get better his circle of neighbors extends farther and farther away. A man's land becomes chargeable for the cost of schooling his children, protecting his safety, paying for his

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government, his sewage, his water and even his neighbor's poverty. Society finds ways of restricting man in his abuse of his land. Planning and zoning laws impose restrictions on the individual for the health, welfare and aesthetic sensibilities of the community and sometimes even for the prevention of man's own foolishness.

Because man can never absolutely destroy his land, its permanence makes it a principal source of raising money for the needs of his home and for the capitalization of his endeavors, thus all the laws of mortgage and foreclosure. Because the land is never absolutely destroyed, laws and a system of inheritance or devolution upon man's death are fundamental to the orderly continuance of society resulting in the laws and systems of probate, joint ownership and survivorship. Because of its permanence and its ascertainability, man's liability for his debts and his misdeeds can be most easily imposed on his land which becomes subject to judicial proceedings of attachment and execution for everything from his feed bills to liability for coveting his neighbor's wife. Perhaps even worse, it becomes subject to liens for income, employment, sales, withholding, unemployment, estate, succession and other taxes yet to be established.

To complicate matters further, in communities where population gets so crowded that there is not ample land for everyone, there has now been developed a concept from ancient Rome via Porto Rico that there can be set out to man all the same interest of ownership and severability of a designated space in the air above as there can be in the soil below and this even though space ownership by others intervene between our man's area in the sky and the ground below. Because radical concepts require radical names it is called a "Condominium". There are men in Florida, California, New York and even Connecticut who now own "in fee" their apartments ten stories in the air with limited easements as to the terra ferma on which the building rests. Cabin in the sky has become property in the sky and where do we go from here may mean interplanetary space platforms and the road to the moon, and when the men of your profession get us there, the title searchers and the lawyers will find plenty to do.

Because of the foregoing systems of recording man's so-called ownership or interests in his land and property have developed. In Connecticut the town is the unit of recording and the town clerk the recording officer for the land and space located in the town. These offices in our state vary from a dubious safe in a one room, wood stove frame building to the large and busy offices of our great cities. Almost all of them have in common the fact of being too small.

Equally important to our recording system are the Probate Court offices. Again there is no uniformity as to size. I once found the records in

the Judge's bedroom in her home. The Probate Court is the court of the district where the decedent owner lived and a search of Milford land records may call for a trip to the New London Probate Court or some even more distant place.

In many cases a search of title will require information obtainable only from the clerk's office in a state or federal court and often this court is far removed from the site of the land.

Many years ago in Connecticut, due principally to the efforts of Attorney Charles Lyman of New Haven and others, the Connecticut Bar Association adopted standards for certifying title to real property. Guides and standards for the period of search and for opinions on many oft recurring and similar problems were established and written into a book which has become the bible for real property practitioners in the Connecticut legal profession. Sixty years was the period established as the minimum reasonable period for going back into the records for the basis of an opinion, but only as a minimum because many searches necessarily require much more historical investigation. Other standards were established as to problems ranging from the competency of a wife to witness her husband's deed to the treatment of unreleased but ancient mortgages. The real property committee of the Bar Association is constantly revising and adding to the standards which are published in loose-leaf form to simplify such revision and addenda.

The meeting place of our professions is generally the map, plot plan or description your profession makes for the real estate we are searching or certifying. Without an understandable description, a search is difficult and often impossible. Ideally a map or plot of each parcel of a search would be the perfect basis for any search of title. Just as you can't tell the players without a score card you can not visualize the land without a map; but the sports fan who will pay an additional thirty per cent of the price of his admission for the program will refuse to pay the very little percentage of the cost of his house or building for the price of a survey and map of his property; that is unless some mortgagee requires it of him.

Furthermore, the basis of your maps and plot plans comes from the town clerk's offices and the map should be recorded in the public records if it is to be of real worth. You have the same concern as to the safety, care and accessibility of town clerk records as do the title abstracters and searchers. The modern technology of record keeping, microfilming and safe keeping has had little acceptance in our town clerk's offices. The banking department, the F.D.I.C. and other governmental agencies are constantly prodding our banks to microfilm their records and make arrangements for storage from atom bomb or similar destruction. No one seems

to worry about the billions of dollars of property whose title rests on the records in our town clerk's offices and this includes the millions of dollars of mortgages held by our banks. In this matter, our professions have a common concern. There has to be a better way of keeping and maintaining our land records and we owe the public the responsibility of publicizing these facts.

The legal profession and particularly those who work for or in it as title abstracters and searchers are apt to envy the freedom you and your agents have in working under the blue sky in nature's open spaces. If the amenities of cutting brush, setting monuments or unraveling frozen plumb lines are apt to discourage you or your men in the field, remember the poor abstracter in some dingy and dusty office wrestling the heavy tomes wherein are kept in varying systems the grantor-grantee indices and the copies of deeds of conveyances, bonds for deed, mortgages, releases, foreclosures, *lis pendens*, certificate of distribution and devise, attachments and executions, easements, rights of way reservations and liens including sewage, town, city, state and federal tax liens; or the lawyer back in his office trying to decide what to do about the zoning laws, the probate of various estates, two conflicting deeds in the chain of title, a conveyance by only two of the three known heirs, or a deed executed in Greece that bears all kinds of official looking seals thereon, but neither witnesses nor acknowledgement as such.

We have a lot in common, not the least of which is respect for each others problems.