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Basye: Clearing Land Titles

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and matters closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

CLEARING LAND TITLES. By *Paul E. Basye*. St. Paul: West Publishing Company. 1953. Pp. xx, 729. \$20.

In assessing the merit of a new book in the field of property law, it is common to ask such questions as these: Does the book make a contribution to existing literature by presenting a new critical analysis of a subject heretofore ignored or treated summarily without adequate discussion? Will the book be of value to practicing attorneys, law teachers, law students, or legislators? Is the book thoroughly documented, both as to primary sources and secondary sources? Is the arrangement both logical and easy to use? Are the mechanical aspects of the book (index, format, etc.) satisfactory?

It may be said at the outset that Mr. Basye's book deserves strongly flattering affirmative answers to all of the questions. It is a book that needed to be written, and it seems evident that the right man has done the writing. Any practitioner who is concerned with the appraisal of land titles will find the book most valuable.

I have relegated a summary of the precise scope and arrangement of the text to a footnote.¹ I should like here to amplify my reasons for the wholesale approval of the book. I have, in recent years, taught a seminar in conveyancing which I have tried to make "practical" in the sense that the students are compelled actually to go through the physical steps which a lawyer must follow in supervising a real estate transaction. I insist that they question a client (it is no trouble for me to serve as an uneducated client), that they read an abstract, draw a land contract, a deed, a mortgage, and an opinion as to the title of the land involved. As a necessary preliminary to such work, I have assigned them the task of ascertaining what statutes there are (in the jurisdiction in which

¹The book opens with an introduction outlining the need for simplification of the conveyancing procedure and of the manner of making titles marketable, the obstacles encountered, and the methods available for simplification. Here also are treated the methods by which marketable title may be proved, including a discussion of numerous rules of evidence and presumptions which are helpful to an attorney faced with the job of making such proof. Part II covers the role which statutes of limitation play in keeping titles marketable, and presents, in interesting comparison, the advanced strides that have been taken by those states which have adopted marketable title acts. Part III (with 170 sections in 12 chapters) contains an extensive discussion of various curative acts aimed at eliminating the numerous technical defects which infest almost every chain of title. Part IV (one chapter) presents the author's well reasoned summary of the paths which are open to those who would lead our law toward a simplification of the procedures for keeping titles marketable. A table of cases, of statutes, of title standards, and of law review articles, together with an index, complete the book.

they are interested) which have direct and immediate application to the problem of appraising a land title. Almost without exception, they have reported that there is no secondary source material from which they can get any assistance and that the applicable statutes are scattered in a variety of places in the codes or compilations. Mr. Basye's book is going to be a tremendous help to me and to my students because it furnishes, in a well-organized fashion, a ready source for the principal statutory provisions, as well as state and local title standards, which are of value to the title examiner. If it did nothing else, the book would be extremely valuable to law student, law teacher, and practitioner.

But, the book does much more than compile related statutes from the various states. It presents a critical analysis of the functions which such statutes are designed to fulfill, and a critical analysis of the success with which they fulfill those functions. The analysis is consistently functional and reflects the author's broad experience in the field of title examination. Rules of evidence, statutes of limitation, marketable title acts, and curative statutes are all analyzed with a view to determining how they assist the title examiner in making a realistic and accurate appraisal of the marketability of a particular title. More important, they are analyzed with a view to determining whether they assist the broad goal of keeping titles in marketable condition despite the growing cumbersomeness of our recording system.

The book is more, however, than a compilation and an analysis of statutory materials. It is a blueprint for the future. Mr. Basye has not avoided policy determinations. Instead, he has most lucidly elaborated the areas in which policy decisions must be made. For example, everyone concerned with title examination recognizes that recitals in deeds, if they may be relied upon as evidence of the facts stated, may go far in correcting defects or filling gaps in a chain of title. Everyone also recognizes that there is danger that unreliable self-serving statements may easily be incorporated in deeds. Hence, any extension of the areas in which recitals may be accepted as evidence must be carefully made, lest the furtherance of marketability which would result be accompanied by greater evil. A considered judgment by Mr. Basye, after his intensive study, should be a helpful guide to those who seek to determine what steps may be safely taken to promote marketability of land titles.² The legislator may find in the book a fair and impartial appraisal of the effects of particular remedies which have been tried in other jurisdictions.

A word should be said about the documentation of the book. Mention has already been made of the fact that it includes references to the title standards which have been adopted in a substantial number of states. This material is tremendously helpful. In addition, there is an adequate citation of original cases and a splendid selection of secondary sources to which the reader may go for more extended citation of cases on particular points. There is considerable cross-referencing to *Patton on Titles* and other general treatises. On a few

² See §45, p. 103.

occasions, there is a reference only to secondary materials when it might have been helpful to include at least some important primary sources.³ And, one may even quarrel with some of the author's conclusions. For example, in the discussion of title standards, he voices a hope that more states will follow the example of Nebraska and secure legislative enactment of the title standards adopted by bar associations. A leading title examiner in Nebraska has expressed grave doubt as to the wisdom of fixing the title standards in such a relatively inflexible mold.⁴ But these quarrels are minor, and are "fly-specking" in the worst tradition of oversensitive title examiners. They must not be taken to mean that the book here considered is anything but excellent.

From the physical standpoint, the print is very readable, large boldface section numbers and section headings make it very easy to find a particular reference, the index is good, and the tables of statutes make the book most usable in any jurisdiction. A good bibliography of secondary sources is included, and the tables of the various state title standards are most useful.

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³ For example, in the discussion of the constitutionality of marketable title acts, there is no reference to *Girard Trust Co. v. Pennsylvania R. Co.*, 364 Pa. 576, 73 A. (2d) 371 (1950), holding unconstitutional the Pennsylvania act (Act No. 512, 1949, Purdon's Pa. Stat. Ann., tit. 68, §451).

⁴ Morton, "Title Standards," 31 MICH. S.B.J. 7 at 16 (May, 1952).