WHAT IS TITLE?

BY MCCUNE GILL

We think in words. And clarity of thought is usually measured by the exactness of our knowledge of the meaning of the words with which we think.

Most of us use the word "title" quite frequently. Just what does it mean? And how did that meaning develop? It is well to begin at the beginning.

1. The earliest form of "title" is the Latin *titulus,* meaning a little sign or inscription, (the ending *ulus* indicating the diminutive). The Greek form was *titlos.* This sort of title was a small piece of parchment, with a name written on it, fastened above something, to act as a sort of placard or label. The most celebrated titulus in ancient history was the one used in the Crucifixion. St. John says (19-19) "And Pilate wrote a title and put it on the cross"; (and when his constituents wanted him to re-write his title—as they do to this day—he replied with commendable firmness: "What I have written I have written"). The Roman name for a writing tablet was *titlarium.*

2. A *titulus* was often nailed or tied over a doorway to show who lived in or who owned the property. The German scholars translated such *titulus* as *aufschriftung mit name,* a name-superscription. In Justinian's Code (2-16) we read that the Emperor Honorius (A. D. 400) enacted that "No private person may place the title of a more powerful person on his own or another's house."

3. The strip of parchment over a doorway has been preserved in the designs of classic architecture. Hence we see such strips carved in stone, or molded in terra cotta, over many of our modern doorways. Sometimes the very nails and thongs that secured the original parchment are faithfully reproduced, and the roll of the ends of the skin forms graceful scrolls. This is particularly noticeable in the popular French architecture.

4. As *titulus* was a sign placed over something, it came to be applied to the marks and dots placed over written letters. This is our word "tittle." The phrase "one jot or tittle," means merely, one I or dot over the I. It will be observed that this

word preserves the original short sound of the vowel. So when lay friends facetiously call one a "tittle examiner," they are quite correct. The Spanish *tilde* which changes canon to canyon, is the same word as our tittle.

5. The word *titulus* was extended to mean a memorial or monument raised to commemorate an event. Thus in GENESIS 35-14 we see that Jacob *erexit titulum lapidem,* or as Wycliffe says "raisede a tytle of Stoonys," to mark the place where he talked with God. A tombstone was called a *titulus sepulchri.* And royal property bore a *titulus fiscalis.*

6. In an ecclesiastical sense title has come to be applied to the principal or cardinal churches, *tituli* of the City of Rome, and also, to some extent, to those in other places. Blount in his DICTIONARY OF LEGAL ANTIQUITIES says this is because the name of the church's patron saint was engraved on the porch as a sign that the saint had title to the church. In this connection it may be remarked that church sites were formerly conveyed to holy personages by name as grantees, as, "to Christ and St. Peter in Westminster." Another explanation is that such churches gave title to benefices, or rights to collect a living from the parish.

7. Before a priest was ordained it was necessary that he show a "title," or sphere of activity which he intended to follow and by which he would be supported as an alternative, his private fortune or the aid of his relatives might be his "title" for ordination.

8. In the theater, "title" sometimes means the name of a play, or its principal or "title" role. More particularly it means a sign displayed to the audience to convey any special information. Thus in the Cyd we read "Hang out the title, our scene is Rhodes." Accordingly when one reads at a vaudeville show that So-and-so's trained seals will next appear, he is reading a "title."

9. As "title" meant a name over a doorway, it was no great figure of speech to apply the word to those terms that serve as labels to persons rather than to places. Father or sire became "sir," master is "mister," leader or dux is "duke," comrades or comites become "counts." One who can "imperare," or command, is an emperor, and he who is able to "primus capere"—first take—is a *princeps* or prince. There are several classes of

such titles, including those of office, nobility, distinction, degree, and address. The Greeks called them *eugenikas titlas.*

10. Title may mean merely a name. Thus our old friend Shakespeare declares, "My name is Macbeth—the devil himself could not pronounce a title more hateful." In the hills of the South (where a fairly good brand of Elizabethan English is still spoken), when the natives inquire as to a person's name, they ask, "What is his title?"

11. The fact that title means a distinguishing name has given rise to a new and rather ludicrous use of the word, to indicate an athletic championship. Perhaps the lawyer is amused to read in great headlines that "Title will be decided to-day," only to find that it is the heavyweight title or the football title, and not the title to which he is most accustomed.

12. *Titulus* was also applied to the label attached to the ends of the rolls that served the ancient world for books, hence the "bookbinders title," the title of a book, the "title" poem for which a book of several poems is named, or the "title" page showing the name and author. Dryden says "They live by selling titles, not books." And it has been said by a court that "the title on the cover is not the title of the work."[1]

13. *Titulus* was also used to denote a section of a book. The ancient law books are all divided into *"liber," "titulus," "caput,"* or, book, title, chapter. And this was followed in the early English abridgments. Thus one sees a reference to "Stratham's Abridgments, Titles, Title." This idea has recently appeared in the United States Code, where the chapters are called titles. And in the modern codes of France, Germany and other Civil Law countries the only mention of "title" is with the meaning article or chapter, or as the Germans say *titelkopf.* There are "rights in land" and "transfers of rights," but no titles in our legal sense.

14. An explanatory heading is frequently called a title. This in the case of an act of the legislature the title must express the substance of the act.[2] Similarly the caption of a law suit sets forth the names of the parties and the name of the court. The same meaning of the word "title" is applied (more modernly) to

[1] 173 F. 419.

[2] In Virginia the term "legislative title" is used. See 117 Va. 201.

"movie" films. Perhaps the reader, too, has been startled to read "Titles by" someone not at all connected with the title profession.

15. As title came to express claim or degree of ownership, or the validity of a claim, it was applied by jewelers to mean the amount of precious metal in an alloy; as, ten carats out of a possible twenty-four. "Jewelers solder with gold of a lower title (or in French, *titre*) than the article to be soldered."

16. The Romans had a legal meaning for title as well as a physical one, the former being, no doubt, derived from the latter. Their meaning, however, was much narrower than ours. In Rome ownership was called dominion or *dominium.* This *dominium* could be acquired in two ways, by tradition and by usucapion. Tradition was the transfer of an admitted legal ownership based on a formal delivery or mancipation; usucapion was a sort of equitable ownership based upon the concurrence of three elements, bonafides, *titulus,* and *possessio.* Good faith and possession explain themselves. Title, in the Roman sense, was a "just cause" of possession, a sale or gift for example, a recognized means of claiming acquisition. It was something like our "color of title." Thus in Justinian's INSTITUTES (2-6-14) we see reference to *uenditionem aut donationem uel alium titulum,* sale or gift or other title. And in the CODE (7-33-45) we read of *justo titulo* and *uero titulo.* One of Coke's definitions of title is copied from this Roman idea, *titulus est justa causa possendi quod nostrum est*: "Title is the just cause (or legal reason) for possessing that which is ours."

17. The "title" of the CORPUS JURIS CIVILIS and of Coke's definition is, however, not the modern idea of the word; we apply to it a much broader meaning. Thus, in direct opposition to the Roman idea, that title was not *dominium,* we read in New York[3] that title "is the ownership of land, the *dominium directum et absolutum.*" And Blackstone's idea of title is the means whereby this *dominium* may be transferred.

18. Austin in his JURISPRUDENCE tells us much about the mediaeval civilian's idea of *titulus.* It seems that transfer of ownership was affected by *titulus,* plus *modus,* that is, a "title

[3] 10 Johns. 266.

to acquire," and a "mode of acquiring." Thus, in descent, the death of the ancestor is the heir's *titulus*, and the heir's acceptance is his *modus*. In this sense, "title" is restricted to the "investitive facts" of ownership—the immediate deed by which one acquires. But this narrow meaning of the word does not fit in with the very broad significance that the common law countries attach to "title."

19. The use of the word title to mean a mere claim is prevalent among many writers. Emerson in his Essays says, "I have the same title to write on one subject as another." Shakespeare does likewise in Henry V, "Make claim and title to the crown of France." And Chaucer writes, "A title be began to borrow of other sickness." This gave rise to Lord Coke's explanation of the meaning of "right, title and interest." He says (345-b) that neither mean ownership, but each is a degree of claim—as one might say, "vague, vaguer, vaguest." Every right is a title, according to Coke, "but every title is not a right for which an action lieth." Henry VIII prohibited any sale of "a pretended right or title to land not in possession," and that is still the law in some of our states.

20. Title may mean ownership as distinguished from possession. In Ohio "Adverse possession does not prevent the transfer of title by deed, descent or devise."[4] And the South Dakota Court says,[5] "Neither title nor possession passed." In a very interesting case involving land on San Francisco Bay the United States Supreme Court[6] has held that the Spanish word *titulo* does not include a temporary personal possessory right to pasture cattle, a tenancy at will as it were. And one of Coke's definitions of title is "Where a man hath a lawful cause of entry into lands whereof another is seized."

21. But title may also mean possession without paper claim. Thus it is said: "Adverse possession is not merely a defense but gives title; the opponent's title being extinguished," adding cautiously, "whatever his condition theoretically may be."[7] In Minnesota it is said that "title to property carries the right of possession."[8]

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[4] 2 Ohio St. 308.
[5] 34 S. D. 55.
[6] 5 Wall. 600.
[7] 34 Cal. 385.
[8] 107 Minn. 36.

22. The claim which, with possession, gives "title" need not, of course, be a claim under a written instrument or "color," it can be a claim by words or by actions merely. Thus in Kansas "possession under claim is title sufficient to bring action against those who have no title at all or mere trespassers."[9]

23. Blackstone, in his desire to analyze and refine, states that title must include (1) Actual possession (by the owner or his tenant or agent). (2) Right of possession (either apparent or actual) and (3) Right of property. This definition has been criticized by Maupin, and well it may be, in view of the fact that we now loosely use the word to include (or exclude) all or each of these elements.

24. It not infrequently happens that a legal term may mean two opposite things. Thus title, which sometimes means an unestablished or doubtful claim, may also be used to denote a claim only when definitely established, that is, ownership. Thus the Indiana Court declares "The right of the holder of the certificate of sale was not a title to the land, although it might ripen into a title by failure to redeem."[10] In Louisiana (of all states) we hear that "a claim is clearly distinguished from a title."[11] If this were the only meaning, there could be no "bad" or "doubtful" titles. A United States court discreetly remarks that "title may mean any interest, or full absolute title."[12]

25. In Texas there is a peculiar local use of "title" as synonymous with grant or patent. "Titled lands" are those that had been granted or conceded by any sort of governmental action (complete or not) before the State government was formed.[13]

26. Title is also used to express "right to ownership" as distinguished from ownership, or amount of ownership. Hence in Delaware, "The title of the widow depended on this question."[14] And in Missouri "The deed of the husband will confer no title as against the wife."[15] In a case in England "Two objections were made to the title of the lessor."[16] In Scotland we hear of a "title to pursue" one's right to property.

27. Title may mean an ownership which is unencumbered.

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[9] 68 Kan. 314.
[10] 94 Ind. 14.
[11] 111 La. 563.
[12] 21 F. 615.
[13] 51 Tex. 169.
[14] 4 Har. 111.
[15] 57 Mo. 172.
[16] 5 C. B. 713.

The New York Court[17] defines it as "the legal estate in fee, free and clear of all valid claims," as, for example, a claim of dower. And this is the sort of title we refer to when we say "covenant for title." "Dower would destroy the value of the title."[18]

28. It appears to be entirely good usage to employ the word "title" as synonymous with "estate"; that is, the quantum of ownership. Thus the Illinois Court[19] speaks of "conveying the fee simple title" (instead of fee simple estate) to the grantee. In Massachusetts "He could have no greater title than an estate at will."[20] And even so meticulous a writer as Tiffany describes a right indiscriminately as estate, interest, title, or ownership.[21]

29. Considering titles as estates, one might infer that "title" means only a fee simple estate. Thus in New York[22] "Title implies an estate in fee"; and in Washington[23] "The word title, in a statute of limitation, means a fee simple and not a life estate." The opposite might be inferred from a statement of the Supreme Court of Missouri that "Title is not necessarily fee but covers all lesser estates."[24]

30. Title sometimes means the landlord's reversion as distinguished from the lessee's tenancy.[25] On the other hand we frequently hear of the "leasehold title."

31. Among other uses (or abuses) of the word is the habit of applying it to the ultimate remainder or reversion to distinguish it from the particular estate. Thus we say that title is vested in a person subject to a life estate.

32. Title sometimes means a vested rather than a contingent interest. In Illinois we read that "the estate does not vest as an absolute fee simple title" etc., and "no title ever vested."[26] Doesn't one have "title" to a contingent interest?

33. Title may mean ownership as distinguished from lien. Thus in states having both a supreme and an intermediate court, the supreme court usually has jurisdiction of cases "involving title to real estate" but not of those involving liens on real estate. That title does not mean lien was evidently in the mind of the

[17] 10 Johns. 266.
[18] 269 Mo. 285.
[19] 217 Ill. 309.
[20] 1 Allen 215.
[21] REAL PROPERTY, secs. 113-114.
[22] 23 Barb. 37.
[23] 72 Wash. 224.
[24] 203 Mo. 480.
[25] 149 Mo. 441.
[26] 154 Ill. 570.

New York judge who wrote, "The mortgage was not to be merged in the title."[27]

34. If, however, we think that "title" excludes the idea of "lien," we shall find that in Oklahoma the notion has been entertained that "Title includes a vendor's lien."[28] In Missouri the court speaks of "an incumbrance or title."[29] And in Georgia the special property of a pledgee is called a title.[30]

35. Trusts involve a frequent use of the word "title." We see sentences where the "title" means the legal interest and others where it is used to designate the equitable ownership, and in still others it means the combination of these two.[31] In construing the "change of title" clause of an insurance policy some courts say that an equitable interest under a contract of sale is, (and some say that it is not) a "title."[32] And the Missouri Court says that "The legal and equitable titles will merge unless there is another (what other?) title intervening."[33] The phrase "legal title" is greatly overworked; it may mean many things having nothing at all to do with a court of equity.

36. Title may mean ownership as distinguished from a power to convey such ownership. Thus Tiffany says, "A power does not pass, on the death of the trustee, to his heirs, although the title passes"; and further, "Executors are thus given a power of sale without being given the title to the land, although the title may vest in them as devisees."[34]

37. Title may mean corporeal rights or property and not incorporeal rights. (Of course any right is incorporeal, but those of limited nature—such as easements—are usually the only ones so called). Hence the Nebraska court's "A county does not hold the title to county roads."[35] And in New Jersey "The present title of the heirs extends to the center of the alley."[36]

38. Some jurists say that "title" cannot be predicated of personal property. But all know that the word is frequently so used. The right to hold an office is about the most incorporeal property imaginable. In fact with us it can hardly be said to be a subject of ownership at all. But the phrase "title to office" is well

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[27] 88 N. Y. S. 261.
[28] 27 Ok. 469.
[29] 157 Mo. 88.
[30] 144 Ga. 761.
[31] 225 F. 893.
[32] 73 Kan. 127.
[33] 157 Mo. 88.
[34] REAL PROPERTY, 1070 and 1042.
[35] 59 Neb. 641.
[36] 79 N. J. Eq. 472.

recognized. "The title to an office," says the Wisconsin Court, "means the right which the claimant has to it."[37]

39. We were taught in law school that "title" could only mean the method of acquiring an estate in real property, and that such title was either by purchase or descent. And that purchase included all sorts of queer things that were not purchases at all. This limited idea of the word title, it has been seen, is highly confusing. It has no foundation in the history of the word nor justification in its present use (Washburn and Tiedeman to the contrary notwithstanding).

40. Title is frequently used to express the source of ownership. Thus the United States Supreme Court says, "The heir made title direct from the grandfather."[38] And centuries before this the Fabyan Chronicle said, "They claymed the lande by the ryght or tytle of theyr fader." And when Blackstone says that joint tenancies must have the "unities of time, title, interest and possession" he uses title to mean the source of ownership. In Michigan we read that when a half interest was conveyed to the husband and half to the wife "they had distinct titles and were tenants in common."[39] And Littleton says "One claymed by one title and the other by another title."

41. Title, of course, often means the chain, or history, of ownership. This is the sense in "abstract of title." And this is the way it was used by one J. Stephens, who in 1615 uttered this gem: "Let him be a tytle sifter and he will examine lands as if they had committed high treason."

42. Sometimes the source or chain idea is limited to the last instrument, "the particular conveyance under which a man holds his property."[40] This is something like the old Roman "just cause" or "legal means," and like Austin's "investitive fact."

43. Title frequently means the chain as evidence of title, that is, the title deeds or title papers, or as the U. S. Supreme Court says "the instruments by which right is accredited";[41] or as Maupin declares, "the whole body of documents or facts which evidence the ownership."

44. The idea that title means chain is further developed to

[37] 160 Wis. 431.
[38] 1 Pet. 507.
[39] 165 Mich. 228.
[40] 75 Neb. 104.
[41] 5 Wall. 600.

mean a chain showing an indefeasible (and not a defeasible) ownership. Thus in Nebraska it is declared that title signifies a "regular chain of transfer from the sovereignty."[42]

45. Title in the sense of chain may be restricted to those instruments which are of record and not those instruments or facts that are not shown on the records. This of course is our "record title," of which an "abstract of title" is a condensation.

46. As recorded chains of title become more lengthy, purchasers are more interested in what professional examiners or attorneys say about such chains than they are in the chains themselves. Hence "title" is coming to mean the opinion or certificate showing where the record ownership lies. Most of us have had occasion to assure some owner that he has not lost his property because he has lost his "title."

47. And, now, we come to the broadest meaning of our little five-letter word. It is also the most modern, and is simply "ownership." Thus the New York Court says "Title is ownership,"[43] and likewise in Texas, "Title means ownership."[44] That is, the word expresses the simple idea of ownership, without special thought as to the kind of ownership, or the source of or right to ownership, or whether or not it is shown of record. It is in this sense that we use it when we say "title insurance" or, still better, "ownership insurance." Judge Walker tells us that "the truth is, title means the same thing as ownership."[45] In probably half of the instances where the word "title" is used at the present time, it is intended to mean ownership merely, or as expressed by the Georgia court, "general ownership."[46]

48. Lastly, by a kind of metonomy, the word "title" has come to be applied to those who issue abstracts, certificates, or policies, and to the business or profession of issuing them. A "title man," may be said to be one who is in the business of supplying the public with indemnity concerning "title" in sense 45, 46, or 47 above (depending on which section of the "title association" he belongs to). And he may also, at times, discuss all the other 44 kinds of title.

By this time we might agree with the English judge who in-

[42] 75 Neb. 104.
[43] 32 Hun. 365.
[44] 101 S. W. 842.
[45] Walker's AM. LAW, p. 356.
[46] 144 Ga. 761.

nocently remarked that "the word title has different meanings."[47] In fact it has forty-eight different meanings or shades of meaning, which, if studied, will enable us to read, and to speak, and to think, with great clearness. Because, after all, we can only read, speak, or think, in words. Among which are the forty-eight words that the centuries have developed from the little signs the old Romans tacked up over their doorways.

[47] 22 L. J. Q. B. 4.