THE

AMERICAN LAW REGISTER.

SEPTEMBER 1875.

AN ABSTRACT OF TITLE.

THE lawyer is not altogether interested in that which is new, but the interests of his client require that he should ever be fresh in that which is old and well established, and it may be well for him that he stop now and then to review well established principles, lest in the multiplicity of his business he may omit some important element in the preparation of his case, or it may be in the ordinary routine of his business. A very eminent jurist once remarked that his practice was for many years to read Starkie on Evidence through at least once a year. The profession are much inclined to hunt for new authorities, when perhaps Coke, Saunders and Holt might help them out. The purpose of the present article is not originality of matter or novelty of views, but it is intended rather as a reminder to the profession of well-known principles, familiar to every good conveyancer.

What we call an "abstract of title," or "searches" as in some states, is a synopsis of the several instruments and proceedings, composing a chain of title.

Before the "Recording Act" in England, all deeds passed with the possession, and it was the duty of the conveyancer employed to arrange the business and to examine the conveyances, to make an abstract, showing the title. It was a specialty, and many of the old and well established conveyancers retained the custody of these muniments: so that every time the property changed hands they seemed to have a "corner" on the business. In those days, however, the tendency was to keep estates together.

In this country, however, where the statutes of all the states provide for recording conveyances, and the use of certified copies thereof in evidence, people have become exceedingly careless, and original deeds and tax receipts have not with any degree of uniformity been preserved. A great fire which destroyed the entire records of a county with a population of half a million, with a realty value of a thousand millions of dollars, and where for thirty years the handling of real estate has been carried on as a distinct business, and where almost every citizen has made from one to fifty conveyances, has demonstrated that every scrap of paper which relates to a title or throws any light upon it, should be sacredly preserved. Even if the record were not destroyed it may be incorrect, for recorders and clerks are, like other people, liable to make mistakes. No one thing should be more thoroughly impressed upon the mind of the lawyer, as well as the owner of land, than the importance of preserving the evidence of the title.

A good and complete abstract ordinarily will be sufficient to enable the conveyancer to pass upon the title, but as a safeguard in the case of the destruction of the public record or for the purpose of correcting its defects, or for the purpose of detecting forgeries and frauds, the original papers are invaluable, and indeed without them often the title will fail.

A *thorough abstract* embraces everything shown by the public records relating to the particular land embraced therein. These records are:

First. The books in the recorder's office of the county wherein the land is situated.

Second. The records of the several courts, embracing: 1. The United States courts. 2. The circuit and superior courts of general jurisdiction organized under state constitutions and laws. 3. County courts and courts having probate jurisdiction, and 4. Criminal courts, if any are organized specially as such, in cases of forfeited recognisances, which in some states are made liens.

It not unfrequently occurs that reference must be had to records in the departments at Washington, as in cases of Indian title, and to records in the government land offices.

Constitutions and statutes, although not set out in abstracts, are often really parts thereof, and must be supplied by the knowledge of the conveyancer, especially when the *sources* of title are to be considered.

Examples of this kind will be found in the legislation of Con-

gress, granting the sixteenth section for school purposes, for internal improvement, and railway grants, the Reserve in Ohio and swamp land acts.

A *complete chain* of title, especially in the states of Ohio, Indiana, Michigan, Illinois and Wisconsin, composing the North-Western Territory, will show :—

First. The proclamation of discovery.

Second. The grant by the king of Great Britain and his council to the original Virginia patentees.

Third. The treaty of peace, whereby the colonies were confirmed in their rights.

Fourth. The Act of Virginia of 1783, authorizing the Virginia delegates to cede the North-Western Territory.

Fifth. The Ordinance of 1787.

Sixth. The treaties of the United States with the Indians whereby they vacated.

Seventh. The government survey which defined the boundaries.

Eighth. The Act of Congress which placed the land in market.

Ninth. The certificate of the receiver of the land office.

Tenth. The patent of the President.

Of *school* lands it may be stated as follows :—

First. The Act of Congress donating the sixteenth section to the state.

Second. The Act of the General Assembly of a state providing for its sale.

Third. The deed of the proper officer authorized by law to convey the same.

Or if it be public improvement lands, as in Illinois :—

First. Act of Congress making the grant.

Second. The Act of the General Assembly providing for canal trustees.

Third. The deed of the canal trustees.

Fourth. In case of Illinois Central Railroad lands which are included in the term *public improvement*, 1. The charter of the company; 2. Deed of the commissioners appointed thereunder.

There are in the north-western states, as indeed in many of the older states, Indian reservations—tracts of land set apart for the exclusive occupancy of certain Indian tribes or remnants thereof. These lands cannot be conveyed by the Indians, but, when the Indian title is purchased by the government, the land is put into market and the title proceeds from that source.

There is a class of lands in Illinois which deserves especial mention—known as the French claims. The French settled on the Kaskaskia, and established trading posts opposite St. Louis, also at Vincennes on the Ohio. In the Act of Virginia of December 20th 1783, above referred to, which authorized the Virginia delegates to cede the North-Western Territory, the following language occurs:—

"That the French and Canadian inhabitants and other settlers of the Kaskias, St. Vincennes and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions confirmed to them, and be protected in the enjoyment of their rights and liberties."

The substance of this is incorporated in the Ordinance of 1787. At Cahokia in Illinois there is a large common, belonging to the inhabitants of the village of Cahokia. These commons and other lands thus acquired and held did not come within the provisions of law concerning government lands.

As to the Indian title, it may be said the government has always recognised some claim in the Indian, but it was a visionary claim, founded upon no solid basis. The whites have ever been ready to take the land without compensation, and it was rather fear of the murderous tomahawk than any particular sense of right that made it necessary that the *abstract* should show that the Indian claim had been acquired.

The Louisiana purchase embraced the territory lying west and south of the North West Territory. Its eastern boundary was supposed to be the Mississippi river, and its western boundary was an undefined line extending perhaps to the Pacific Ocean, subject to such rights as were claimed by other nations, and which have been since rather more the subject of speculation than of contest.

After the purchase of Lousiana, the rights of actual settlers were confirmed, and all unoccupied territory became the property of the United States, and has been the subject of congressional legislation, Indian occupancy, sale or railroad grant. Just at this time the Black Hills country is attracting the attention of the adventurers. The Indians claim it by virtue of possession and treaty, which the government by its settled policy is bound to respect. Their claim must be respected until such time as the government shall acquire the right to put the land in the market, which may be done by buying out the Indian title or driving them out,

which the government is able to do as soon as the lamb shall roil the waters, and thus be in a position to put the land in market, and thereby acquire a title as good as *any* title in this country, at least so far as the Indians are concerned, for most Indians have been compelled to vacate pursuant to a treaty, borne upon the point of the bayonet.

The practical question to be determined by the conveyancer is the source of title, whether it appear in the abstract or not. In most communities these general sources are understood, and there is generally some conceded starting-point, as the patent of the President, a deed from the canal trustees, &c.

Difficulty in ascertaining source of Title.—It must be apparent to every lawyer that the time is coming if it has not already arrived in the older cities, when it will be difficult to ascertain the source of title and to trace it down; the records becoming so voluminous—original deeds destroyed, and the memory of witnesses fading out. Some new starting-point must be established, whereby expenses may be saved and titles made more certain. In this connection I refer to an article from the "Land Owner," and suggest that human ingenuity may be taxed in this country as it has been in England.[1]

---

[1] "*The Landed Estates Court of England.*—Registration of title in England is a modern experiment, set on foot after long-continued opposition, and still frowned on by the solicitors, who conceive that its operation will be to reduce their emoluments. Owing to the total want which had always existed of a register for deeds or writs connected with the transfer of land, except in the counties of Middlesex and York, the complexity and uncertainty attending the operations of conveyancing, had long been the opprobrium of English law, and the mercantile classes at last called for a remedy by which an acre of land might be sold with the same expedition and certainty as bank stock. Under the existing system, so far from expedition being a feature of conveyancing, delay, expense and insecurity were the chief characteristics. It was and is the inveterate practice for a purchaser of land to demand, and for the vendor to give, what is called a sixty years' title—*i. e.*, he must show the successive owners of the land for the sixty years previous to the sale, and all that these owners did in connection with it. This created great expense and delay. But if the property were sold next month, or next day, precisely the same process had to be repeated between the new purchaser and his vendor, for what might have been done between other parties previously was not binding, nor was it safely to be acted on by their successors in the property. These evils called loudly for some remedy, and of late years all the legal reformers have been busy with projects to provide some relief. An important impetus was given to a reform by the passing of the Irish Encumbered Estates Act in 1848, the object of which was to break up and compel a sale of the

The Chicago fire of 1871 destroyed all the public records of deeds. There was scarcely anything left showing title except the

---

deeply encumbered estates of Ireland. So deeply involved had many of the estates there become, that the nominal owners were merely collectors of the rents for the benefit of others, and all improvements were paralyzed. The object of the act was to compel a sale of the fee simple; and by means of a court specially created for the purpose, called the Encumbered Estates Court, all those who had an interest in the property were summoned to appear and discuss their mutual claims and priorities, and assess, as it were, their pecuniary interest, and the proportion of the total value to which they were entitled; and then the court judicially solved all difficulties, and swept off the property by selling it with a clean title to a purchaser, and dividing the proceeds among all those who claimed a share. The effect was, that a fresh title, free from all prior encumbrances, was given to the purchaser, and thereby the subsequent history of the property was cut off entirely from what had gone before. The court was attended with great success, and subsequent acts perpetuated it as a standing institution of the country, it being found that the clear title thereby obtained was eagerly sought in the market. The court, though at first created for what were supposed to be temporary purposes, has now been called the Landed Estates Court, and the jurisdiction extended not merely to encumbered, but to unencumbered land. In 1854, a similar statute was applied to the estates of the West India Islands, and a court established in London for the purpose of clearing off the encumbrances of those estates, and selling them with a clear title to purchasers. In 1859 a bill was brought into the House of Commons to establish a similar court for England, but owing to the opposition experienced, and to various changes caused thereby, it was not till 1862 that two acts were passed, which provided only an instalment of this much desired reform. The objects of the Acts 25 and 26 Vict. c. 53, 67, one of which is called Lord Westbury's and the other Lord Cranworth's Act, is to enable owners of land to register their estates with indefeasible titles, and to simplify the title by judicial sales effected by the Court of Chancery. The mode of operation is as follows: When a freehold estate is desired to be registered as indefeasible, an application is made to the registrar of the Land Registry, who officially examines the title, and then gives a certificate that the title is indefeasible. Or, if the owner prefer it, he can obtain a similar declaration from the Court of Chancery. Part of the title consists in a map of the lands, which is deposited in the office. The great advantage of getting an indefeasible title from the office is, that the owner is then perfectly certain that he can defy all comers to interfere with his land, and that, in the event of his selling it there is no necessity for the purchaser to re-examine the title, it being stereotyped, as it were, for permanent use, and so all subsequent expenses are avoided. The details attending the scheme of the Land Registry need not be further given. After the statute had been in operation two years, it was found that the progress made by the new institution had been slow, but considering that the adoption of its benefits was voluntary, and not compulsory, and that it was opposed by the solicitors as a body, from interested motives, it was stated in Parliament that the progress made was satisfactory, and equal to that of other similar reforms, which had, after similar early difficulties, taken firm root in the country."

abstract books of private firms. Some legislation was deemed necessary, and a fresh starting-point was required.

So the General Assembly passed an act to cure the defects occasioned by the destruction of the public records: and it provides first that abstracts made prior to the fire "in the ordinary course of business," may be used in evidence, and second, that the owner of land may file his petition in the Circuit Court, making parties thereto all persons interested or claiming an interest and "persons unknown." The court renders a decree according to the right of the matter, the time for suing out a writ of error is shortened, and when that time shall have expired the title is established.

It may become necessary, as the country grows older, to establish some such plan, so that the owner can at any time have a fresh starting-point established.

Liability of abstract makers.—On this point I will simply refer to a decision of the Supreme Court of Illinois, believing the law to be correctly stated.[1]

---

[1] Opinion by SCHOLFIELD, J., Illinois Supreme Court, filed January 30th 1875, in the case of *Chase et al.* v. *Heaney*:

"The undertaking implied by the law from appellants engaging in the business of searching the public records, examining titles to real estate and making abstracts thereof for compensation is, that they possessed the requisite knowledge and skill, and that they would use due and ordinary care in the performance of their duties. For a failure in either of these respects, resulting in damages, the party injured is entitled to recover: Story on Bailments, § 431; *Ritchie* v. *West*, 13 Ill. 385; *McNevins* v. *Lowe*, 49 Id. 210; *Steamboat New World* v. *King*, 16 How. 469; *Clark* v. *Marshall*, 34 Mo. 429.

"Appellee employed appellants to make for him an abstract of title to certain real estate which he owned. This they attempted to do, but omitted to note on the abstract a judgment against the property for taxes, and its subsequent sale to satisfy the same. Appellee claims to have been ignorant of the judgment and sale; and that, relying on the correctness of the abstract, he failed to redeem therefrom within the time provided by law, in consequence of which he was compelled to, and did, expend the amount of the judgment rendered by the court below in removing the cloud thus cast upon his title.

"It is contended, on behalf of appellant, that the evidence fails to show that at the time the abstract was made this judgment and sale were of record.

"It is not controverted that there was, in fact, such a judgment and sale; and as it was the duty of the officers to promptly make the necessary records thereof, we must, in the absence of evidence to the contrary, presume it was done. If the officers did not discharge their duty in this respect, appellants should have shown the fact by proof; and, not having done so, the objection cannot be sustained.

"It is also contended that there is no evidence of a contract whereby appellants

Having cursorily examined some of the general sources of title, we may proceed to the consideration of the different conveyances and proceedings shown by the abstract. *First*, of conveyances proper; and *second*, of proceedings of courts of record.

There must be a grantor capable of granting, twenty-one years old if a male, and if a female twenty-one years in some states and in others eighteen years. The deed must contain granting words, and a consideration expressed. The description of the land must be written, and sufficiently accurate that a surveyor, applying the rules of his science, can locate it. It must have a *habendum* with words of warranty. Although the abstract may disclose sufficient to show that the deed is in proper form, yet it cannot show whether the grantor was laboring under a disability. This must be ascertained from other sources. In obtaining this information the conveyancer must be governed by the same rules which he would follow were he preparing to prove the case in court. He may be satisfied of the fact. Ordinarily affidavits will be sufficient, but if there is any doubt he had better reject the title. Or if the fact can easily be proven, but the evidence is likely to be lost and fade away, he can avail himself of the benefit of the statute to perpetuate testimony, and thus *complete* his abstract of title.

Proof of the execution must be established. When the acknowledgment is in due form as required by law, the abstract will be silent as to the execution—only the defects being noted. The form of the acknowledgment is governed by the law in force at the time it is taken, notwithstanding the law may be subsequently repealed.

---

agreed to furnish appellee with a complete abstract of all that appeared upon the public records relative to the title to the property.

"The evidence shows that appellants held themselves out to the public as being engaged in the business of searching the public records and making abstracts of title for compensation; that appellee requested them to make an abstract of the title to his property, and paid them the compensation which they charged therefor. And this is all that was necessary for the purpose of the present suit. Nor do we consider it was competent for appellants to limit their liability by an obscure clause in their certificate appended to the abstract, without specially calling appellee's attention to it. They undertook to furnish him an abstract of what appeared on the public records affecting the title to his property, and he was authorized to rely upon their competency and fidelity in this respect. When, therefore, they discovered they could not furnish him with a complete and reliable abstract, it was their duty to notify him of the fact, so that he might apply elsewhere. Upon the whole evidence, we think it sufficiently appears that appellants were guilty of such negligence as renders them liable."

Questions of this character more often arise in the case of the execution of deeds by married women. As a *feme covert* could not convey by the common law, and as her power in the premises is conferred by the statute, the law must be strictly observed. The law enters into the form and becomes a part of the contract; and if good at the time of its execution it always remains good; for the contract having been once completed, rights vest under it which no subsequent statute can impair. But in case of a *feme sole* (of proper age) or a male, no acknowledgment is necessary for the purpose of conveying title. Proof may be made of the execution of the instrument by proving the signature.

The object of the acknowledgment is in case of a male or *feme sole* to admit the deed to record, and in case of a *feme covert* to convey the title. It is then the duty of the conveyancer to be familiar with the law in force at the time of the acknowledgment. The deed *not* acknowledged although good as to persons not under disability, cannot be recorded, and an acknowledgment taken before an officer not authorized is no acknowledgment.

A deed *not* recorded is not notice to persons dealing with the land, unless *actual* notice is proven.

The record of a deed is constructive notice of its existence, and all persons attempting to deal with the land are bound with notice. A certified copy of the record of a deed cannot be used in evidence, except upon first showing the loss of the original.

A deed not acknowledged and not recorded is binding on all parties dealing with the land if the grantee is in possession of the land; in fact, everybody is bound by whatever title a person has in actual possession, whether he discloses his title or not.

Another important question is, has the grantor a wife? If the abstract is silent on the subject, it is the duty of the conveyancer to ascertain the fact. A statement in the deed that the grantor is a widower or bachelor does not prove the fact, for the grantor cannot thus make evidence to cut off the dower, if there is one. It is, however, a strong circumstance. The deed may be so old that in all probability the wife is dead. The fact must, however, be established. Affidavits of parties familiar with the grantor are ordinarily sufficient when they state the death.

It is well to insert after the name of the grantor his residence and occupation. A deed from John Smith would be a dubious affair, for John Smith, lawyer, of Philadelphia, might be the real

party. Yet there are forty John Smiths, some one of whom might be rascal enough to attempt to sell the land of John Smith, lawyer, of Philadelphia.

Quit-claim deeds.—A quit-claim deed is just as good to pass a title as a warranty if the grantor has a perfect title. There are two kinds of quit-claim deeds:

First—A quit-claim which conveys the land.

Second—A quit-claim of any interest the grantor has in it.

The latter is good to convey the title if he has it, but if he has no interest and subsequently acquires the title it will not inure to the benefit of his grantee.

Mortgages and trust-deeds.—Titles frequently pass through mortgage foreclosures. There are two kinds of mortgages—first, plain mortgages, and, second, with power of sale. The first kind must be foreclosed in chancery. Where such is the case the conveyancer must be satisfied that the mortgagor had the title, that he had capacity to execute the instrument, and that it was properly acknowledged and delivered. If it appears on the record, it is presumed to have been delivered, as is true of all conveyances. In short, the mortgage must be as certain and specific as a deed. The decree of the court is for a specific sum, and usually, if the sum is not paid by a certain time, the land will be sold by the master. The equity of redemption, however, continues, and the mortgagor may redeem at any time within twelve months, unless he shall have waived and released this equity in the mortgage, in which case the court may decree that the equity of redemption be sold with the land. The master, pursuant to the decree, executes the deed. The master's deed should recite all the facts necessary to show that the court has jurisdiction, and that the proceedings were regular. If the equity of redemption was not waived, and therefore not sold, the deed cannot be executed until the expiration of fifteen months, for the mortgagor has twelve months and his creditors three months thereafter in which to redeem. So that the conveyancer should see,

First—That the mortgage was properly executed.

Second—That the court had jurisdiction of the case.

And, in order to determine this latter question, the record must show service of summons, either on the person or by publication if against a non-resident, in the manner provided by the Chancery Act. If the mortgagor has died his heirs must be made parties,

and service must be had on them, and if any of them are infants a guardian *ad litem* must be appointed.

The next kind of mortgage is one with a power of sale, which authorizes the mortgagee in case of default to sell the land. The power must be strictly complied with; the notice must be given as provided, and the sale must take place at the time and place designated. The abstract, if complete, should show all the proceedings, and in all cases where it is not complete resort must be had to the original records. It may fail to show many facts which a lawyer would deem essential. The debtor is helpless—he has no part or lot in the proceeding—and all persons exercising arbitrary and extraordinary powers must be held to a strict accountability. Purchasers even at a mortgage sale, under a power, are required to see that the creditor gets his money, unless the mortgage expressly provides that he shall not be so required. What I have said applies equally well to trust-deeds. A trust-deed is an instrument which conveys the land to a third person in trust to sell, &c., under the directions contained in it. These directions must be pursued strictly.

Prior to the Chicago fire, deeds of this kind usually required that sales should be made at the north door of the court-house. When the fire came the north door was destroyed, and the question arose as to the place of sale. The Circuit Court decided the sale could not take place where the north door was, but the Supreme Court decided otherwise; so that now we frequently see a trustee and one purchaser (and he the creditor) sprawling around on the ruins, trying to get as near as possible to that particular place in the universe which formerly was known as the north door of the court-house.

We find in the course of the examination of the title that the construction of a will is involved. Some person, at one time an owner of the property, devised it to certain persons from whom the title is derived. Of course the starting-point in a case of this kind is: "What was the intention of the testator?" To settle this question involves a knowledge of wills. The will must be proven, in due form, but the conveyancer should not rest here. The testator may have left debts behind to be paid regardless of the terms of his testament. Has the estate been settled and the debts all paid off? If the abstract fails to show this, recourse must be had to the records themselves.

Perhaps the real estate in question has been sold to pay debts. In such case the proceedings must be examined, and here arises the question of jurisdiction. The petition may be all right, the proofs complete, the order of the court sufficient, the sale in due form, and the executor's deed correct; but suppose the abstract fails to show that the deed was confirmed? Then refer to the records, and, if it transpires that the deed was never confirmed, the title has failed to pass by the proceedings.

Partition proceedings will often appear in the abstract, involving not only a knowledge of chancery practice, but also the statute relating to partition. All the parties in interest must be brought in, otherwise their rights are not affected. In remedies given by statutes the statute must be strictly followed. In ordinary chancery proceedings where the relief sought is within the discretion of the court, the decree will bind all parties to the suit, but in statutory proceedings, as partition-proceedings to sell lands for debts, to support minor heirs, &c., great particularity must be observed. The law attempts to protect those who are unable to protect themselves, as in case of infants and lunatics.

It is impossible to enumerate the cases which may arise in equity concerning land, but the conveyancer charged with the examination of the title should see to it that the proceedings have passed the title beyond a peradventure. Ordinarily a decree binds all parties to the suit, but either party may take a writ of error, and if the decree is reversed, it is bad for a purchaser thereunder. If, however, the time for suing out a writ of error has elapsed, it is pretty safe to take the title. If, however, a bill of review is filed, setting up fraud in obtaining the decree, and that the defendants had actual notice of the fraud, the decree will be set aside, if the fraud and notice be proven.

There may be many defects in the title, but if the record fails to disclose them, a purchaser will be protected, unless the defects are proven to have been known to him when he purchased. So a bill pending concerning land, is notice to all parties who deal with the land, and if they purchase they do so at their peril, taking the chance of the result of the suit.

Conditions in deeds.—It often occurs that a conveyance contains some conditions upon which the title depends. See to it that the condition has been performed. In 1833 a treaty was made with an Indian tribe whereby certain lands were ceded in consideration

of their vacating the vicinity of Lake Michigan. Sixteen hundred acres were ceded to one Billy Caldwell, in Cook county, but upon the condition that neither he nor his heirs should sell the same without the approval of the President. He did so, however, and the present owner, who is the son of the grantee of the Indian, desiring to borrow money, had his abstract brought down. It showed the treaty, but did not show that the President had ever given his consent, nor did the records at Washington show the fact.

An examination of the authorities developed the construction the courts gave to such a case, which is, first, that the approval of the President was a condition precedent to the sale by the Indian; and, second, that an approval now would not relate back, but must take effect as of its date.

Dower.—Some of the most troublesome questions arising in an abstract are those relating to dower. Under the statute of Illinois, a married woman has dower in an equitable estate. If, therefore, a quit-claim deed should be required to cut off an equity, care should be taken that the wife should join. But the estate must be complete, not merely an interest in the husband, which might ripen into an estate.

A woman cannot be divested of her dower except as provided by law. Reference to the statute must be had to see if she has properly joined her husband in the release. She cannot release her dower to any one while her husband conveys the fee to another. It is an appurtenant to the fee so long as the woman lives. After her husband's death, she may release her dower—to the owner of the fee only, however, before it is assigned; and after assignment, she has a life estate which she may sell to any one.

Trust estates may arise in several ways: by will, by marriage settlement, by declaration of trust, or deed for particular purposes. The owner of the fee may burden an estate with a trust, and may create or carve out life estates, some or all of them depending on contingencies. A simple declaration, duly executed by A, in whom the fee is, that he holds it in trust for B and his heirs for ever, will, by operation of the statute, place the title in B. In order to prevent the operation of the statute, it is requisite that some power be granted by the conveyance which he cannot exercise unless the fee remains in him. This is true in states where the Statute of 27th Henry VIII. has been adopted. Such an instrument should be drawn with great care, and every contingency should be pro-

vided for—that is, an event might happen which, if not provided for, would render all the rest uncertain, or possibly defeat the main features of the trust.

Evidence of title.—The common law of England and statutes in aid thereof have been adopted in Illinois by an express act of the General Assembly. Hence all the rules of the common law applicable to real estate are recognised here, except so far as they have been modified by statute. These statutes cannot be fully understood without a pretty thorough knowledge of the common law. Hence Coke, Saunders and Shepard are good authorities. Our statutes, so far as they relate to real estate, are but amendments to the common law, and of course, then, an understanding of these amendatory statutes must embrace a knowledge of the law amended. Starting off, then, with a knowledge of the common law, the conveyancer should become familiar with certain statutes, and, if he purposes to practise in states where the common law is in force, he should mingle his reading of the common law with those statutes which affect it.

As has been intimated, the evidence of title is a matter of law, and when deeds or instruments relating to land are once executed pursuant to common law or a particular statute, a repeal or modification of the law does not ordinarily change the effect of those instruments; generally they run through on the line on which they started, so that it often becomes necessary to recur to a law which has been repealed.

These statutes, or, in fact, the law, may be subdivided into three general heads, those that relate to and declare:

First—The title.

Second—The remedy.

Third—The evidence.

Laws relating to the title or interest form a part of the contract. And so at the common law a married woman labored under disability in regard to her separate property; but if a law were passed enabling her to deal with her property the same as if she were sole, and while such a statute were in force, she should execute a warranty deed, it would be good, because by that statute she was authorized to execute such a contract. Now if that statute were repealed it would not affect that deed, because the Constitution will not allow a law to be passed which impairs the obligation of a contract.