etcetera

By Judge Jerry Buchmeyer

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Real Estate: The Title Opinion

The most imaginative, humorous “piece of legal writing yet drafted”? It might well be a title opinion . . . apparently written in 1928 by a Prewitt, Texas attorney (Kress L. Campbell). The opinion concerns an “abstract of title in seven parts covering the South 236½ acres out of the Edmundson Survey,” and begins with this rather cautious advice to the client:

“Don’t buy the G-- D---- land.

“It has been my sorrow and burden to look over several horrible examples of a title-examiner’s nightmare, but this alleged title takes the cutglass flyswatter. It is my private belief that you couldn’t cure the defects if you sued everybody from the Spanish Government (who started this mess) down to the present possessor of the land, who is in there by virtue of a peculiar instrument optimistically designated by the abstractor as a ‘General Warranty Deed.’

The title opinion first points out that “the field notes of the Spanish Grant do not close. [And] I don’t think it is possible to obtain a confirmation grant since the late Mademoiselle (who started this mess) on down to the present possessor of the land, who is in there by virtue of a peculiar instrument optimistically designated by the abstractor as a ‘General Warranty Deed.’

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The next and most serious defect discussed is a “quit-claim deed containing a general warranty” executed by Ellis Gretzberg (who just “appears suddenly out of nowhere” in the chain of title) to one Peter (“Prolific”) Perkinston. Unfortunately, Perkinston died, “leaving two wives and 17 children, the legitimacy of two of them being severely contested.”

But fortunately, a shooting match between the two sets of claimants “assisted the title slightly by reducing the original number to six and substituting 11 sets of descendants.” After this explanation, the opinion describes the defects in the warranty deed held by the prospective vendor:

“It is executed by a fair majority of one set of the offspring of Peter (“Prolific”) Perkinston, and is acknowledged in a manner sufficient to pass a County Clerk with his fee prepaid. Outside of the fact that it doesn’t exactly describe the property under search, the habendum clause is to the grantors, the covenant of general warranty doesn’t warrant a thing and it is acknowledged before it is dated, I suppose it is all right.

“I would advise you to keep the abstracts, if you can. They are a speaking testimonial to the result of notaries public drawing instruments, county clerks who would put a menu on record if a fee was tendered, and jacklegged jugheads posing as lawyers.

“You can buy the land if you so desire. There are 573 people who can give you as good a title as your prospective vendor has, not counting the heirs of the illegitimate son of Prather Linkon who died in the penitentiary in 1889 while serving a term for sodomy.”

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1. Perhaps it should be noted, without comment, that Richard Nixon began his legal career as a real estate lawyer. Schee v. Holt, 56 Cal.App.2d 304 (2d Dist. 1942).
2. As suggested by Jerome S. Levy, a Dallas attorney, for the Et Cetera column in the June 4, 1979 Dallas Bar Newsletter.
4. “I am not being funnier than the circumstances indicate: he actually left two wives, and it seems never to have been legally adjudicated who he done wrong by. Each one of these ladies passed away in the fear of God and the hope of a glorious resurrection and left a will deeding this land to their respective brats.”
5. “I might mention that this land was the subject of a trespass to try title suit between two parties who appear in the abstracts for the first time when the suit was filed, and one of them recovered judgment awarding title and possession. We may waive this as a minor defect, comparatively speaking.”