

ADVOCATE

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Title Insurance Saves The World By: Lawrence C. Bell

“The strongest bond of human sympathy, outside of the family relation, should be one uniting all working people, of all nations, and tongues, and kindreds. Nor should this lead us to a war upon property, or the owners of property. Property is the fruit of labor; property is desirable; it is a positive good in the world. That some should be rich shows that others may become rich and, hence, is just encouragement to industry and enterprise. Let not him who is houseless pull down the house of another, but let him labor diligently and build one for himself, thus, by example, assuring that his own shall be safe from violence when built.” Abraham Lincoln, from a speech given to the New York Workingmen’s Democratic Republican Association, March 21, 1864.

Some three years earlier, on February 12, 1861, then President-elect Abraham

Lincoln said that he thought a Homestead Act was worthy of consideration so that “the wild lands of the country should be distributed so that every man should have the means and opportunity of benefiting his condition.” On May 20, 1862, “An Act to Secure Homesteads to Actual Settlers on the Public Domain” was signed into law. Under The Homestead Act, any citizen who was the head of a family, or a single person over the age of 21 could apply for a 160-acre “quarter section” of land. The Act applied to land in the 30 “public domain states” which excluded the original 13 states, Kentucky, Maine, Vermont, West Virginia, Tennessee and Texas. There was a \$10 filing fee and the prospective homesteader had six months to begin living on the land. A deed (called a patent) was issued by the government

after five years of continuous residence, provided a dwelling was constructed and some portion of the land was cultivated. The right to bear arms was as much an assurance of ownership as anything else.

The Homestead Act was amended several times, in 1864, 1867 and 1872, changing the ownership rules. There was also a problem with fraudulent homesteading. The “Commutation Clause” in the Homestead Act allowed homesteaders to purchase 160 acres for \$1.25 an acre after six months of residence. Some speculators employed people to spend six months in residence and then bought the land at the highly favorable \$1.25 per acre rate. Others wheeled portable cabins from place to place and hired witnesses to swear that they had seen a dwelling

Title Insurance... cont. on page 3

IN THIS ISSUE

- TITLE INSURANCE SAVES THE WORLD COVER
- PRESIDENT’S MESSAGE PG. 5
- AN AGENT’S PERSPECTIVE PG. 6
- AGENCY SECTION PG. 9
- INFLUENCE THE FUTURE – BE A MENTOR PG. 10
- LEGISLATIVE UPDATE PG. 13

- A CLOSING ARGUMENT PG. 14
- CONVENTION SUMMER 2019 PG. 16
- CONVENTION SCHEDULE OF EVENTS PG. 19
- CONVENTION CROSSWORD PG. 20
- ALTA ADVOCACY UPDATE PG. 21
- TAX NUANCES PG. 22

- FALSIFIED MORTGAGE PAYOFF LETTERS PG. 28
- JOHN R. WEIGEL SCHOLARSHIP PG. 29
- ON THE MOVE PG. 30
- DATES TO REMEMBER PG. 30
- NOTES FROM THE EDITOR PG. 30



ADVOCATE

Title Insurance Saves The World

continuation from cover

on the property. By 1879, land fraud had become so bad that Congress created a Public Lands Commission to address revision of the land laws. As they say, it was the wild, Wild West.

Meanwhile, in October of 1871, the Great Chicago Fire devastated that city. Thankfully, Cook County land records were available to establish land ownership based on an abstracting system devised by a law clerk named Edward A. Rucker in 1847. Shortly after the fire, an editorial printed in the *Chicago Times* proclaimed, "There has been absolute destruction of all legal evidence of titles to property in Cook County. The annoyance, calamity and actual distress that will arise from this misfortune are not yet properly appreciated. Something equal to the necessities of the case must be done quickly." Although the legal evidence was destroyed, the abstracting records were saved. In April of 1872, the Illinois Legislature passed the Burnt Records Act making the Chicago abstracting records admissible in court as evidence of land ownership, forming the cornerstone of the rebuilding of the city.

Mark Watson pursued the benefits of land ownership around the same period of time. He engaged the services of a conveyancer named Charles H. Muirhead to draw the deed and assist with the transfer of title for his Philadelphia purchase transaction. Conveyancers handled many early land transactions in American history. They were not lawyers, but they were recognized as authorities on matters of real estate law. They attended to all aspects of the transaction, from conducting the search to determining ownership rights of the seller as well as other rights, liens or encumbrances. It was standard practice to rely upon the experience and expertise of a conveyancer when changing the ownership of property from one person to another.

Muirhead abstracted the title for Watson and finding a judgment thereon, sought an opinion of counsel as to whether the



judgment constituted a lien. The attorney opinion that he obtained stated that the judgment was not a lien as it was not final and had not been executed. The written attorney opinion was that the judgment need not stand in the way of the purchase; that it amounted to nothing; that it was not an encumbrance. With this assurance, Watson completed the purchase transaction.

Not long thereafter, the property was sold at Sheriff's sale to pay off the judgment lien, which was, in fact, an encumbrance upon the property. Watson sued Muirhead to recover his losses. The Pennsylvania Supreme Court applied a negligence standard in explaining that Muirhead

did not act upon his own opinion that the judgment was not final but that he had in fact submitted the question to eminent counsel, and obtained a written opinion that did not express so much as a doubt as to the status of the judgment in question. "To hold him responsible would be to establish a rule, the direct effect of which would be to deter all prudent and responsible men from pursuing a vocation envisioned with such perils." The Court affirmed the dismissal of Watson's suit holding that the passing on the judgment was not evidence of want of ordinary knowledge and skill or lack of due caution. Mark Watson was an innocent purchaser who had no recourse after suffered financial damages because of the encumbrance on his title. *Watson v. Muirhead*, 57 Pa. 161 (1868).

"Property is the fruit of labor; property is desirable; it is a positive good in the world" but *Caveat Emptor*, Let the Buyer Beware. The case of *Watson v. Muirhead* illustrated the contract law principle that the buyer assumes the risk and the responsibility for

Title Insurance Saves ... cont. on page 18

Title Insurance Saves The World

continuation from page 3

defects in title. A buyer could hire experts in researching the land records to verify the validity of the seller's title, but with many land records in dispute, innocent buyers could suffer financial losses when buying real property. The answer was clear. In 1874, the Pennsylvania legislature penned enabling legislation that authorized the formation of indemnity companies to insure against losses based on invalid or encumbered titles.

On March 28, 1876, a conveyancer in Philadelphia named Joshua Morris, together with several colleagues, met to incorporate *The Real Estate Title Insurance Company of Philadelphia*, to “insure the purchasers of real estate and mortgages against losses from defective titles, liens and encumbrances,” stating that “through these facilities, transfer of real estate and real estate securities can be made more speedily and with greater security than heretofore.” They were the first. More

would shortly follow. The 100-year principle of *Caveat Emptor* in the ownership of real property was no longer the rule. In 1885, the Land Title and Trust Company was established as the second title company in Philadelphia. The German American Loan and Trust Company of New York was incorporated, followed by companies in Chicago, Minneapolis and Los Angeles.

In 1907, a title insurance trade association was formed, known as the American Land Title Association (ALTA). Although title insurance had become available throughout most of the country, each company issued its own forms and title insurance was further subject to local customs and practices. ALTA addressed standardizing policy coverages so that mortgage lenders and the market place would not have to examine the terms of each individual policy. Ultimately, title insurance policies and products were standardized on a national level.

Abe Lincoln recognized home ownership as an American dream so that each may “have the means and opportunity

of benefiting (their) condition.” The title insurance system in America allows land to be freely bought and sold; gives mortgage lenders the confidence and ability to provide mortgage loans forming the backbone of our nation's economy; and instills trust in our national system of private property ownership. The availability of title insurance in foreign countries has stabilized governments and fostered investment, infusions of capital, and economic growth around the globe. Some say that title insurance saved the world. Those who disagree should visualize the world without it. ■

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