Monthly Bulletin

of the

American Association of Title Men

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A Message from the Committee on Cooperation to the Members of the American Association of Title Men

Your committee on cooperation is so badly scattered that cooperation in that committee is rather difficult. As chairman of that committee, however, I am anxious to interest you in its object.

The natural question that arises in the minds of one of our people, when asked to join our association, is whether it will pay financially to do so. Unless our organization is a benefit to its members in dollars and cents it does not justify its existence, for each of its members is organized to make money. We, therefore, have three objects to aim at: Protection from outside interferences or assault; decrease in expense; and increase in receipts.

To properly accomplish the first of these objects, we must have sufficient numbers or affiliations to exert an influence on legislation. The numbers engaged in our business are comparatively small; we are one part of the real estate business in which a vast number of others are directly interested. Our aims are the same as those of the realtors. The realtors in America are rapidly perfecting and enlarging their organization, and already exert a powerful influence in matters pertaining to real estate. We generally are more alert to what does or does not affect the interest of the real estate holder. If the realtor has confidence in us, he will join us in any matter that is to the common interest. In the past there has been a considerable antagonism in places between the members of the two professions. Much of this has been eliminated by a better understanding and a closer association between the two organizations.

We highly recommend that the relations between the title men and the realtors be still further strengthened. Our people should all join their local real estate boards, should take an interest and an active part in their affairs, attend such conventions and meetings as they can; they should serve on their committees and show the realtors that we recognize that we have interests in common, and that we are anxious to assist in improving their business and conditions. Considerable strides have been made along these lines in California, where the realtors are a powerful and rapidly growing organization. Legislative conditions in this state have been reversed in the past few years. As far back as any of us can remember, we have been rushing up to the legislature many times and oft to head off hostile legislation. At the last session of our legislature nearly all of the bills proposed by us for the general good were favorably acted upon. We are now saving much time and trouble in legislative sessions, preserving our peace of mind and doing some constructive work besides.

On the other hand there is no greater money-maker and money-saver than a little cooperation between our own members. In each locality there should be a fair schedule of fees; it should be observed without favor. We are engaged in a quasi-public business, and it is not fair either to the public or ourselves to have different rates for different people. Taking the situation in San Francisco merely for an example, we have the utmost harmony between the companies. We have the same schedule of fees and live up to it. Some concessions are made to charitable organizations, but concessions are never made for the purpose of securing business. We cooperate in all contributions; in most instances we make no promises until after consultation. We make no contributions of any kind to secure business, and whenever a small contribution is made before consultation, immediate notice thereof is given to our competitor. We require payment of our fee and expenses before closing a deal and we have eliminated all commissions. We have thereby been enabled, by collecting for every order the schedule fee, to substantially increase our monthly receipts; and by confining our donations to well established local charities and matters fathered by the San Francisco Real Estate Board, and by eliminating commissions, we have likewise cut down our monthly disbursements.

There is also a further benefit to ourselves and the public by the local cooperation. We do not belittle our competitors, or endeavor to make capital out of their mistakes. We improve our standing with the public by the opposite attitude; we put our business on a higher plane in their eyes. We render a better service and save ourselves a great deal of worry and expense. The attorneys for the companies discuss and agree upon what are and what are not valid objections, thereby eliminating many minor objections. No deal in San Francisco is held up more than temporarily by reason of a defect in title, where the owner has a policy of title insurance. When such cases arise, if there is a legal question as to the validity of the objection, the company which has issued its policy gives a letter of indemnity to the company making the objection and such objection is waived. If the objection is a confessedly valid one, the company which has issued the policy gives the other a letter of indemnity, but in addition agrees to, and does after the deal is closed, take proper steps to remove such objection.

I can say with a great deal of pleasure, that by reason of the local cooperation in San Francisco, the objectionable features in our business have disappeared; it has gotten to be a pleasure to do business with the realtors and the public. We can highly recommend the remedy from experience with its results.

DONZEL STONEY,
Chairman.

THE ORIGIN OF TITLE INSURANCE.

By John R. Umsted, Esq., of the Philadelphia Bar; Vice President, Continental-Equitable Title and Trust Company; Vice President, Pennsylvania Title Association.

Everything has a beginning and the beginning of title insurance, strange as it may seem, was in the place where it would appear least necessary.

The talent and learning of the Philadelphia lawyer from our earliest days is praverbial, yet in his home, title insurance had its birth; and it behooves us to consider why it should have originated in Philadelphia and should have there attained the position of exclusive practice; for today the transfer of title without title insurance in Philadelphia are negligible.

For one hundred years after our severance from England, following English practices in the transfer of real estate, with the common law of England a basis for its law, with its feudal tenures in the shape of ground rents, perpetual and redeemable, with its steady growth turning forests into farms, farms into villages, tracts into lots, and lots into cities, the State of Pennsylvania, of necessity, had developed a class of lawyers trained in their knowledge of the history and law of real property. Nowhere in America were records better preserved, laws more protective to real estate, conveyances more skilled, or titles more secure than in Pennsylvania; yet, in 1876, a demand arose that a better system supplant the one in vogue and this demand came from among the lawyers and conveyancers themselves. Many reasons can be assigned for this, but the chief one is that it was desired to give to the purchaser of real estate the best protection that could be afforded him. There were those who jealously guarded what they considered the privilege or monopoly of the lawyer and conveyancer, but the broad spirit of public interest insisted on that which would best facilitate

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NOVEMBER, 1922.

PROCEEDINGS OF CEDAR POINT CONVENTION OUT.

By the time this Bulletin is in the mails, the membership will have received the printed proceedings of the 1922 convention. This book was gotten up in a different form from those of the past years. The paper is of different structure and weight and there is much more printed matter to the page. It makes the book smaller in thickness and more convenient to carry or handle. This is the make-up most universally used for such matter. While it may appear that there is not as much material as in former years, there is as much if not more. The change was made with the idea of more convenience both in using and for mailing purposes.

READ EVERY WORD OF IT.

The address of Fred P. Condit, President of the Title Insurance Section, gives a suggestion for a new field of business for title companies. This is in the guaranteed mortgage and is something which presents great possibilities. It will pay everyone to read and investigate this matter and know of the success the Title Guarantee & Trust Co. of New York has had with this branch of its business.

When a man serves as the President of a national organization he will get a comprehensive idea of the conditions concerning the business of the members of the body which he heads. He will learn of the past, know of the present and have plans and ideas of the future. The annual address of President Pryor is therefore full of facts and suggestions which will interest everyone.

Secretary Doherty designated his report as a "Swan Song" but whether it be any kind of a song or not, it is a real message to the title profession. The only comment that the editor will make on it is that you read it.

One of the biggest things ever done by the Association was the tabulation of the information given by the returned questionnaires. This work was done by Mr. Allen C. Stelle, of Los Angeles, Secretary of the Title Insurance Section. It was a tremendous undertaking but ably accomplished. Mr. Stelle was unable to be present to personally give a report of this work but Mr. Doherty gave a comprehensive review of it which will show the results.

The reports of the various committees show that there are things going on every day that affect the title business—that there is a need for the Association and that it is filling every demand upon it. These same reports show that changes in the workings of the Association are needed each year and that they are being made. The result is that the Association is being strengthened and improved and the organization perfected.

The address of Chas. C. White on "Bankruptcy" is a masterpiece. Every title man will find it profitable to study this article. Examiners and title officers will find it to be an authority on the subject.

The report of Chairman Woodford of the Judiciary Committee will be found to be invaluable. Mr. Woodford is to be complimented upon the preparation of this and the able presentation of those matters affecting us.

The address of Mr. Robins on "History and Development of Title Insurance" is a most excellent review of this subject; Abstractors will be especially interested in the talks of Mr. Adams on "Abstracts" and of Mr. Ricketts on "Abstracter's Equipment."

The subjects discussed in the talk of Mr. Filson on "Title Insurance from the Standpoint of the Abstracters," and the matter of "Tax Liens" as given for Mr. Thompson by Mr. Monroe are of general interest and will appeal to every title man.

"There's a sucker born every minute," remarked the manufacturer of straws as he trebled his output.

NEW TITLE AND TRUST COMPANY IN WICHITA, KANSAS.

The many friends of B. F. Sadil, pioneer abstracter of Kansas, will be interested in hearing of the affiliation of his company, the Sedgwick County Abstract Co., with The Home Mortgage & Trust Co. under the new name of The Home Mortgage Title and Trust Co.

The new company will transact a general trust business, abstracts, title insurance and city loans.

SURVEY OF REAL ESTATE CONDITIONS.

The Bureau of Information and Research of the National Association of Real Estate Boards has issued the Report of its survey of 184 cities and counties of the United States and Canada. The summary of this report shows the following:

Reports indicate general housing shortage still exists; 121 cities report shortage, whereas 53 report no shortage. Reports from 10 cities indicate shortage as moderate but not acute.

Despite tremendous construction last year, reports indicate practically no overbuilding; 164 cities are reported as not being overbuilt in any way; 14 report some overbuilding. The overbuilding is not confined to any particular kind of construction. A number of replies to this question are "not yet," which would indicate in some localities a tendency to overbuild is discernible.

Reports indicate material increase in the amounts of building permits of 1922 over 1921; 136 reports are to the effect that 1922 has shown a great increase; only 11 show a less amount this year than last. One board reports more in dollars and less in space. This condition would seem to be indicated in many localities.

Reports from 53 indicate a trend to higher rentals; 35 report a downward trend and 67 stable conditions. Not much fluctuation is indicated.

The trend of business rentals upward is more decided than with residential property. Reports of 95 cities indicate marked increases; 10 report a downward trend and 53 steady.

Good market conditions are reported by 87 cities; 53 report fair and 43 poor.

Market conditions are reported good in 80 cities; fair in 59 and poor in 43.

Labor conditions are reported satisfactory in 120 cities; unsatisfactory in 10; 5 reports indicate some idle men and 43 show some shortage particularly in building trades.

Reports indicate general improvement in the mortgage money situation; 95 cities report mortgage money is available in sufficient quantity, whereas 78 declare the supply insufficient. Four reports declare conditions still improving although not yet good. No reports indicate conditions becoming worse.

7% and 6% seem to be rates gen-

erally prevailing; 66 cities report mortgage money available at 7%; 62 at 6%; 33 at 8%; 6 at 7%; 3 at 5%; 1 at 5½% and 1 at 10%.

INTERESTING NEWS OF EX-PRESIDENT WORRALL WILSON.

The many friends of Worrall Wilson, past President and one who devoted many years in active work for the American Association of Title Men, will be glad to hear of some of his recent activities and ventures of his company. The Seattle Times of October 29 prints the following item:

Millions Loaned Here.

"Large and Small Deals Protected by Title Insurance.

"Seattle is Home of Leading Corporation Engaged in Safeguarding Investments.

"The great life insurance companies which are lending in the aggregate millions of dollars on Seattle improved real estate, are almost unanimous in their requirement of title insurance to evidence and protect the title to property on which they loan, says Worrall Wilson, president of the Washington Title Insurance Company of Seattle. Such companies as the Metropolitan Life Insurance Company of New York, the Provident Life and Trust Company of Philadelphia and the Pacific Mutual Life of Los Angeles not only require title insurance on all loans made in this territory, but all of their loans are closed through the escrow department of the title insurance company.

"Among other companies which are consistent users of title insurance are the Prudential Life Insurance Company, the New York Life, the Equitable, the Penn Mutual and also the Occidental Life Insurance Company of Los Angeles and the Western Union Life of Spokane.

"The introduction of title insurance during the last eleven years has made possible the recognition of one standard title, which is the insured title. Titles are standardized because insured only after the most exhaustive examination of title has been made, and then the entire resources of the insuring company, including the permanent guaranty fund deposit of $150,000 in government bonds and approved first mortgages, which are held in trust by the state treasurer at Olympia are behind the policy.

"The present resources of the Washington Title Insurance Company, which was the first title insurance company to be organized in Washington, and the largest company in the Northwest, are now nearly $700,000.00"

The same issue also tells of The Seattle Title Trust Co. being appointed as the representative of the Metropolitan Life Insurance Co. in the investment of its funds in Seattle under its housing plan. The head says "New capital for city. The Metropolitan Life Insurance Co. to invest funds here, and closing of deal with Seattle Title Trust Co. held to be epochal event."

In a statement the manager of the insurance company said: "After a year of careful study of the situation in Seattle regarding real estate mortgage loans to be placed by our company, it has been determined to select the Seattle Title Trust Co. as the representative of the investment of the company's funds in this city. You may add that we are very glad to have obtained this connection here as with the new relations with the Seattle Title Trust Co. the Metropolitan will find a well safeguarded outlet for its investments."

This is doubly interesting because of the association of Mr. E. P. Tremper, genial Vice President of the Title Insurance Section, with Mr. Wilson in the same company.

So many at the convention were disappointed that it was impossible for Mr. Wilson to attend this year, but know that only pressure of his many civic, as well as business activities, kept him away.

Feature Articles In This Issue

This number of The Bulletin contains two very interesting articles. In addition to the paper of Mr. Umsted, as announced in last month's Bulletin, Mr. Winfree generously granted the privilege of printing his able presentation on "Closing the Deal."

Similar discussions will appear from now on in The Bulletin each month.

The Association is very appreciative of the interest of these men who are giving us the benefit of their time and ability in the preparation of such papers.

"Don't worry when you stumble. Remember a worm is about the only thing that can't fall down."

Thirsty days hath September, April, June and November. All the rest are thirsty, too—unless you make your own home brew.

Another Definition.

Efficiency is the art of spending nine-tenths of your time making out reports that somebody thinks he is going to read but never does.—[Kansas Industrial.

TEN COMMANDMENTS OF BUSINESS.

Handle the hardest job first each day. Easy ones are pleasures.

Do not be afraid of criticism—criticize yourself often.

Be glad and rejoice in the other fellow's success—study his methods.

Do not be misled by dislikes. Acid ruins the finest fabrics. However, both dislikes and acids may be used to advantage.

Be enthusiastic—it is contagious.

Do not have the notion that success means simply money-making.

Be fair, and do at least one decent act every day in the year.

Honor the chief. There must be a head to everything.

Have confidence in yourself, and make yourself it.

Harmonize your work. Let sunshine radiate and penetrate.

BACK IN 1890.

The world's most famous automobile manufacturer was working in a bicycle shop.

A millionaire hotel owner was hopping bells.

America's steel king was stoking a blast furnace.

An international banker was firing a locomotive.

A President of the United States was running a printing press.

A great merchant was carrying a pack on his back.

A railroad president was pounding a telegraph key.

There's always room at the top—where'll you be in 1954?

"All things come to him who waits,"
But here's a rule that's slicker:
"The man who goes for what he wants
Will get it all the quicker."

A good many of us mistake action for progress.

THE ORIGIN OF TITLE INSURANCE.

(Continued from page 1.)

transfers, give the greatest protection and enhance the value of the commodity (real estate) in the community.

That it may be understood that the inception of title insurance was brought about by the class of men referred to, let us read the advertisement of The Real Estate Title Insurance Company of Philadelphia, the first title insurance company formed in America; and to those who may know or care to inform themselves, it will appear that the officers were among Philadelphia's leading conveyancers on December 8, 1876, when the following advertisement first appeared in The Legal Intelligencer of Philadelphia:

THE REAL ESTATE

TITLE INSURANCE COMPANY

OF PHILADELPHIA.

Office—108 South Fourth Street.

INCORPORATED MARCH 28, 1876.

This Company insures purchasers of Real Estate and Mortgages against loss from defective title, liens and incumbrances.

It has at its command the knowledge and experience of most of the leading conveyancers of this city as well as the information relating to Real Estate titles, accumulated by them during many years past.

Through these facilities transfers of Real Estate and Real Estate Securities can be made more speedily and with greater security than heretofore.

Insurances are effected only after thorough examination of title and search as to incumbrances.

DIRECTORS.

J. Hays Carson	Charles Richardson
Joseph L. Caven	Craig D. Ritchie
Daniel M. Fox	John Edward Siddall
William E. Littleton	Henry C. Thompson
Charles M. Lukens	William Trautwine
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OFFICERS.

President—JOSHUA H. MORRIS
Vice-President—CRAIG D. RICHIE
Secretary—JOSEPH S. SIDDALL
Treasurer—HENRY HAINES

It would be unfair in writing an article on this subject not to publish in full this advertisement and give to the readers the names and purposes of the pioneers in the great work of title insurance.

Now what were the causes leading up to this?

Philadelphia in 1876 was just awakening to its possibilities; the Centennial Exhibition was on; an impetus had been given to building; large tracts were being cut into lots; many building operations were under way. The city was growing at a tremendous rate. In the old days, the title to tracts of ground were briefed and local conveyancers handled purchasers with bring downs, but the clients were gravitating to central lawyers and conveyancers, and there was need in many cases to run and rerun back titles with the attendant labor and expense.

If all local titles could be kept in one office it would not be so costly, but Philadelphia was growing and business was being distributed. There was the risk and uncertainty of searches, errors in abstracts and possibility of erroneous legal opinions as to which the conveyancer or lawyer might escape liability except in cases of negligence. A title insurance policy contracted to indemnify the purchaser against loss from any of these causes. Title insurance became a matter of necessity. It centralized the information at one point, it systematized the examination, it collected the necessary data, it reduced the expense. These statements need no corroboration better than the achievement of title insurance today in Philadelphia.

As to losses on searches, it may be said that today they form the greatest source of loss to title companies on which they have little or no recourse and without title insurance the insured would have no more.

Is it strange, therefore, that this most reasonable and significant advertisement should have appeared in Philadelphia on October 17, 1879?

"The charges for examining titles, making searches and guaranteeing the work, are so low, and the time required is so short, that attorneys and conveyancers will find it more satisfactory to have the titles of their clients examined than to incur the tedious and poorly paid labor of examining them themselves; the total cost of insurance and together with a professional fee for services in effecting insurance and making settlement, being generally less than the expenses of preparing a Brief of Title with Searches."

The searches necessary in Philadelphia in 1876 were: Recorder of Deeds for Deeds and Mortgages; Registry of Deeds; Locality Index of the Court of Common Pleas; Locality Index of the District Court of Philadelphia; City Solicitor's Index of Claims; Register of Delinquent Taxes; and Judgment Indices of: District Court for the City and County of Philadelphia; Common Pleas Court for the City & County of Philadelphia; Quarter Session Court of the Peace for the City and County of Philadelphia; Supreme Court of Pennsylvania; U. S. District Court for the Eastern District of Pennsylvania; U. S. Circuit Court for the Eastern District of Pennsylvania; with no opportunity to obtain any search as to Sheriff's sales other than information obtained from John C. Uhle, Esq., who had prepared a private index of his own and furnished certificates therefrom.

In 1877, the Circuit Court for the Eastern District of Pennsylvania decided in Prevost vs Gorrell (No. 2) 5 Weekly Notes of Cases 151, that a judgment entered in the Western District of Pennsylvania was a lien on lands in the Eastern District. This decision was very disturbing to the profession which had not theretofore thought it necessary to search both districts. Thus we can see the opening for the insurance of titles and the comfort in the thought that a title insurance company would not be a bad thing to take care of claims, encumbrances and defects that might arise spectre-like to attack one's title years after its requirement, and when the family lawyer or conveyancer may have moved on to a new home where the title may not be changed. The new practice came, it grew and became exclusive.

Men who had specialized and become authorities on titles accepted the new situation and adopted the benefits. New companies were formed and gradually the old-timers, one after another, followed into the new practice until there remained only those who, furnished with a set of guaranteed searches by the title company, would continue to abstract a brief of title; but even this class, of whom building association solicitors formed the greater part, has come to the title insurance company, so that today with the title insurance companies of Philadelphia numbering about forty, the entire city practically covered by title insurance, and with an aggregate of about 1,000,000 title policies issued, the conveyancer of the old days has passed away. We miss him. He was a man of distinct character, scholarly and respected. His was a profession, and his position in the community was like unto the Clergyman, the Doctor and the Lawyer, but he has gone and in his place has come a bustling, hustling business man who does things quickly, gives us results but leaves us in ignorance of the wonderful mysteries that underlie our land titles in the great Commonwealth in which we reside. "Tempus fugit."

Editor's Note: This is the second of a series of articles arranged for by Mr. Potter, President of The Title Insurance Section. The first which appeared in last month's bulletin was by Mr. Potter and gave an outline of the series together with a very practical discussion of the close relationship and dependence upon each other of the abstracter, examiner and underwriter of title insurance. It is essential that they understand the work and problems of each other.

Next month's article will be on "Resume of Title Forms in Use" by Mr. W. H. Winfree, President of the Northwestern Title Insurance Co., Spokane, Washington.

Winter am comin'
Comin' fas',
But I got yams
'Nuff to las'.
Wolf, why yo' howlin'
Roun' my do'?
I got twenty washin's—
Could git mo'—
'Nuff to buy hog-meat
Apples fer pies;
Go way, wolf,
I advertise

—[Life.

CLOSING THE DEAL.

By W. H. Winfree, President, Northwestern Title Insurance Co.

(From address delivered before the Portland Realty Board.)

Brokers Generally Close Real Estate Deals.

It is the general practice for the broker who has made a sale or exchange of real estate to close the deal. In almost every instance this is a self-imposed burden. The reason for this custom rests apparently on two grounds, first, the general belief, shared by many brokers, that the broker's commission is not earned until the transaction is consummated, and that a part of his duty is to close the deal; second, the desire of the broker to render what he regards as a complete service. Unless the contract of employment of the broker expressly, or by necessary implication, obligates him to close the deal, he is under no obligation, either legal or moral, so to do.

There are cases holding that, under the peculiar wording of the contract of employment of the broker construed in each of such cases, his commission is not due until the transaction is consummated. See collection of cases in 29 Lawyers' Reports, annotated (N. S.), 533, and 44 Lawyers' Reports, Annotated, 593.

The listing agreements in general use by the real estate brokers in most places, are so drawn that they will not be governed by the rule which controlled the decisions in the above cases, but by the principle laid down in the case of Barnes v. German Savings & Loan Society, 21 Wash. 448, wherein it is said:

"In Carstens v. McReavy, 1 Wash. 359 (25 Pac. 471), it was stated that it was not necessary for a broker to obtain a written contract with his prospective purchaser, but, if he found a purchaser who was ready, able and willing to purchase and the owner was informed of such fact and the purchaser actually produced, the broker was entitled to his commission although the sale was defeated through the act of the owner or the owner chose to deal with the purchaser on other terms."

These listing agreements are also so drawn that (quoting from Armstrong v. Oakley, 23 Wash. 122), "when the agent procures a purchaser ready, willing, and able to buy on the terms proposed, his employment is at an end."

If further authority is desired to sustain the statement that, under the listing agreements generally used the broker's commission is earned and his employment is at an end when he "procures a purchaser ready, willing, and able to buy on the terms proposed," see,

4 Ruling Case Law, 252, and cases cited; note in Extra Annotated American Decisions, Volume 93, pages 172 and 173 and cases there cited; and 46 Lawyers' Reports, Annotated (N. S.) 129 and cases collected.

A Broker May be the Agent of Both Parties in Closing.

The broker's employment being ended when he finds a purchaser, whom does he represent in closing the deal and what are his powers? While a broker cannot represent both buyer and seller in making a sale of real estate, unless both parties know of and assent to the dual position, he may act for both parties in closing the transaction. The positions of buyer and seller are antagonistic until the terms of the deal are agreed upon; but at that point there is no further conflict in their interests and a broker may and does become the agent of the one for whom he acts, whether buyer or seller, or both: see 9 Corpus Juris, page 518, Section 20, and cases collected, where it is stated that the broker is, in the first place, "termed the agent only of the person by whom he is originally employed, and does not become the agent of the other until the bargain or contract has been definitely settled as to the terms between the principals."

A broker should not be misled into the belief that an agency cannot be created except by a writing because of the fact that the statute of Frauds in some states provides that a broker cannot collect a commission for buying or selling real estate unless the authority to buy or sell is in writing. This is clearly stated in the case of Stuart V. Preston, 77 Wash. 559. Nor does an agency have to be created by express authority. It may be implied; 2 Corpus Juris, pages 435-438, and cases collected. The authorities here collected sustain the text that,

"There is in general no particular mode in which an agency must be created, and it is immaterial what terms are used or by what name the transaction is called if the requisites of an appointment are present. The relation of agency does not depend upon an express appointment and acceptance thereof, but it may be, and frequently is, implied from the words and conduct of the parties and the circumstances of the particular case. It may be implied from a single transaction."

Special Skill Required of Broker in Closing.

If the subject of agency requires special skill, the agent is liable for loss due to want of skill, if he enters upon the agency business, even if the agency is gratuitous: 2 Corpus Juris, page 723, and cases cited. The authorities there collected, without practically any dissent, hold that,

"In case of an employment which requires special or professional skill an agent who professes or holds himself out as possessing such skill will be liable for losses due to his failure to possess or exercise the same, and this is true notwithstanding the agency is gratuitous."

Liability of a Broker for Losses From Mistake in Closing.

If the question is ever presented to the courts of any state where it is the general practice of real estate brokers to close real estate transactions, there is little doubt but that it will hold that, by the general practice of real estate brokers in that state closing real estate transactions, a broker "professes and holds himself out as possessing special skill" in so doing and his liability will be measured by the skill of a specialist in closing. The court would not have to go to the extent of holding that the broker held himself out as having special skill in order to hold him liable for most losses occasioned by the improper closing of a real estate transaction, as practically every such loss could be avoided by the exercise of ordinary prudence.

The extreme to which some of the cases go is shown by the case of Murrah v. Brichta, 9 S. W. 185, where a broker was held liable when he received no compensation from the plaintiff for his services and the broker proved that he followed the procedure commonly employed by careful business men in the community where the deal was made.

Representations. One of the greatest risks to real estate brokers, and to anyone closing a real estate deal, is from claims of losses because of alleged representations made by the broker or closing agent. The law is that,

"One who makes a statement expecting it to be acted upon must have knowledge of the fact concerning which he speaks or he is liable." See Katham v. Comstock (Wis.) 122 N. W. 1044; 28 Lawyers' Reports, Annotated (N. S.), 201, and long list of authorities collected in the note commencing with page 202. Endsley v. Johns, 120 Ill. 469, 60 American Reports, 572; Lasman v. Calhoun, 111 Wash. 467."

The principal representation in closing a deal has to do with title. It is because of the risk that a purchaser may claim that a representation has been made concerning title that the memorandum of sale in general use in Spokane has thereon the following:

"I understand that the agent assumes no responsibility as to title and recommends the purchaser to have the abstract examined by attorney or title company."

In White v. Reitz (Mo.) 108 S. W. 601, a broker was sued for loss because of a defective title based on his statement that, "He had owned the land himself and knew the title was good." He proved that he was honest in his belief and that he had owned the land at one time. The court held him liable, citing a number of decisions supporting the rule that honesty of purpose and lack of knowledge is no justification for one making a statement which may be acted upon by the person to whom it is made to his damage.

It is not necessary in such cases that the broker, or the person held liable in damages, should have been the agent of the one to whom the representation was made, nor is it necessary to show any privity of contract between them: 12 Ruling Case Law, page 407.

Nor is it any defense that the person relying on such statement could have protected himself by examining the records or that an investigation would have shown the mistake: 12 Ruling Case Law, page 377 and cases, particularly Carpenter v. Wright (Kan.), 34 Pac. 798.

If the liability of the broker for both acts of omission and commission is so onerous because of his holding himself out as having special skill in closing a deal, it is certainly the part of wisdom that he fully advise himself as to every act and thing which should be done to properly close a sale of real estate.

Little Things to be Cared for in Closing.

First in point of importance, are the so-called little things. It is the attention given to trivial matters which brings success to one man or business and the inattention to these things which brings failure to another. A famous sculptor is credited with having said, "Greatness is made up of little things, but greatness is no little thing." So first we say, and first in point of importance, the little things in closing the deal should have every care and every attention. Whoever closes the deal should see that no representation—real, implied, or imaginary—has been made by the salesman to the purchaser which is not embodied in the contract. The one closing the deal should see what has been said or understood, about awnings, screens, shades, linoleum, gas and electric light fixtures, heaters, porch chair, swings, etc.

Few of those who purchase a dwelling know that these articles do not become a part thereof. Most people think that they go with the house and when, after the deal is closed, they discover their mistake, they feel they have been the victims of sharp practice.

The Essentials in Closing.

While it is seldom that a broker is able to point to a loss in dollars occasioned by the nonattention to the little things in closing the deal, a direct monetary loss will occur because of the failure to do, or the improper doing, of a number of essentials to a proper closing.

The Contract—The terms of the contract of sale and purchase should be thoroughly understood. It is the closing agent's chart and he should not deviate one iota therefrom without the written assent of the parties thereto.

Evidence of Title—Does the contract call for an abstract or a title policy? If an abstract, the one who is to receive the title evidenced by the abstract should be advised to have it examined by his attorney. If the contract calls for a marketable title, the closing agent should see that the attorney's opinion says that the title is marketable, and, if a title policy is used, that a marketable title is insured.

In Spokane we seldom contract for a marketable title. The rule of marketability established by our Supreme Court is almost impossible of attainment. The memorandum of sale in general use in Spokane provides for,

"An abstract of title, or title insurance policy, certified to time of contract of sale, showing good title free from encumbrances except as stated."

The evidence of title, whether title policy, or abstract and lawyer's opinion, should find the title to be of the kind and character called for by the contract.

Preparation and Sufficiency of Papers—It is no part of the duties of a broker or other closing agent to prepare the papers: Barnes v. German Savings & Loan Society, 21 Wash. 448; Phillips v. Langlow, 55 Wash. 385; 9 Corpus Juris, 608-609; 46 Lawyers' Reports, Annotated (N. S.), 129; Brackenridge v. Claridge, 42 S. W. 1005. In the latter case it is said "The broker is not a conveyancer, but a maker of bargains." The closing agent must make delivery of papers, consummate the transaction, and when anyone undertakes to perform that service he assumes the responsibility of seeing that the papers are sufficient to carry out the terms of the contract.

Care should be taken that in each instrument,

Every blank is filled in or ruled out;

Every name is correctly written;

There is given the marital status of individual grantors and mortgagors.

In states where the community property system prevails, the marital status of individual grantors and mortgagers at the time the title was acquired should be given, and the marital status of an individual grantee should be given;

If a corporation is a party, its corporate existence and principal place of business is stated;

Exception is made in a warranty deed of encumbrances and defects, if any, in accordance with the terms of the contract;

If the purchaser is to assume and agree to pay a mortgage that the deed to the purchaser contains such a covenant;

Every signature is correct and, if a corporation is an executing party, its seal is affixed;

Each acknowledgment is complete in every detail and that the seal of the official taking the same is affixed;

Revenue stamps affixed and canceled;

In states where witnesses are required, that each signature has the required number of witnesses;

In states where the separate acknowledgment of the wife is required that such separate acknowledgment conforms with the statute.

These details having been given careful attention, and everything found regular, the closing agent must then determine if the delivery of all of the instruments would carry out every provision of the contract. A mistake may, we believe, be most easily made in two particulars, one, that the grantor, or grantors, in a deed, or vendor, or vendors, in a contract, have not such a title as they contracted to convey or sell; and second, that there are encumbrances against the property which the purchaser did not agree to in his contract of purchase. The first point is determined by ascertaining that the title is vested in one of the grantors or vendors in his or her separate capacity, or, if community property, that the spouse which joins with the vestee was his, or her, spouse at the time the title was acquired. What is here said as to a grantor or vendor applies to a mortgagor.

The courts hold many things to be encumbrances which are so common to property in this state that they are not regarded as encumbrances; such as reservations in Railroad deeds, building restrictions, contracts for supplying water and electricity, etc. Unless the purchaser agrees in the contract to accept the property burdened with such encumbrances, a closing agent has no right to consummate the deal until authorized so to do by the purchaser.

Encumbrances which are to Remain—Every encumbrance which is not to be released must be in exact accord with the provision of the contract in regard thereto. Investigation should be made to see that the due date, interest rate, amount, and terms of a mortgage remaining are as called for in the contract. The terms of any lease must be as provided for in the contract, as also party wall agreements, easements, and every encumbrance which the contract provides shall be a burden on the property when the deal is closed.

Municipal Charges—The statutes of Washington give cities owning their own water and electric plants liens for delinquent charges for water, light, and power, enforceable by discontinuing the services to the premises against which the lien exists. Spokane, and probably other cities, attempts to enforce a claim for crematory charges. Investigation should be made to see that there are no such charges; or, if there are, that they are adjusted between the parties.

Rights Accruing After Date of Evidence of Title—It is not an uncommon thing for a closing agent to act on evidence of title many days, and sometimes, many weeks, old.

It only takes a few moments to file a deed, or mortgage, or to secure a judgment and if it is necessary to have a title investigated up to the time that a sale is made, is it not just

as necessary to have the record examined between the date of the sale and the date of the closing? One who closes without such investigation is not only not measuring up to the requirements of one having special skill, but is not taking the precautions of the ordinary prudent man in business affairs.

Parties in Possession—It is the duty of the closing agent to advise the purchaser of the rights of parties in possession and that such purchaser should make inquiry of every tenant or occupant as to his right.

In closing a deal through our office we caution the purchaser to inquire himself of anyone in possession as to their rights and make it plain that we take no responsibility for, and do not insure against, rights of parties in possession.

A few days ago the vendee in an executory contract of sale who had made a cash payment and was paying the balance in installments through our office, called and said she wanted to terminate the contract, have her money refunded, and be paid some damages. Our Escrow Officer had some difficulty in ascertaining the trouble, but finally the woman said the house was infested with bed bugs. Our Escrow officer, who has some sense of humor, said "Madam, remember I told you we knew nothing of, and did not insure against, rights of parties in possession."

But to be serious, notice is of two kinds: One by the records, which is called constructive notice; and the other by possession, which is called actual notice, and if anyone is in possession of the premises, their rights should be ascertained. Not infrequently one is in possession under a lease with an option to purchase.

Mechanics' and Materialmen's Liens —A purchaser should be warned to ascertain that there are no rights of mechanics or materialmen for liens.

A lien is given on real estate for laboring on and furnishing material to a structure erected thereon. One entitled to such a lien may file his claim some time after he has ceased to labor or furnish material. There may be nothing about the premises to give warning of the right of either mechanics' or materialmen's liens; no claim may be of record, and still the right of lien against the property may exist.

Escrows—If a deed is lodged with a holder to receive partial payments and to be delivered to the grantee when the terms of the escrow are complied with, the same care should be exercised as to the rights of all the parties in the particulars heretofore enumerated, and further, care should be exercised that there is a written contract of sale in addition to the escrow instructions. This is necessary under the rule laid down by our court in the case of McLean v. Healy, 98 Wash. 489, where the court held that an escrow might be proven by parol but, if it pertained to the sale and purchase of real estate, it must rest on an enforceable written contract.

Cash—When everything else in the transaction is found to be in order the closing agent must see where the contract calls for a present payment to the broker or agent, or to any depositary for the account of the one who is entitled to such payment, that cash or its equivalent is paid over. Of course, a party to the transaction may accept a check or draft, but when a closing agent is authorized to receive or make payment for another, he has no authority to accept anything but money: 2 Corpus Juris, pages 628-629 and 727-728, and authorities collected.

Insurance—All policies of insurance should be examined to see that the name of the insured in any new policies and of the assignee in old policies conforms with the name of the grantee in the deed or the vendor in an executory contract and proper riders placed on the policies protecting mortgagees and vendees, if any.

Adjustments—Rentals must be adjusted in accordance with the terms of the contract as also interest on any mortgage remaining on the property and unearned insurance premiums.

Accounting—The finishing touch to a well closed deal is best expressed by an itemized statement of all receipts and disbursements, and nothing so cements a customer to a well conducted business as an accurately prepared and neat appearing account of receipts and disbursements.

Editor's Note: Mr. Winfree brings out many interesting and important points in this discussion. It shows very clearly that the title man has an important place in the world of business and that title matters should be handled by specialists. When one reads this article it is easy to see the great value in having escrows, trust and closing of deals handled by title companies.

This paper was prepared for delivery before the Portland Real Estate Board and issued in pamphlet form for distribution. It later appeared in the above form in the Real Estate Journal, the bi-monthly publication of the National Association of Real Estate Boards.

Being so pertinent to our interests, it would be a fine thing if it could be printed in pamphlet form and every title man take a number of copies for distribution.

STATE NEWS

TEXAS MEETING, OCTOBER 16-17.

The fifteenth annual convention of the Texas Abstracters' Association was held in San Angelo on the above-mentioned dates. It was a very busy and profitable session and despite the fact that a full set program was not prepared, but instead more of an open meeting, things had to be kept moving in order to get through in the two days' schedule.

It was a great pleasure indeed for the Executive Secretary to be present. The exhibit of the American Association was on display and commanded the usual interest and examination.

Addresses were given on the following topics: "System in an Abstract Office," by W. C. Montgomery, of Paint Rock; "Federal Liens," by Hon. Alex Follins, of San Angelo; "Taxation of Abstract Plants," Herman Eastland, Jr., Hillsboro.

Round table discussions were had on Ways of Abstracting Court Matters, Torrens Agitation, Readjustment Problems, Side Lines and Feeders, Overhead Expense, and other interesting topics.

Much time was given to discussing the matter of taxation of plants. Some of the Texas assessment boards seem to have become infatuated with the desire to put them on a high valuation and inflict a real penalty instead of a tax.

The meeting was well attended and interest keen. Texas is a State of greatness and the length across it is hundreds of miles. Many came a great distance to be present. There are immense possibilities for this State Association and plans were made to accomplish some of them. There are many counties in the state and a real get-together by the many abstracters in them would make for an organization capable of many accomplishments.

Too much cannot be said for the untiring efforts of the San Angelo abstracters to make the convention pleasant. W. A. Stroman, of the Tom Green County Abstract Co., and "Big Henry" Fannin, of the San Angelo Abstract Co., were the kind of hosts one never forgets. They just took you in charge and made you feel like you never wanted to leave. A most enjoyable banquet was given the visitors on Monday night.

The next meeting will be held in the central part of the state.

The prize for the best abstract submitted in competition for the Lewis Fox Trophy was won by Mrs. Willie O'Neal, of Panhandle. The abstracts made by the fair sex seem to be taking the majority of prizes in these various state contests.

New officers elected for the coming year are: President, Ben C. Love, Franklin; Vice President, T. W. Massey, San Antonio; (the Secretary is appointed); Executive Committee, R. E. Sutton, Belton; Jas. K. Stewart, San Antonio; Tom Dilworth, Waco.

INDIANA MEETING, OCTOBER 25-26.

This Association held its convention on these days at Indianapolis. A complete report of it will be given in the next bulletin.

F. E. KOESTER, SECRETARY OF THE NEW JERSEY ASSOCIATION.

Through an omission in the last bulletin, which told of the formation of the New Jersey Title Association, it was not mentioned that Mr. Frederick E. Koester, Secretary of the North Jersey Title Insurance Co., was elected Secretary of this newly organized Association.

NECESSITY FOR UNIFORM LAWS ATTRACTING ATTENTION.

No one knows the necessity for improvement in our land laws as does the title man. The advantage of uniformity is especially realized.

H. L. Burgoyne, counsel for the Union Central Life Insurance Co., an authority on titles and a staunch supporter of the American Association of Title Men, outlined sixteen proposals for uniform title laws and presented them to the convention of 1913. The Association has considered them from time to time and proposes to again take some action in regard to them.

Something will be done to improve land laws within the next few years and this is a subject for the consideration and study of the title profession. We should have a part in it. It is our business and the American Association of Title Men initiated such a program. The Commission on Uniform Laws of the Bar Association, and other bodies have taken it up within the past few years and now come the realtors with their support. The National Association of Real Estate Boards has had a wonderful growth and development as an association and will be a big factor in the accomplishment of such a program.

The last issue of the "Real Estate Journal," its official publication, has the following article:

Standardizing Real Estate Forms.

The United States government, through its Department of Commerce, has asked that the Realtors of the United States, through the National Association, assist in working out a plan for the simplification and standardization of various legal instruments and contracts used in real estate transactions.

In a recent communication W. A. Durgin, Chief of the Division of Simplified Practice of the Department of Commerce, points out that there is a great amount of waste in business and industry caused by the great and needless variety of forms and documents used. He offers the assistance of the Department of Commerce in collecting and analyzing various forms now in use, and in developing a series of recommendations for standardized and simplified forms. The department also suggests the appointment of a member of the National Association as Secretary Herbert Hoover's personal representative to undertake this work in an intensive manner. After the collection of data has been completed and recommendations have been formulated, it is proposed that such recommendations be submitted to the National Association of Real Estate Boards for approval and adoption.

The officers of the National Association recognize the need of simplified practice in real estate transactions and and are preparing in every possible way to cooperate with the Federal government in this respect. State associations are also actively at work in this field and are developing standard forms of listing contracts, earnest money contracts, mortgages and deeds. The California Real Estate Association has recently devised standard forms which are now being used throughout the state. Due to the diversity in statutory requirements in the various states, the difficulties in developing standard forms for national use are of greater magnitude than those which will be met in any single state. It is believed to be quite possible, however, to develop model or standard forms, which, with minor adaptations, can be fitted to the needs of any locality.

Next month's Bulletin will have a complete report of the sixteen proposals, as outlined by Mr. Burgoyne. They are practical and cover the subject, and were conceived as a result of his many years of work with titles.

UNIQUE ABSTRACT ADDED TO AMERICAN ASSOCIATION EXHIBIT.

W. A. Gretzinger, Title Officer of the Republic Trust Co., Philadelphia, has presented the Association with a brief of title to a land in Philadelphia which is very interesting and a valuable addition to the Association exhibit.

The first entry is a patent from "Alexander Hoynoyassa, Governor of the South River in America to William Stone and Andrew Lawrence," of date, March 4, 1664, and was recited in a deed from George II, King of England, to the grantor. Then comes a patent from William Penn as "Governor of the Provinces" and the title continues down through a series of interesting transfers.

It is fine to have this and the interest of Mr. Gretzinger is highly appreciated.

TEXAS COMPANY HAS CONTEST AT FAIR.

Texas puts a great deal of stress on her State and District fairs. At the Lamar District fair held in Paris, Texas, the first week in October, the Scott Title Company, of which Mr. T. M. Scott is President, secured a booth at the fair and moved a part of their title plant to this booth and made abstracts and gave out general information pertaining to the title business during the fair. They had old pictures and original plats and other instruments of interest to the general public and showed how a set of books are kept and how an abstract is made.

They advertised over the country in the newspapers and by cards that they would give a first prize of $10.00 and a second prize of $5.00 for the best original written definition of an abstract of title delivered at their booth. This was an experiment to see if people would be interested enough in studying out and writing definitions of an abstract of title.

They were most agreeably surprised to receive approximately seventy-five definitions. After the fair was over these definitions were turned over to two disinterested attorneys living in Paris, who examined them and awarded the first and second prizes.

The prize winning definitions are:

First Prize.

"An abstract of Title is a brief history of the title to a given tract of land as shown by facts and documents of record."

Second Prize.

"An abstract of Title is a brief statement of the evidences of the ownership of a tract of land, including and showing all transfers, judgments, liens and matters of record affecting the title thereto, with references to the books and pages of the records where the same may be found, with a certificate from the party making the same, showing that it is full, complete and correct."

MINNESOTA MEETING, JANUARY, 1923.

Secretary Boyce, of the Minnesota Abstracter's Association has sent out a letter announcing the Annual Meeting of this Association, which will be held sometime in January. Plans are being made for an interesting and novel session.

One of the features of it will be the annual contest for the cup awarded by the Federal Land Bank of St. Paul, for the best abstract. They have a rather unique system in this, in that everyone abstracts the same instruments and the chances are equal for each. The bank sends out twenty-five instruments and the abstract is made from them.

A special endeavor is being made to have a 100 per cent attendance.

TITLE MAN ACHIEVES HONOR.

Mr. F. L. Taylor, Title officer of the Northwestern Title Insurance Co. of Spokane, Washington, has been awarded the prize for the State of Washington, offered by the American Law Book Co., in its contest for the best answers to a series of legal questions.