Title News

Vol. 6 SEPTEMBER, 1927 No. 8

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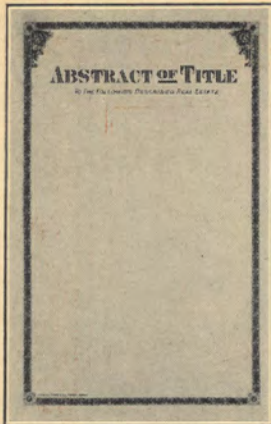

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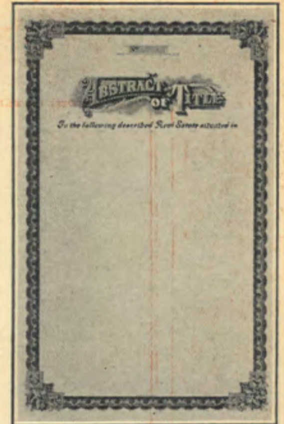

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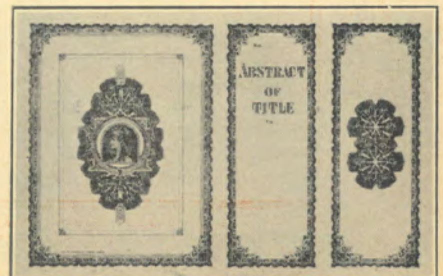

TITLE NEWS

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The American Title Association

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Vol. 6 SEPTEMBER, 1927 No. 8

Editor's Page

THE EDITORIAL force has just returned from the Detroit Convention and as we put the finishing touches to this September issue, we cannot refrain from telling you that the Twenty-first Annual Convention of the Association was the largest, most profitable and successful ever held.

Advance indications pointed that such would be the case but their extent was even greater than anticipated. We also want to give advance notice that the full report of this meeting will appear in the October TITLE NEWS and that the next issue of the magazine will be the Annual Printed Proceedings as issued by the Association each year.

Many title companies have within the past few years added very extensive and profitable side lines to their business in the making and management of Builders' Advance Mortgages. Like title insurance, this began in the East and has been largely developed by the title companies in that section of the country.

However, this is not a regular mortgage business, but a separate and distinct variety, calling for special knowledge, procedure and facility. We have had several requests lately for an article dealing with this subject. One is presented herewith and it is by Jacob P. Lesselbaum, a prominent Philadelphia Realtor. Mr. Lesselbaum is a builder and developer and by reason of being a quantity as well as a pioneer user of them has had a great deal of experience and is very competent to present information on this subject.

He recently appeared before the Forum of the Philadelphia Building & Loan Associations and his address on this occasion was reprinted in that city's Realtors' Magazine. Mr. Lesselbaum generously consented to prepare this special article for TITLE NEWS, and it will be found very interesting and informative.

We took a great deal of pleasure and pride a few months ago in announcing that several features were on hand for presentation in TITLE NEWS. Among them was a series of especially fine articles by our staunch friend and nationally known title authority, McCune Gill of St. Louis, Missouri.

The second of these is presented herewith and it is most interesting reading. Very few have probably thought that there is geography to our laws but this story and the chart accompanying it plainly show that even in real property matters we are strongly guided and influenced by kindred community ideas.

Have you ever stopped to think how basically important surveying and the work of the civil engineer is in our land title structure? This work plays a great part in the first steps of determining titles. As time goes on the matter of survey becomes increasingly important. A disregard of this is many times the cause of complications and troubles.

How surveying affects real estate titles is explained by an outstanding authority, Professor Earl B. Lovell, of the Department of Civil Engineering of our largest institution of higher learning, Columbia University, New York City.

One of the best ways to advance in your business and profit therefrom is to know what the rest of those in it are doing. Short news items, explanations of methods and the telling of things that those in the title business all over the country are doing are always interesting. We would like to have many pages in each issue of TITLE NEWS devoted to such accounts. Every issue has some but we are glad to have several in this one. Beginning on page twelve amd continuing through the balance of the magazine you will find many bits of information and stories of happenings all of which will tell you many things that you could apply to yourself or the title business in your community.

The Editor also wishes that more of the members would send in little articles and stories of their experiences and happenings in the course of conduct of their business.

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September 10, 1927

Fellow Titlemen:

The idea and plan of Regional Meetings have been eagerly accepted and their practicability, worth, and the medium they present for stabilizing the title business has been accepted by the titlemen in all sections.

Since the presentation and advancement of the scheme early in the year, they have been held in a number of states and results have absolutely proved that they are the successful solution of a great many problems for which we have long searched for a method of solving. In some cases these have been undertaken by state associations and the states divided into districts, in others the titlemen of a city or community have gotten together on their own initiative. But whatever method or plan followed, there is ample precedent and proof to warrant that they be undertaken by the titlemen of the entire country.

These have been undertaken by both the title insurance communities and where the abstract system prevails. They present a real way of stabilizing the business, bringing about more uniform and systematic procedure and conduct. Every member of the Association should be interested in seeing these undertaken within his district or state in the immediate future.

Sincerely yours,

Richard B Hall

Executive Secretary.

Builders' Advance Mortgages

Jacob P. Lesselbaum

Member Philadelphia Real Estate Board

Builders' advance mortgages are a form of mortgage on land used by builders to raise money in gradual installments to finance a building operation as it progresses. They are also known as "advance money mortgages" and "mortgages to secure future advances."

Being a form of mortgage on land these mortgages are, of course, subject to the general laws relating to mortgages in the several States, and also to any special legislation or decisions of the courts.

There has been much diversity of opinion among courts and law writers in the past on the question of the validity of mortgages to secure future advances, and as to the rights of the holders of such mortgages against subsequent purchasers, mortgagees and mechanics' lienors. Formerly such mortgages were regarded with jealousy and suspicion on account of the presumed possibility of concealing frauds upon creditors. Their validity is now fully recognized and established so that there is now no question as to the validity of mortgages to secure future advances.

The Supreme Court of Pennsylvania in a case decided in 1855 that "a mortgage given with a bond and in the common form and immediately recorded, and intended to secure the payment of a sum of money which the mortgagee then contracted to loan to the mortgagor for the purpose of enabling him to erect houses on the mortgaged property, and which was to be advanced in proportion to progress of the work, is valid, though the contract of loan be not referred to in the mortgage, nor recorded, and it ranks as a lien for the amount loaned from the date of its record, and not from the date of the actual advance; and this is so though the mortgagor contracted to apply the money to the payment of the builders, and had, in part, failed to do so, and they had entered their liens." This case was cited with approval in subsequent decisions by the same court in cases decided in 1917 and 1925.

Builders' advance mortgages have become a recognized form of security. Their frequent use has grown out of the necessities of trade and their convenience in the transaction of business. They enable parties to provide for continuous dealings, the nature and extent of which may not be known or anticipated at the time, and they avoid the expenses and inconvenience of executing a new security on each new transaction.

It is well settled that a mortgege on land may be made as well to secure future advances or indebtedness as for a present debt or liability. If such a mortgage is made in good faith and recorded as required by the statute, it will be a valid security and may become a prior lien for the amount actually advanced or loaned, although the advancements are not made until subsequent liens come into force, where the making of the advances was obligatory upon the mortgagee under the terms of his contract. Where the advances are optional or voluntary, the rule may be different, but as between the original parties, the mortgage will be a valid security although the making of the advances was left to the option or discretion of the mortgagee.

The need of a home or shelter is one of the prime necessities of man in a civilized state. In fact, civilization itself is built around the home. What is more natural than the desire to own one's own home? In more primitive times, each man built his own home, either by himself or with the help of others. With the development of machinery, railroad transportation, and the concentration in cities and towns, it has become necessary to provide homes for the workers. To meet the needs of these workers it is essential to have their homes convenient to their work, suitable to their tastes and within their means.

In preparation for the famous Centennial of 1876 in Philadelphia, the urgent need arose for dwelling houses for the thousands of visitors who were expected to, and did in fact, become permanent residents of the City. At that time it was discovered that the old method of building single dwellings by individual owners or artisans was too slow a process to meet the expected demand and, in addition, was too costly for the purpose of ready sale to prospective home owners. In order to build in large quantities at low cost the enterprising builder soon found that he could not provide the capital necessary for his undertaking without calling in the assistance of the financier.

The builder was usually able to buy his ground for cash and could probably pay for the necessary street improvements, but when it came to pay for the labor and materials required for the buildings, he did not have sufficient cash or credit to carry out his plans. If he mortgaged the ground he could probably not raise more than sixty per cent of its value.

In this predicament there came to his rescue the builders' advance mortgage. Without this form of financing the building of homes on a large scale at low cost would be an impossibility. The ordinary mortgage on real estate is a loan on tangible real property, either unimproved land or ground, or land and buildings. The borrower is able to show the prospective lender the physical, tangible property upon the security of which he desires a loan.

The lender, if he is satisfied that what he is shown is sufficient security, will grant a loan thereon.

But a mortgage to secure advances in the future based upon the construction of a building or buildings, which exists only in the imagination or on paper, represents nothing so tangible. It requires imagination and courage for a financier to loan money on an idea existing only in the mind of the would-be borrower, or on the plans and specifications embodying such an idea. The builder of pre-Centennial times did not have the advantage of access to trust companies, and title insurance companies with elaborate building departments, for they did not exist at that time. Such banks as were in existence looked with suspicion on builders' advance mortgages as being visionary and unsound. But there were in Philadelphia some men of vision and courage and civic pride who having the control of large estates with a great deal of money to invest, came to the assistance of these enterprising builders.

Without the enterprise of the operative builders of those days, and of the financiers who came to their assistance, Philadelphia would not have made the marvelous strides in home building which earned for her the proud title of "The City of Homes."

It is not to be supposed that this new method of financing home construction proceeded always smoothly. The financiers having control of funds for building operations did not always have the means of supervising and inspecting the progress of the building construction. Seldom did they have any practical knowledge of the labor and materials required, or the current price of materials going to the buildings. Plans, specifications and blue prints meant little to them. As to whether the proper location had been selected, whether the buildings were such as would attract home buyers, concerned some of these men very little. Their whole object was to earn as great an income for the money they invested as they could, and for the rest they trusted entirely to the operative builder. It is fair to say, that in most instances, this confidence was not misplaced, but in some cases the builder, if dishonest, would appropriate the money to himself, leave the city hurriedly, leaving the investors to "hold the bag," and the mechanics and material men clamoring for their money. In many instances, the buildings were not completed.

In spite of all these difficulties, it was essential to erect homes as a brisk demand had been created for them, and it was seen to be a profitable business, if properly conducted and safe-

guarded. By this time, title insurance companies had come into existence, the first of these companies having been chartered and established in the Centennial year in Philadelphia. Trust companies were just around the corner, so to speak. These two forms of institutions and builders' advance mortgage brokers, who came into existence later, finally placed this form of mortgage on a sound financial basis.

The title insurance companies began to issue not only title insurance policies guaranteeing the title to the ground on which it was proposed to erect dwellings, which in itself removed a fruitful source of trouble, but also issued policies insuring builders' advance mortgages against prior liens, mechanics' liens, municipal claims, and most important of all, insurance against the possibility of failure to complete the buildings. The trust companies and the title companies established special departments for handling this type of financing and insurance, employing men who had the requisite technical and practical experience to supervise and inspect the building as it progressed.

Brokers, specializing in builders' advance mortgages, began to acquire also the theoretical and practical knowledge of the different trades entering into building construction, such as carpentry, masonry, plumbing, steamfitting, plastering, concrete work, etc. They acquired information as to the current prices of materials, the ability to read and understand plans, specifications, blue prints, etc., a knowledge of the municipal building ordinances and regulations, the ability to appraise the value of ground in different parts of the city, and the thousand and one things that are necessary for them, as well as the banks, to know in order to be successful in this field. In addition, both the banks and brokers were required to possess a high degree of courage and vision in order to visualize and plan a building enterprise from its inception to its completion.

Nor are the banks and brokers the only ones interested in the success of a building operation. Properly viewed, the interest of every person who is in any way concerned with the problem, should be given careful consideration in order that all receive their just due. We should include in our problem the builder, the mortgage broker, the trust company, bank or other financial institution furnishing the funds for the mortgage, the title insurance company, the contractor, the sub-contractors, the material men, the realtor who finally sells the homes, and, last but not least, the home buyer. All of these have their particular problems. If any of them suffer, the whole plan must suffer.

During the last twenty years an average of eight thousand homes have been built each year in the city of Philadelphia. Even during the year 1926, 8720 homes were built in Philadelphia. This is remarkable when we consider that in the year just past, operative builders slowed down their activities because home building was going through a period of stabilization. This tremendous amount of building does not include the suburban operations which were also quite extensive.

Practically all of this building was accomplished by means of builders' advance mortgages and indicates two factors: First; that there is a demand for homes, and second; that this demand can be met by means of financing building operations through builders' advance mortgages. In financing a building operation the law of supply and demand of homes is the first and fundamental consideration. Assuming that there is a demand for a home of a certain type and price, we can proceed to visualize the different steps required at the present time to complete a transaction involving a builders' advance mortgage.

First of all, there must, of course, be a desirable tract of ground upon which to erect the buildings. The location of the proposed operation is one of the most important factors in the ultimate success of the enterprise. We frequently find operations erected in unsuitable and misplaced locations, which are doomed to be failures from the beginning because they were located in unimproved and undeveloped sections or without proper transportation facilities. Sometimes these developments are made years in advance of their actual need and not only cause a loss on the particular operation, but actually retard the development of other localities which actually need homes. These misfits sometimes require years to overcome and correct.

Assuming then that we have found a desirable location for a building operation, at a fair price for each lot on which an individual home is to be erected, in a neighborhood which is either fully improved, or where the improvements may be easily secured, with ample transportation facilities, we have the stage set, and the first, and, in many respects, the most important character steps out. This is the builder. Upon him rests the greatest burden for the success or failure of an operation. His character and ability count for more than anything else, except the actual money invested. Much depends upon his performances in the past, and whether his previous operations have been successful. His financial standing and reputation should be good. It is more desirable that he build in a section where he is well and favorably known, and where he has been successful in the past. He should preferably have a following of people who are favorably impressed with his work and should have the good will of material men, contractors, sub-contractors, and mechanics, who are interested in his undertakings and wish him well, as their cooperation goes a long way to make a building operation successful.

The builder having found a location that is suitable for his proposed operation, comes usually to a realtor who specializes as a broker in builders' advance mortgages and lays the proposition before him. The broker, after viewing the ground and appraising its value, and determining that it is reasonable in price and suitable for the purpose, discusses with the builder the type of house to be built, the estimated cost, and the probable ultimate selling price to the home buyer. If the broker is convinced of the ultimate success of the enterprise, the builder signs an agreement whereby the broker is made the agent of the builder for the purpose of securing a builders' advance mortgage from a bank which handles such loans. The compensation of the broker is usually stipulated to be a certain amount of money in return for which he gives his services in connection with every phrase of the operation from the time the builder first comes to him with the proposition to the time the houses are finally sold and settlements for them made by the buyers.

Plans and specifications are then prepared. The greatest care should be taken in this preliminary work, as to a great extent, the success of the venture depends thereon. A competent architect should be engaged who has practical experience in the field of home building. Artists may draw beautiful pictures of ideal homes, but when the houses are erected they may be anything but practical. An artist may draw on paper the picture of a home that looks charming and beautiful, full of individuality and picturesqueness, and the builder may follow the design as carefully as possible, but while the exterior may be charming, the interior may be impractical. When such a home is put up for sale prospective purchasers are entranced with the outward appearance, but as soon as they see the inside they refuse to buy.

I have in mind four beautiful looking homes—beautiful from the outside—which were designed by artists of considerable repute in their own field. They are charming to look at, but they are unsaleable. They have been completed and unoccupied for several years. Every prospective purchaser has turned "thumbs down" after seeing the interior. Almost everything is wrong with them. Floor levels are wrong; heights of ceilings are wrong; there is almost more closet space than room space; the lighting arrangements are poor; the communicating halls are impossible in their layout. And yet from the outside, they are as beautiful homes as could be desired.

After the plans and specifications are completed, bids are secured from the contractors for the different kinds of work involved, such as excavating, foundation work, carpentry, plastering, plumbing, heating, etc. From these bids and those of the material men, a schedule is prepared showing the kind of work to be done by each contractor, the bid submitted by him, amount of cash he will require for completion of his work, and the amount he is willing to accept in deferred payments. A contractor should not be asked to carry more than twenty-five per cent

of his contract on deferred payments.

Contracts should be awarded to contractors whose financial resources, or credit, will permit them to carry out their contracts and whose reputation for successful completion of similar contracts in the past is good.

The contractors often require security for their deferred payments. In some cases, one house or more, subject to a first mortgage, is set aside as security for such deferred payment, and title is held in trust by the bank for the contractor until payment is made by the builder. Often one or more second mortgages are held for the contractor. Of course, the security is not turned over to the contractor until his contract is completed in the absence of any other stipulation embodied in the agreement with the builder.

Agreements are then drawn up between the builder, also called the owner, and the contractors reciting that the builder, upon a certain described lot or piece of ground, is about to erect, or is erecting a building, or buildings, according to certain drawings, plans, and specifications, collectively called "specifications."

These "specifications" are signed by the parties to the agreement, and made a part thereof, and deposited with the bank.

The contractor agrees, in good and workmanlike manner, to the satisfaction of the builder and the bank, to do and perform all the work, and to furnish all the labor and materials mentioned and referred to in the schedule which is annexed to and made part of the contract. This is termed Schedule "A." Schedule "B," which is also annexed and made part of the contract, contains the payments to be made and the method of payment for the different parts of the work contracted for, and the agreement as to security held for the contractor for his deferred payment is fully described.

The contractor, for himself and his sub-contractors, and all parties acting through or under him, agrees that no mechanics' lien claims or liens shall be filed or maintained against the buildings, or the ground, for work done or materials furnished, and expressly waives and relinquishes such rights.

The contractor also agrees to be considered an independent contractor, and to be held alone answerable for any loss or damage caused by himself or those under him, and agrees to fully indemnify the builder against loss, damage or expense, as to all claims resulting from accident, negligence, or other cause. He is also required at all times to have in force workmen's compensation insurance in a satisfactory amount.

The agreement also provides that the contractor shall furnish the materials which he has undertaken to supply promptly, and to push the work vigorously without any delays, with such force of mechanics as shall be satisfactory to the builder and the bank, and so as not to delay or hinder the other mechanics. If at any time during the progress of the work, the contractor, in the opinion of the builder or the bank, refuses, omits, or neglects to furnish and supply a sufficiency of materials or workmen, the builder, or the bank, acting for and in the name of the builder, has the right, under the contract, after twenty-four hours' notice in writing, to procure the necessary materials at the current market price, and to secure the necessary number of workmen and mechanics to complete the work, and charge the cost and expense to the contractor against any balance due him. He is also liable for any deficiency which cannot be covered by the balance due him. The builder, or the bank, or his agent, or attorney in fact, has the alternative right, at their option, to annul the contract and procure others to furnish the material and secure workmen to complete the work, holding the contractor liable for any deficiency and charging any balance due him for the additional cost.

The contract further provides that no extra charge or claim shall be made for any work done, or materials furnished, whether called for in the contract or not, without a separate contract in writing to be approved by the bank, in no way altering or affecting the original contract, including the waiver of the right of lien.

In the event of any dispute or disagreement arising as to the character, style, or portion of the work to be done, or materials to be furnished under the contract or the plans and specifications, it is agreed that it shall be referred to the president of the bank as arbitrator and that his decision shall be final and binding.

The contractor is required to furnish either a personal or a surety bond to furnish all labor and materials required for the erection, construction and completion of the buildings in accordance with the terms of his contract, and to keep the buildings free of mechanics' liens as regards his particular work. The penal amount of the bond should be at least the total amount of the particular contract.

The builder should give his personal bond covering the entire operation guaranteeing completion in a specified time, and where indicated furnish a surety bond in addition.

It is well for the builder to have sufficient capital to purchase the ground clear of all incumbrances. Sufficient money should also be provided for street improvements, if not already in and paid for, taxes for the current year, fire insurance, title insurance, and also for one year's premium on a life insurance policy on the life of the builder, to the amount of five to ten per cent of the total amount of building contracts, the bank handling the operation being made the beneficiary. So much depends upon the builder that it is advisable to have this extra capital in case of his death, for the use of the operation. An amount equal to six months' interest on the mortgages should also be "ear-marked" and set aside from the building fund as additional security.

Having completed this preliminary work, a schedule is prepared giving list of contractors, the amount of their contracts, the cash required by them and the deferred payments they are willing to accept.

A loan of sixty per cent of the value of the ground and the total cost of construction is considered a fair basis for security. The loan is secured by an assignment of a mortgage, or mortgages, drawn for one year at 6% per annum, and is given as security for a collateral loan for a similar period. The amount of money loaned also represents a loan of approximately 80% to 85% of the amount of the mortgages. If the amount realized is not sufficient to cover the cash necessary to finance the operation, loans are made on second mortgages to make up the deficit, as it is essential to have on hand at the commencement of the operation sufficient money to equal the cash required as shown on the schedule. The funds are held in trust for the benefit of the operation to be disbursed as the construction progresses, in accordance with the schedule of payments for the completion.

The usual charge made when a trust company loans its own funds, disburses the money, and issues its policies of guarantee covering the operation, is about five per cent. When funds are accepted for distribution from outside sources, and policies issued, the charge for this service is usually three and one-half per cent. In addition to these charges, the usual charge is made for title insurance.

Builders' advance mortgages are often taken by individuals and trust companies, who place these funds in another bank having a special department for distribution of such funds. Two kinds of policies are issued by the bank handling the operation;—one guarantees completion of the operation within a certain period, usually one year; and the other policy guarantees against loss by reason of non-completion within a certain period of time, usually one year. Both policies, of course, insure the mortgagee against prior liens, mechanics' liens, and municipal claims.

Conveyancing for a building operation is of prime importance. An official survey, made by the local city surveyor is made of the entire tract, also showing the tract divided into the number of lots upon which dwellings are to be erected. Each lot is properly described on this plan so individual mortgages may be drawn.

Quite frequently a blanket mortgage is drawn covering the entire tract, mentioning the number of properties to be erected therein. This method necessitates the release of each mortgage from the blanket mortgage when it is sold, and the drawing of a new mortgage. It is more practical to create individual mortgages on each lot and house to be erected thereon, so

that they may be assigned when sold to investors. This method eliminates the possibility of mechanics' liens, because they are the original mortgages that were created before the commencement of the building operation. A saving can also be effected to the benefit of the builder in conveyancing recording and title insurance charges. Frequently it is easier to sell a mortgage already created than by making a new mortgage.

The property is deeded to a strawman who creates all the bonds and mortgages. This transfer is based upon the official survey so that there can be no question of the mortgages not covering the ground properly. The property is then reconveyed to the builder, subject to the mortgages. The mortgages are then recorded, as well as the contracts. The property is then conveyed to a trustee who holds title for the builder.

The mortgages, contracts, and deeds must be recorded before any work is commenced on the operation. This is necessary to forestall any possibility of mechanics' liens, which may date from the "commencement" of the building. As to when "commencement" begins has been a fruitful source of litigation which is wise to avoid by taking the proper precaution. An affidavit stating no work has been done, or materials furnished, should be acknowledged by two competent persons who have personally examined the ground, and can make a statement of their own knowledge. It is well, also, to have a photograph taken of the ground before the recording of the deeds, mortgages and contracts, showing work has not commenced, or materials delivered, and again before commencement of the work. These photographs to be properly authenticated.

The usual practice in Philadelphia in making loans on builders' advance mortgages, is to accept an assignment of a mortgage drawn for one year @ 6%, as collateral security for a note also for one year @ 6%. The amount usually loaned on such mortgages is 80% to 85% of its face value.

Considerable difficulty has arisen from the fact that the mortgages are due in the short period of one year. The sub-contractors taking either second mortgages or houses subject to first mortgages, as security for deferred payments, fully realize that this method of security is not satisfactory to them for the reason that if the mortgage is not paid within one year, the property, of course, might be disposed of at Sheriff's sale. The contractors are usually unable to raise sufficient money to pay off these mortgages in case of a judicial sale, and they lose their entire deferred payment, which is often 25% of the amount of the contract, because they are unable to protect their interests.

Quite frequently the operation is almost completed at such a time as to make it impossible to sell the entire operation within one year, this may be due to weather conditions or other conditions that cannot be controlled by the builder. The sub-contractors, realizing that the mortgage will soon be due, very frequently refuse to put the finishing touches on the houses that would complete them. Most of this finishing is in the form of labor for which they would be required to pay in cash. They feel that under these circumstances to go to any additional expense for the completion of these houses would mean "sending good money after bad."

The builder realizes that his mortgage is due in a short time, and that all his equity will be lost if the houses are sold at Sheriff's sale, or his collateral sold to satisfy the note, also loses interest in his operation. Very frequently properties are foreclosed and bought in by speculators at the Sheriff's sale with the contractor and builder losing all the money that they had invested in the operation. These properties, bought by speculators, are then put on the open market for home owners, and on account of being bought at considerable less than their fair value, are sold at a price below the usual price houses of that type should bring. This, of course, brings about a very chaotic condition and the selling of such houses below the market price tends to unsettle the security of other nearby operations.

Banks prefer, of course, to make loans on a collateral note for one year, for then they feel that their funds in the particular building operation are "liquid." These funds can be really "liquid" if the mortgages were created for three years, and taken by the banks outright on individual properties and not as collateral for notes. With the bank's bond guaranteeing completion and against municipal and mechanics' claims, the banks can very readily sell these mortgages to individual investors almost immediately upon commencement of the operation. There are, as you know, millions of dollars of bonds bought by individual investors in amounts of $3,000.00 or more on large office buildings, apartment houses, warehouses and the like, and there is no doubt but that if the banks accept three year mortgages outright on building operations and dwellings, that these mortgages can readily be sold to their clients.

With a straight three year mortgage immediately resold to investors, the bank is reimbursed for the amount of money it has agreed to lend the builder and the funds become immediately "liqid". By doing this the bank lessens the possibility of uncompleted buildings, the sub-contractor has no fear of losing his deferred payment in the operation, and the builder will, of course, stay on the job to the very end, and the houses will be fully completed and sold to the home owners. The bank, as trustee for the building operation, controls the funds so that they may protect the mortgages, when they are sold to investors, by paying taxes, interest and other charges out of the funds on hand until the houses are sold to home owners.

Due to the present system of granting only one year loans to builders, and the fact that sub-contractors have lost considerable money on properties being foreclosed, there is no doubt that the contractors specializing in this class of work, are not accepting business *at as low a price* as they would if they knew the builder was given sufficient time to dispose of his houses before the mortgages become due. Also due to the limitations of one year loans, many reputable contractors, whose organization, equipment and low overhead, enable them to do especially good work at reasonable prices, do not enter this field of building operations on dwellings on account of the insecurity of their deferred payments subject to one year mortgages.

There is no question in my mind, but that if the banks will take these mortgages on building operations for three years, and dispose of them as they do other mortgages to their investors, they will find that they are not only giving a very valuable service to the builder and contractor, but also helping to make it possible for the builders to fully complete their operations in every respect. This will also afford a considerable saving to the builder, and eventually to the ultimate purchaser of the house. When financial institutions grant a three-year loan to the builder at the beginning of the operation, the builder is saved the expense of conveyancing, title insurance and charge for replacing the mortgage, not to mention the time spent by the builder away from the operation in making these negotiations. The builder would be pleased if he could be released of this responsibility at the very beginning, the bank taking the mortgage outright for three years, and making a reasonable charge for the service, which, of course, would be very profitable to the bank.

The Geography of the Law of Real Property

By McCUNE GILL, St. Louis, Mo.

The land law of England, of Littleton and Coke and Blackstone, has changed greatly since the early colonists brought it to these shores. But the change has by no means been uniform. Our curious system of States has resulted in a veritable geography of real property laws, some States changing this principle, and others that; some changes being found in a definite section of the country, others seeming to skip about irregularly. And where several alternatives are presented, we not infrequently find that some State or other has seized upon every possible variation.

So it has been thought of interest briefly to sketch this unique topography of our jurisprudence of real property laws, as well as to compare the changes here, with those that have been made in England, the country where those laws originated.

Let us commence with the formal establishment of the common law in the States, or rather the formal breaking away from the parent stock. In most of the States it is assumed that English decisions, and statutes as well, of a general nature, are binding on us up to the year 1776, the date of the Revolution. But we find in Virginia that a much earlier time of separation is set as to British Statutes, the year 1607, or the fourth year of James the First, the date of the first English settlement at Jamestown. This curious provision was carried westward by the Virginians, and the course of their journeyings can be accurately followed by looking for this statute in the other States. We find it first transplanted to Kentucky, and then to Missouri, Illinois, and Arkansas. After the Civil War it naturally appears in West Virginia, and recently has been adopted in far off Wyoming. While we are considering the adoption of the English laws, it is interesting to note that Louisiana has a constitutional provision that the English common law shall never be adopted there in a body; but we know that many principles of our system—such as the Statute of Frauds, and even trusts,—have been smuggled into that Civil Law State, notwithstanding its constitution.

It would seem to be quite unnecessary to declare that feudal tenure no longer exists; but we find at least eight states that have seen fit to say that all land is allodial. These states are not at all related either in location or history. They are Arkansas, Connecticut, Georgia, Kentucky, Minnesota, New Jersey, New York and Wisconsin. In one of the states, South Carolina, we find a solemn declaration that all land is to be held in "free and common socage"; naively reminiscent of 12 Charles II.

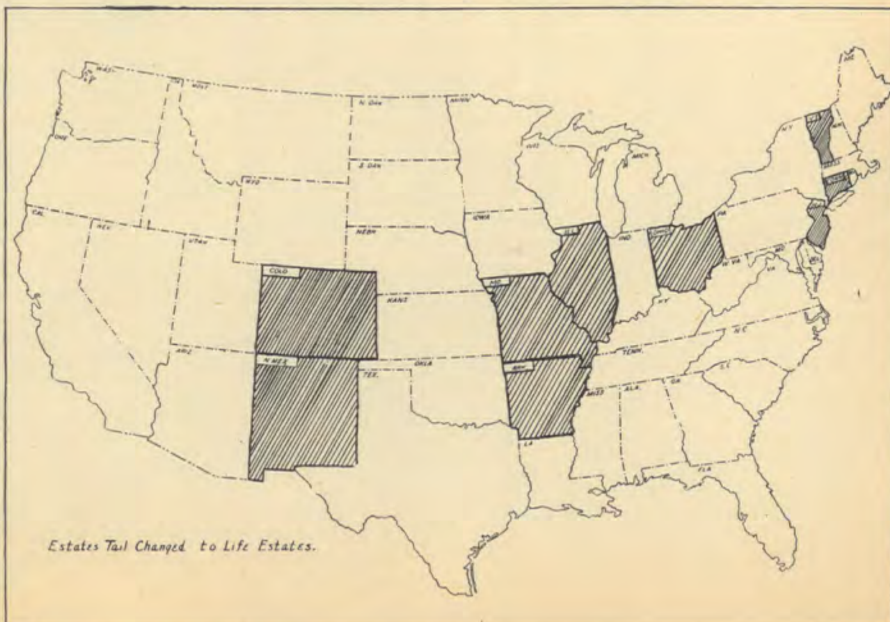
One of the most generally adopted statutory changes is that which renders unnecessary the use of the word "heirs" to create a fee simple by deed. While this reform commenced in the early eighteen hundreds, its spread was slow, and it was only recently that some of the States fell into line,—Ohio for example, not until 1925. And four of our Atlantic seaboard sisters are still to be converted; Connecticut, Delaware, New Jersey and South Carolina. The change in England was rather gradual, the statutes there requiring at first the words "fee simple," but now dispensing with all words of limitation whatsoever. This, by the way, is one of the changes recommended by the American Title Association.

The change in estates tail forms a curious chapter in our legal history. By the time of the Revolution, estates tail were freely alienable by court deed or fine. As our acknowledged and recorded deeds took the place of fines, there would seem to be little necessity for change in these estates, even in a country as favorable to alienation as ours is supposed to be. And so today some seventeen of our states, headed by Massachusetts, still have estates tail, barrable, however, by ordinary deed. But some of the states, twenty-two in number, seem to have feared such a condition, and, following New York, changed estates tail to fees simple, thus eliminating any question as to alienability. And now comes the strange part of the story. Although thirty-nine of our states are careful to render estates tail salable, the other nine, instead of seeking to do this, seem to have gone back 600 years or so to the days of the Statute De Donis, and to have sought to prevent such sales by changing these estates to life estates in the first taker with remainder (contingent, of course), in the heirs of his body. The geographical distribution of this idea is as strange as is the idea itself. It starts in the east at Vermont; then jumps to Connecticut, then over to New Jersey, and from there skips to Ohio. Its next stop is in a trio of Central States, Illinois, Missouri and Arkansas. From there it resumes its jumping habits, alighting in Colorado and leaving the country at New Mexico.

The martial rights of husband and wife are almost completely a matter of geography. With a few exceptions all of the states East of the Mississippi, and Missouri and Arkansas just beyond, are dower states. The Southwestern and most of the far Western states have community. Those in the Northwest get along very well without either dower or community, giving the spouse only a share as heir. Quarantine for a year is sporadic in the old Northwestern Territory, Ohio, Indiana, and Michigan, while life quarantine, originating in Virginia, was carried by the pioneers into Kentucky, Missouri and Arkansas. The elimination of inchoate dower is one of the changes recommended by the American Association.

Thus do we see how most of our land laws have followed immigration from East to West. But one prominent statute did just the opposite. Homestead originated in Texas in 1839 and rapidly spread Eastward over the country into all except two or three states. It is still found in its greatest vigor, however, in the state of its origin.

Another idea found mainly in the West, is that long term farm leases shall not be permitted. This appears in California, Montana, Nevada, and the Dakotas. The right of distress or landlords' lien, however, seems to increase as we go Southward; although



this is perhaps more a matter of color than of location.

As to tenancies by the entireties, about half of the states have changed them into tenancies in common or joint tenancies if to the survivor. The distribution of this reform cannot be reduced to a geographic rule, however, although it follows somewhat the distribution of dower, or rather usually precedes the abolishment of dower by some decades.

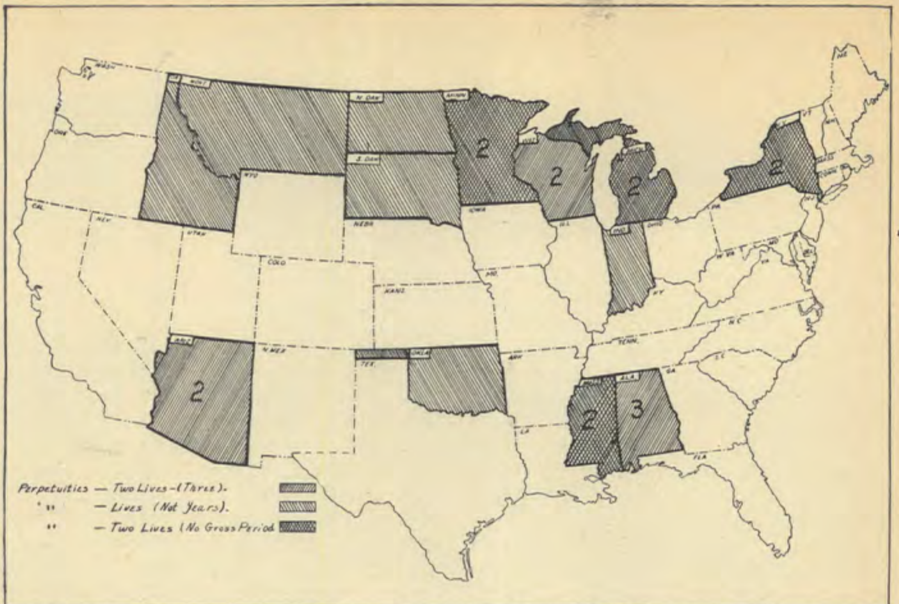
The right to redeem from a mortgage foreclosure seems to be more prevalent in the North and West, as in Illinois, Iowa, Michigan, Wisconsin, Minnesota, North Dakota, Oregon and Wyoming.

The development of the common law doctrine as to what constitutes a navigable river, and who owns its bed is worthy of note. Along the Mississippi, for instance, all the states (save one) on the East side give the river bed to the riparian owner and all on the West side take it away from the riparian owner and give it to the state (three making high water line the boundary and two low water).

The Rule in Shelley's Case is fast disappearing from our jurisprudence and has recently been abolished in England. It still persists wholly or partly in some of our more conservative states, forming a sort of band across the country. These are Pennsylvania, Indiana, Illinois, Arkansas, and Texas.

While some principles of land law are disappearing, others are appearing and spreading over the country. One of these is that contingent reminders and other entailments can be sold, with the approval of the court, and the proceeds reinvested. These statutes naturally appear in the most populous states where land has been tied up within the old families. We find such laws in Massachusetts, New York, New Jersey, Pennsylvania, Virginia, Ohio, Indiana, and Missouri.

The statutes modifying the rule against perpetuities form an interesting study in the spread of a statute, by the process of newer states copying from the older. In 1828 the Revising Commissioners in New York modified the common law rule, by limiting future vestings to two lives with no allowable gross period of 21 years. This was copied by Michigan, Minnesota and Wisconsin in the north and by Mississippi and Alabama in the South. It was also made part of the Field Codes of 1848 and from thence transferred to the statute books of California, the Dakotas, Idaho, Montana, Arizona and Oklahoma. In these western states the life period is lengthened to include any number of lives, but without allowing any gross period (except as changed in California and Wisconsin). This strange and unnatural modification of the just and natural common law rule has thus worked its way into the unsuspecting newer states—a volcano that some day will burst forth, and wreak havoc with titles. Even worse



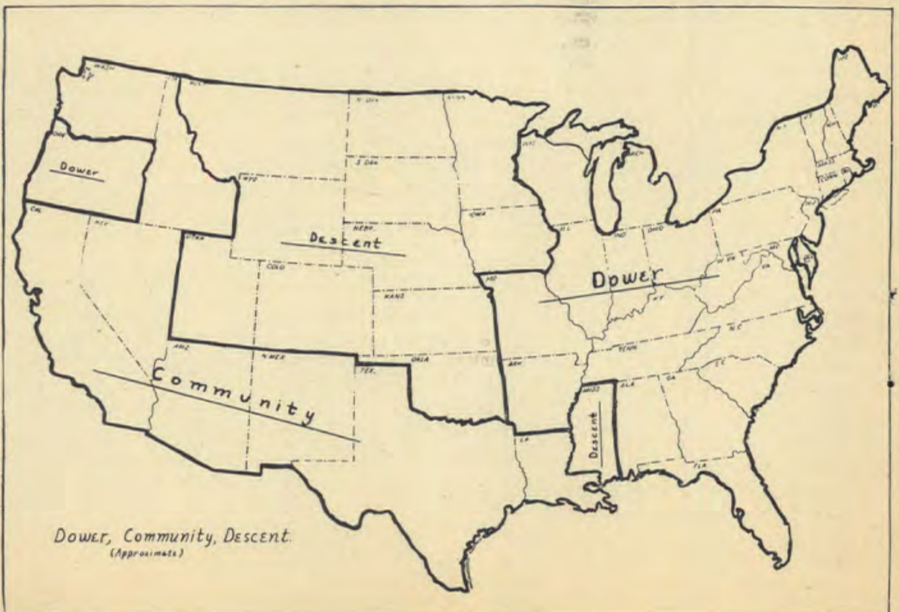
is the Thellusson Act against accumulation which seems to spring up wherever some testator attempts to provide for accumulating or pyramiding his estate. This is found in its severest form, forbidding accumulations except during the settlor's life and a minority in New York, Illinois, and the Western "Field" States, although in England a further gross period of 21 years has always been allowed.

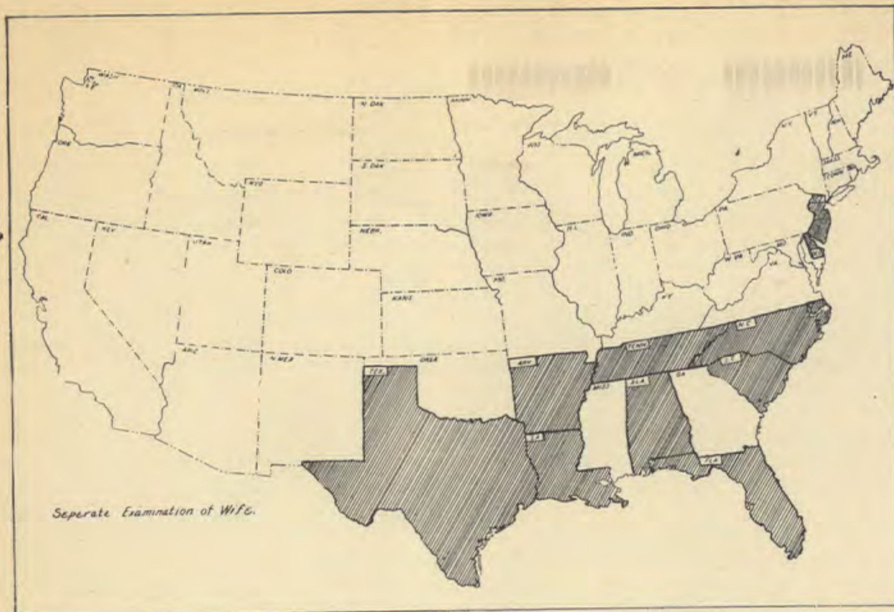
The provision that a will is an exercise of all the testator's powers of disposition even though not referring thereto, seems to suit everyone as we find it in both the "New York" and the "Virginia" States. Among the former are Michigan, Minnesota, California, the Dakotas, Montana and Oklahoma. The latter include Kentucky, Maryland, North Carolina and West Virginia.

The Statute of Uses, however, separates into North and South. It has been substantially re-enacted by the followers of Virginia but rejected and a new set of trust laws invented by those following New York.

One Act of very recent origin is of especial interest. It is the one providing that property conveyed to a person as "Trustee" without further disclosure of the terms of the trust, can be conveyed by the Trustee alone and that the public is not charged with notice of the interests of the beneficiaries even though the trustee may not, in fact, have had any powers of sale. This Act is found in Arkansas (1919), California, Colorado, Florida, and Ohio (1925). In Oregon such a deed is good only after five years. Most of these Acts were passed because of the approval of this law by the Title Associations.

The abolishment of private seals runs true to the expected form. In some of the New England States (Massachusetts, Maine and New Hampshire), common law or wafer seals must be used. In the next tier of States as far west as Illinois, scroll seals may be substituted. West of the Mississippi private seals were abolished so long ago that some of




Separate Examination of Wife.

your Western lawyers and judges have never even seen an honest-to-goodness pendant seal of wax.

The use of witnesses to deeds is not quite so geographic. Most of the fifteen states requiring witnesses are Northern, and scattered from Vermont to Wyoming. But three very Southern states are included, Florida, Georgia and Louisiana.

It is surprising in these days of comity between states, to find how few allow as good, acknowledgments taken in another state in the form provided in such other state. The ones that allow this are Alaska, California, Connecticut, Illinois, Iowa, Kansas, Minnesota, Ohio, Oregon, Vermont, and Wyoming.

It is also surprising in these days of feminine assertiveness to see that any state should cling to the idea that a wife must be examined separate and apart from her husband to ascertain whether he has coerced her into signing. We find that this provision still persists in the (almost) solid South, Alabama, Arkansas, Delaware, Florida, Louisiana, New Jersey, North Carolina, South Carolina, Tennessee, and Texas; another instance of the geographic variation of our land laws, as well as of our people.

It must be somewhat of a surprise to a seller of property to find that the use of certain harmless-looking words, such as Grant, Bargain and Sell, should bind him to a solemn warranty of title. But we find that this is the case in about half of the states, the Eastern States making these words a general warranty all the way back to the government, and the Western States making them a special warranty as to grantor only. But some of the states have repudiated the whole doctrine of implied warranty and prescribe that no phrase other than an express warranty, shall "imply" anything. Among these are Alaska, New York, Oregon, Rhode Island, and Wisconsin.

The rules of descent are notoriously diverse in the various states. In some the wife inherits before brothers and sisters, in others after. In some the father inherits before the mother, in others with her, and in one (Utah) after her. Consider the one point of collateral factions; in some states all heirs take per stirpes (Arkansas, Kentucky, Nebraska, North Carolina); in others all take per stirpes but representation is not permitted beyond descendants of brothers and sisters (Alabama, Illinois, Maryland, Mississippi, New Hampshire, New Jersey, Pennsylvania); while in still others those of the nearest living degree of relationship take per capita and all others per stirpes. (Arizona, Florida, Indiana, Louisiana, Missouri, Ohio, Texas, Arizona, West Virginia.)

The half blood relationship problem is incongruously solved. In some states half blood collaterals inherit equally with whole bloods of the same degree; in others half as much; in still others nothing in ancestral property; and in a few they are entirely postponed to whole bloods of the same degree. The first and third class are mainly Northern States; the second and last, Southern.

The alien problem is similarly mixed. It would seem that the states would follow the treaty policy of the Federal Government in this matter, particularly as State statutes must give way to treaties; and especially as we have treaties with almost all nations and all of the treaties are practically the same. Allowing descent and devise of lands to aliens but not validating any purchases by them. Only the District of Columbia, Florida, Minnesota, Missouri and Washington have provisions similar to these. The other states either allow complete privileges to aliens, or attempt to discriminate against those who are non-resident, or ineligible to citizenship (as in some Western or Southern states), or require that all land must be sold within a certain period of years (as in Illinois).

The number of witnesses necessary to a will is strictly a matter of geography. Three are still necessary in some of the conservative Atlantic seaboard states, Connecticut, Georgia, Maine, Massachusetts, New Hampshire, South Carolina and Vermont, although the number of witnesses necessary in England has long since been reduced to two. In nineteen of the Southern and Western states we find the influence of the Civil Law being felt so as to allow holographic wills without any witnesses.

Our last example of the varying laws of our states on the same subject, is one of the most interesting. This has to do with the lapse of devises where the devisee dies before the testator. Here we find six possible variants from positive to negative, and each variant about equally popular. Approximately one-sixth of the states will adhere to the common law rule that all such devises lapse. Another sixth relax only in favor of descendants leaving descendants. Another in favor of descendants, or brothers and sisters, leaving descendants. Still another any blood relatives leaving descendants. The fifth, any devisee whatever leaving descendants. And the last, any devisee whatsoever leaving any heirs whatsoever whether descendants or not, thus abolishing the doctrine of lapse entirely.

* * *

Thus do we see something of the diversity of the rules obtaining in the various states, as to the government of land; a diversity sometimes explainable by the historical derivation of the state, sometimes by its location, and sometimes frankly haphazard and not explainable at all; a diversity that presents a strong argument for uniformity of legislation; but withal, a diversity that creates a very interesting Geography of Real Property Law.

OKLAHOMA TITLE ASSOCIATION ISSUES NEW ATTRACTIVE DIRECTORY.

The ever-active and efficient Oklahoma Title Association on July 1, 1927, issued a mighty fine Directory of the abstracters and examiners, members of the organization.

It is arranged alphabetically according to counties, gives the names of the companies therein, with names of the manager or individuals in active charge and the phone number of the office.

It has been distributed generally throughout the state to loan companies, Realtors, attorneys and other patrons of abstract offices and many favorable comments and congratulations have been given.

It is prefaced by the following:

"The Oklahoma Title Association is an organization of Abstracters and others directly interested in land titles, whose purpose is to better the interests of its members by best serving the public; to make the preparation of abstracts of title more nearly uniform and perfect; to continually strive for the improvement of the present title system."

How Surveying Affects Real Estate Titles

By Professor Earl B. Lovell, Department of Civil Engineering, Columbia University, New York City

It is a pleasure to present some of the interesting things regarding the work of the engineer and surveyor as allied to the work of real estate title examinations.

The word survey comes from the Latin verb supervidere, which means to "overlook," to "oversee," to "view at large," or "to take a commanding or comprehensive view of," to "inspect carefully," to "examine." As applied to engineering the word means to determine the boundaries, extent and position of any part of the earth's surface by means of linear and angular measurements and the application of the principles of geometry and trigonometry to determine the form and dimensions of tracts of ground, coasts, harbors, so as to be able to delineate their several shapes and positions on paper.

Surveying is the art of making such observations and measurements as are necessary to determine the relative positions of points and other objects on the surface of the ground and of keeping a record of those measurements to the end that a drawing or graphical delineation, usually called a map or plan, of the included area may be made so that every place, point and object shall have or occupy its true situation. Conversely it is the art of laying out on the ground in their relative positions the prominent points or lines as shown on geometrical plans, maps and drawings or as described by metes and bounds, courses and distances.

Surveying divides itself into two branches:—Plane Surveying and Geodesy.

Plane surveying is that branch of the art of surveying in which the portion of the earth's surface surveyed is regarded as a horizontal plane. The curvature of the earth and the effect thereof on primary relations of points and lines is neglected. In the usual practice of making farm surveys and city surveys, where the areas surveyed are of limited extent, this assumption will cause no appreciable error.

Geodesy is that branch of the art of surveying in which the areas surveyed are of such large extent that we may no longer regard the earth's surface as a horizontal plane, but must treat it with reference to its "true figure"—called the "geoid" defined as a surface which is everywhere normal to the force of gravity and more particularly that one such surface which coincides with the mean surface of the oceans of the earth. The shape and dimensions of the "true figure" do not refer to the landed continents but rather to the surface under the continents to which the waters of the oceans would tend to shape themselves if allowed to flow in narrow, shallow canals cut into and through the land. Notice we say narrow and shallow canals. That is so that the quantity of water taken out of the ocean to fill these canals would not appreciably lower the level of the sea. The "true figure", or "geoid" for all practical purposes is a spheroid or ellipsoid of revolution.

City surveys and title surveys in their usual everyday sense deal only with problems in the field of plane surveying. However, where "titles in fee" run to and depend upon township, county, state or national boundaries, those boundaries must in general be determined and fixed by the application of the principles and science of Geodesy. Once those boundaries are fixed by physical marks or monuments "set on line" surveying for real estate title purposes will be confined again to problems in plane surveying.

The origin of surveying is found far back in ancient time. Cassiodonis, a distinguished statesman of 500 A. D., furnishes us with the generally accepted statement that the Egyptians were the first to make practical use of geometry (land measurement) as "they perceived the advantage it would be to them in recovering the boundaries of estates obliterated by the wished-for inundations of the Nile."

You are all familiar with the story that they wished the lands to be overflowed each year. The overflowing of the lands carried away their landmarks and they were compelled to find some way of restoring them. Necessity then was the mother of invention and brought forth the science of geometry, land measurement used by those ancient peoples.

Hero, one of the great men of the Alexandrian School, and Vitruvius, the Roman engineer, each wrote famous treatises describing various mechanical devices, surveying instruments and methods about the beginning or just prior to the Christian Era.

The Roman land surveyors were men of high standing and they exercised great authority in settling disputes. It was said of them "They are honored with a more earnest attention than falls to the lot of any other philosophers." Paul de Tissot, a French writer who published in 1879 a study of the work of the Roman surveyor, calls attention to the fact that during the Dark Ages it was the land surveyor who with the Arabian scholars of the time conserved the knowledge of the mathematical arts and carried it across the Dark into the Middle Ages, thus giving to the earliest years of the Revival of Learning the benefit of a foundation knowledge of that orderly and logical summary and arrangement found in the geometry of the Ancients. Books on geometry, including many surveying problems, are among the early works of the Renaissance. Modern time has developed new and better instruments; it has perfected methods and practices. Base line measurements made by the United States Coast and Geodetic Survey in 1906-1909 show a precision of one part in 2,000,000 or better, although work showing a precision of one part in 500,000 in acceptable since to require more would give the base line measurement a greater precision than could be attained in the angle measurements, and we understand that there is no particular object in carrying one part of the measurement to a greater precision than the other. Line measurement and angular measurement go together and the precision of one should about equal the precision of the other to have a well-balanced result.

By definition, "Surveying is the art of making such observations and measurements as are necessary to determine the relative positions of points and other objects on the surface of the ground," etc. It is necessary to have recourse to some visible, palpable material standard by forming a comparison with which all measurements may be reduced to one uniform size. The fundamental unit of British long measure is the yard. The prototype of the British imperial yard (to which the United States office of Weights and Measures conforms, though without expressed authority) was legalized in 1855. It is a bar made of bronze or gun metal (known as Bailey's metal) one square inch in cross section, 38 inches long, with a "well" sunk at a point one inch from each end to the center of the bar, in each of which wells is set a gold plug with a cross engraved on the surface of the plug. The standard yard, 36 inches long, is defined as the distance between these lines at 62 degrees Fahrenheit, the bar to be supported throughout and the thermometer to be constructed according to certain specifications.

Notice that the wells go to the center of the bar and that in the wells are set gold plugs the end of which is at the center of the bar. That is done to put the top of the gold plugs, which carry the markings for the official legal yard, at the neutral axis of the bar so that if there be any change in the form or dimensions of the bar, such change will be neutralized as far as possible within the bar itself to the end that the distance between the marks on the two gold plugs may remain constant and give to us an uniform standard of measure.

The standard foot is one-third part of the standard yard. Other units of

linear measurement in common use are the inch, the rod or pole, the furlong and the mile.*

Units of linear measurement not in common use are pace=3 feet, fathom =6 feet, span=9 inches, hand=4 inches.

There are two chains used in engineering work. The reference in deeds which are based on surveys is to the Gunther's chain, 66 feet long, composed of 100 links, so-called, each 7.92 inches long, introduced primarily as a measure in land surveying. Ten square chains, each of this length, give exactly one acre. The other chain, the engineer's chain, is 100 feet long and is composed also of 100 links, each one foot long but that chain is now obsolete. No one uses an engineer's chain. It has been replaced by the so-called band chain, or engineer's tape, which is 100 feet long, a single or continuous unit. The ordinary engineer's band chain is made of steel, about ¼ inch wide, graduated to feet and the end foot to tenths of feet. The engineer's tape used in city survey work is made of steel about ¼ inch wide, graduated to feet, tenths and hundredths of a foot throughout its length. Most manufacturers prior to 1926 made their steel tapes standard at 62 degrees Fahrenheit when supported throughout their length and subjected to a pull or tension of 10 pounds. Most steel tapes as now (1926) made are graduated to be standard at 68 degrees Fahrenheit (or 20 degrees centigrade) when supported throughout their entire length and under a tension of 10 pounds. The coefficient of expansion of steel equals .0000065 per unit per degree Fahrenheit change in temperature. When used the chain or tape is seldom supported and a pull in excess of its standard tension sufficient to balance by "stretch" the "shortening" due to "sag" must be applied. This excess pull depends on the cross section of the tape and the length between supports.

The United States Government uses for base line measurement on the Coast and Geodetic survey a tape 300 feet long made of invar metal, which has a coefficient of expansion within the usual limits of temperature variation equal to .00000056 per unit per degree Fahrenheit or only about 1-12 part that of steel. By reason of this fact it is possible to do work on base line measurements in the day time under the direct rays of the sun and to attain a degree of accuracy greater by far than it was possible to do when the measurements were made at night with tapes made of steel.

The units of square measure are the square yard; the perch or square rod; the rood, which equals 40 perches and the acre which contains 4 roods or 160 square rods or 160 perches. The acre contains also 10 square chains (Gunthers) or 43560 square feet. One square mile equals 640 acres.

We find references in certain old deeds made to the perch, and the rood. Those units are no longer in common use. The square foot, the square yard, the square rod and the acre are the units in most general use at this time.

The standard unit for angular measurement is the degree, one 360th part of a circle. The degree is subdivided into 60 equal parts called minutes and a minute is subdivided into 60 equal parts called seconds.

The magnetic compass, the properties of which, according to tradition, were known to the Chinese many, many centuries before the Christian Era, is described in a treatise entitled "De Utensilibus" written by an English Monk, Alexander Neeham who died in 1217. This instrument after much refinement in manufacture has been replaced for all accurate engineering or surveying work by the engineer's transit, a universal instrument introduced about 1780 for the measurement of angles, which, with suitable verniers attached, enable one to read angles to the nearest 5″ or 10″ of arc although more often reading 20″ or 30″ of arc.

Surveying for title purposes presents two general problems, first, "Surveys as in possession," the object of which is to obtain the necessary data to enable one to write a "metes" and "bounds" description of the tract of ground such as is used in a deed, and to calculate the area, and to show the shape and dimensions of the tract of ground and such improvement as may exist thereon. Second, resurveys, or marking out on the ground from a "metes" and "bounds" description the boundaries of a tract of land, where the previous physical monuments or boundary possessions have been destroyed. To make a resurvey from a deed description and to mark the bounds when all the old corners or monuments are gone is a difficult task at best, always beset with danger and sometimes impossible of reasonable, positive attainment.

We have observed that surveying is a fact finding operation and demonstration.

Its effect on real estate titles is and always has been judicial in character. The function of the surveyor is a semi-judicial one. From the earliest time he has been called upon to fix boundaries and to relocate old property lines. He is not an arbitrator, although between individuals, he is often asked to act as such. In court cases his status should be that of an advisor to the court. His first duty should be to obtain and place before the court the technical information which his professional training qualifies him to gather together and present. To this end he should ascertain all relevant facts dealing with the situation at hand. He must be furnished with or have access to all the legal records and other written documents, including maps which bear upon the determination of the location of the boundary lines of the tract of ground to be surveyed. Having studied the record he should go then to the premises and survey the situation as it exists.

The method of procedure for field work which he may adopt will depend upon the kind and character of the survey which he is to make. A farm survey of a tract of ground, the description of which begins at the line of division between the land of John Doe and the land of Richard Doe, where the same joins the highway leading from the old mill to Washington's Landing on the Sound; running thence along said highway towards the old mill to the land of George Smith, etc., calls for a method of procedure in the field entirely different from the one which would be used to survey Lot 17 on a modern map, made by some well known surveyor of high professional standing, showing premises within the limits of a city that had adopted a comprehensive street system shown and coordinated upon a record map and officially approved and filed in accordance with the provision of the present law pertaining to cities of the first class.

The surveyor's instruments and equipment in the two cases will be essentially the same. However, there will be minor differences. Bearings in the city will be determined from angles turned off from monumented street lines, the direction of which is shown on the official record map. Bearings in the country have in the past been determined too often by the magnetic compass. This has been and still is a source of much confusion. The fact that the magnetic needle is subject to changes in declination is well known not only to surveyors but to all professional men and was known long before Columbus' time. Yet no determined effort has been made up to the present time to require land surveyors to show on the plan or map of the survey the amount of the declination or to state whether the bearings shown thereon are "true" or "magnetic." This much at least should be done, and more. Men qualified to act as surveyors are able to make observations and to determine the direction of the true meridian. The reason why it is not done is simply one of expense. It would take additional time for the observation and that would add to the cost of the survey. Under those conditions the owner is too easily satisfied to accept the survey with only the magnetic bearing noted.

Methods will differ in certain other respects, for example, as to the degree of refinement used. If a man is making a survey in the mountains where land is worth perhaps $10 an acre, he would not be justified in using the same methods of refinement as he would if he were making surveys of

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*1 mile=8 furlongs=320 rods or poles=1760 yards=5280 feet
1 furlong = 40 rods or poles= 220 yards= 660 feet
1 rod or pole = 5½ yards= 16½ feet
1 yard = 3 feet
1 foot = 12 inches

Broadway in the neighborhood of 34th Street or 42nd Street in New York City. The value of the land must be taken into consideration by the engineer and surveyor to determine the degree of precision which he is justified in putting into his work. So in the city work observations are made as to "temperature," "pull" or "tension" on the measuring tapes, sag and their combined effect on the length of the tape is calculated and resulting corrections are made. Surveyors doing work in the country have not always been careful to observe these factors. As a result when the city moves out to the country and absorbs the farm tract and cuts it up into city lots there is more or less discrepancy between the dimensions of the exterior boundary as shown on the subdivision map and the corresponding distances found in the old deed descriptions. Where physical boundaries have been long maintained and the discrepancies are not unreasonable, such differences need not be interpreted as clouds on the title. In the absence of physical bounds to mark the division line and where the dimensions of the tract surveyed as in possession are unreasonably excessive resort should be had to a boundary line agreement while the tract is still in one ownership.

The method of procedure of determining the initial point or place of beginning in each of the two assumed cases will be radically different.

In the case of the survey of the farm tract the surveyor must first determine the location of the highway leading from the old mill to Washington's landing on the Sound. He must then confer with the lawful heirs of John Doe and Richard Doe and secure from them or their legal representatives an agreement as to the position of the boundary line between their respective parcels. Each of these tasks is beset with many difficulties.

The determination of the true legal side lines of the old highway is a problem of major importance from the standpoint of land titles. "Possession" is not always present and when present it is not always on the true lines of the highway. Searches should be made in the office of the town clerk and in the office of the county clerk and where there is a county engineer, in that office also for any map or description of the said road as it may have been laid out and dedicated. Failure to locate and make maps of old roads in districts where the city is expanding into the country, so as to be able to locate tracts of land which bound on the said roads, is one fruitful source of subsequent title trouble.

The city surveyor is not without his trouble in finding his initial point and place of beginning. Streets are not always monumented and when monumented, the block lengths between monument points do not always agree with the filed maps nor do the field angles as measured agree with the angles as shown on the official maps.

Original monuments in some sections of the city may be entirely gone. Street lines then must be relocated from possession. Entire city blocks and adjoining city blocks must be surveyed and all walls, fences and other possession located. The deed descriptions of each parcel of land in the block must be studied as a unit and compared with the survey of the said parcel as in possession and its relation to each and every other parcel of land in the block must be examined with engineering accuracy. The ultimate object, of course, must be to reestablish the original line of the streets surrounding the block.

One must act wisely, judicially. One must recognize that not only have standards of measurements changed, but that standard of workmanship, standard or limit of error have changed with the change in the value of the land. All these factors and others must be remembered and considered in making modern surveys from old deed descriptions. We are indeed reminded of the observation made by Herbert Spencer where he wrote "measuring other persons' actions by the standard our own thoughts and feelings furnish, often causes misconstruction,"—and of Pope in his Essay on Criticism—"Some valuing those of their own side or mind, still make themselves the measure of mankind."

The true criterion for the city surveyor in all such matters is set forth in the book of Matthew, chapter VII, paragraph 2, "With what measure ye mete, it shall be measured to you again."

The surveyor must in matters of measurement reestablish the old standard which was used when the ground tract was subdivided and apportion surplus or shortage pro rata. In such ways property encroachments will usually be reduced to a minimum, and the surveyor will best fulfill his function as a semi-judicial officer.

OKLAHOMA ENERGETICALLY PUSHING UNIFORM CERTIFICATE

State That Pioneered This Idea Making Rapid Progress. Abstracters Benefiting by It.

Some states have advocated a Uniform Certificate. Some have adopted one and then let the matter drop. Oklahoma early pioneered the idea of such a thing, and has been everlastingly at it in an endeavor to get the loan companies to accept it and the abstracters to use the thing.

Strange to say, the loan companies, lawyers and others who use abstracts readily caught the idea and its advantages and accepted the idea with enthusiasm. Stranger to say, many of the abstracters of the state have shown either a hesitancy or lack of serious consideration of the matter. The following report is given in the last issue of the OKLAHOMA TITLEGRAM.

There are thirty abstracters in Oklahoma who are now using the Uniform Certificate and with the four that are now under consideration, this will make thirty-four. There are about eighty-four members in the Oklahoma Title Association, or a little less than forty per cent are now using the Uniform Certificate. There has never been a serious objection raised to it by any abstracter in Oklahoma. Incidentally we have never had a title examiner who has made an objection. This leads the committee who are endeavoring to put over the Uniform Certificate idea for the association to believe that the fifty members of the Association who are not using the certificate really have no objection but have simply failed and neglected to give the necessary time and attention to changing over from the old form that they have been using for so many years.

The Oklahoma Title Association has accomplished some wonderful things. The abstract business in Oklahoma is a well established business. The abstracters of the state in general are successful. Their business is good. This was not true fifteen years ago. It is the general belief of those who have studied the situation that this change in conditions is due more to the organized effort of the abstracters under and through the Oklahoma Title Association, than for any other reason. More good can be accomplished for the members of the Association through the adoption of the Uniform Certificate than all of the different lines of endeavor that the Association has looked after and put over in the past.

If the other fifty members will adopt the Uniform Certificate we will then have no trouble in getting all of the title examiners of any consequence in the state to accept this form of certificate in lieu of any form they have been requiring in the past and the Uniform Certificate committee feels very sure that there will be no trouble in getting practically all of them to require it. Quite a number of examiners for loan companies are now requiring either their form of the uniform form. When they can obtain the uniform form in all of the counties where they are operating it will then be no trouble to get them to adopt the Uniform Certificate as their form since they are already willing to have either of these attached. With this accomplished you have eliminated the one thing that causes you more worry in your business than anything else—the continual requirements for special

form of certificates attached to your abstracts. Not only this but you have accomplished the same results that you have been trying to accomplish by legislation for fifteen years.

The certificate is fair, gives absolute protection to the customers of your office and requires you to make no unreasonable searches or certifications. While it is worded differently than your own certificate which you have probably used for twenty years, read it over and you will find that it in no way changes your liability. The biggest step that can be made for the benefit of your business can very easily be accomplished if you will lend your help by making this change in the certificate you are using.

MONTANA TITLE ASSOCIATION UNDERTAKES A REAL CONSTRUCTIVE CAMPAIGN OF ACTIVITIES.

State Formed Into Seven Districts For Regional Meetings—Cal Hubbard Wins Abstract Contest.

The Montana Title Association has always been active and not only protected but directed the advance and progress of the abstract business of the state. Just anyone cannot go into the business out there, and those in it have been inspired to making something real out of the profession and rendering high grade and respected service.

It has had officials directing its work that have been interested and active and the association has always functioned. This year, however, it plans a more energetic campaign and program than ever before.

The 1928 Convention held late in July was the most enthusiastic and profitable in the organization's history. The program was practical and given entirely to matters of concern and importance. It resulted in the decision to do many things during the coming year.

Most important of all is the districting of the state into seven districts, and Regional Meetings will be held in all of them as quickly as possible. A definite program of matters to be considered has been formed, and President Clarke will attend each of these meetings.

One of the features of the convention was the abstract contest conducted along the national association's plans for a Model Abstract Contest for State Associations. The first prize, a gold watch, was awarded to Cal Hubbard, of the Hubbard Abstract Co., Great Falls, genial and efficient as well as perpetual Secretary of the Montana Title Association. Cal is feeling mighty good over this and has reason to be, particularly in view of the praise from the judges for his abstract entry. Second prize was awarded to the Security Abstract Co., Sidney. The judges were Sidney A. Cryor, J. E. Deggan and Fred Olson, attorneys of the Federal Land Bank, Spokane, Wash. These men not only spent a great deal of time and effort in the actual work of determining the winner, but also in giving helpful suggestions and criticisms on every abstract entered.

President Clarke has given real and serious consideration to the responsibility of his office, and his address was replete with constructive suggestions.

It was voted to send a representative to the conventions of the American Association, and Cal Hubbard was selected as the delegate this year at Detroit.

It was also voted to continue the abstract contest as an annual event.

The proceedings of each convention will also be printed and distributed to the members. This is a very valuable thing to do.

The Association will continue its efforts to advocate a uniform certificate, and incorporate certain clauses of special importance to association members.

New officers elected for the coming year are: President, W. B. Clarke, Custer Abstract Co., Miles City; Vice Presidents, C. C. Johnson, Sheridan County Abstract Co., Plentywood; Jas. T. Robison, Teton County Abstract Co., Choteau; Al Bohlander, Abstract Guaranty Co., Billings; Secretary-Treasurer, C. E. Hubbard, Hubbard Abstract Co., Great Falls.

The Prodigal Son Returns to Save the Fatted Calf.

LAW QUESTIONS AND THE COURTS' ANSWERS

Compiled from Recent Court Decisions by
McCUNE GILL,
Vice-President and Attorney
Title Guaranty Trust Co., St. Louis, Mo.

Can one spouse sue the other for partition of a tenancy by entirety? Joint tenancy?

Tenancy by entirety, no; joint tenancy, yes; as where deed is to husband and wife "as joint tenants." Van Ansdell v. Van Ansdell, 135 Atl. 850 (Rhode Island).

Is interest of husband in tenancy by entirety subject to judgment against him alone?

Not in most States, but is in Oregon. Klarfine v. Cole, 252 Pac. 708.

Is sheriff's deed good if recital of execution is incorrect?

Held good in California. Sheehan v. All Persons, 252 Pac. 337.

Does one who builds, knowing of defect in title, get value of buildings?

No. Nixon v. Nixon, 135 Atl. 516, (New Jersey).

Can owner compel his neighbor to remove slightly encroaching building?

Yes, even through such removal would result in great expense. Crosby v. Blomerth, 154 N. E. 763 (Massachusetts).

Does conveyance of mineral rights waive right to subjacent support?

No. Bremhorst v. Phillips, 211 N. W. 898 (Iowa).

If person becomes householder after judgment but before execution, can he claim homestead?

Yes: Brown v. Manors, 250 Pac. 36 (Washington).

Can holder of land trust certificate apply for receiver and sale because of fraud?

Held not in Washington even though units aggregated more than cost of property, and unauthorized compensation for management was paid. Haynes v. Central, 249 Pac. 1057.

Must tenant give notice to terminate monthly tenancy?

The statutes usually provide that the tenant must give the same notice as the landlord. Lindsey v. Hamil, 249 Pac. 910 (Oklahoma).

Is deed conveying certain number of acres out of a large tract void for uncertainty?

No; deed is good and any subsequent purchaser can select such acreage. Ransome v. Watson, 134 S. E. 707 (Virginia).

Is judgment lien inferior to that of unrecorded mortgage?

Yes; judgment creditor is not purchaser for value. Everist v. Carter, 210 N. W. 559 (Iowa) Miller v. Scott, 154 N. E. 358 (Ohio).

Can a home outside the city limits be an urban homestead?

Yes: Commerce v. Sales, 288 S. W. 802 (Texas).

Does mortgage merge when mortgagee buys fee?

Not if there is a second mortgage. Citizens v. Peterson, 210 N. W. 278 (Nebraska).

Is limitation and possession against fee owner binding on his mortgagee?

Held not binding in Iowa. Oxford v. Hall, 211 N. W. 389.

Does devise to "my lawful heirs John and Mary" include other heirs?

No. Westerfelt v. Smith, 211 N. W. 380 (Iowa).

When does limitation commence to run against dower of wife not joining in deed?

Not until the husband's death, Cummings v. Schruer, 211 N. W. 25 (Michigan).

Is interest of one tenant by entirety subject to judgment against him alone?

No; and this exemption extends also to payments of purchase price after tenants by entirety sell. Battjes v. Milanowski, 211 N. W. 27 (Michigan).

Is remainder in will to "my children" vested or contingent?

Vested even though only an equitable interest in a trust; hence interest of child dying before life tenant is subject to child's debts. In re Roth, 210 N. W. 826 (Wisconsin).

Is trust for daughter for life and then to her present and future children, void as a perpetuity?

No; it will vest within a life in being. Palmer v. Neeley, 135 S. E. 90 (Georgia).

Can town sell lot donated to it for use as school?

No. Town v. Trust Co., 134 Atl. 815 (Rhode Island).

Can a fee be cut down by an executory devise?

Usually it can, but held contrary in Illinois. Sweet v. Arnold, 153 N. E. 746.

Is an agreement by heirs not to contest will, good?

Yes; even though made during testator's lifetime. In re Cook (New York) December 31, 1926.

Is city liable for delay and abandonment of street opening project?

No: James v. City (Ohio) Jan. 3, 1927.

Does grantee individually assume mortgage where his deed is made "subject to mortgage?"

No; the deed must also state that he "assumes" the mortgage, Fretwell v. Nix, 288 S. W. 8 (Arkansas).

Is a deed by a wife valid without joinder of husband?

In some States it is void as a legal conveyance, but even in such States is sometimes held good in equity. Voohris v. Courter, 135 Atl. 145 (New Jersey).

Does the fact that an executory devise may be divested, make it contingent?

No; thus a devise, (after a life estate) to "children but if any die leaving issue to the issue," is vested; and devise by child leaving no issue is good. Wells v. Bennett, 135 Atl. 146 (New Jersey).

Must appointment among issue by equally to all issue?

No; hence widow with power to appoint among issue can divide in such proportions as she sees fit. In re Bailey's Estate, 135 Atl. 109 (Pennsylvania).

Is a mortgage on afteracquired property valid?

Yes; even though the property was not purchased with proceeds of property described. Colonial v. Harmon, 135 Atl. 134 (Pennsylvania).

Is personal property in a "tenancy by entirety" State, governed by the rule of real property?

Yes; and hence cannot be taken for the sole debt of either husband or wife. Corey v. McLean, 135 Atl. 10 (Vermont).

Need a purchaser under a power look to the application of the purchase money?

No; he is protected and his title is good even though the life tenant misappropriates the proceeds. Glick v. Conrad, 288 S. W. 736 (Kentucky).

When is suit to set aside deed for fraud barred by limitation?

In two years (the period for fraud) and not in 15 years (the real action period) in Kansas; and such period runs from recording of deed and not from discovery of such record. Pinkerton v. Pinkerton, 251 Pac. 416.

Can bond of abstracter be enforced?

Yes; even though the land belonged to the abstracter. Teerbett v. Marty, 251 Pac. 182 (Kansas).

What is the effect of a conveyance by one joint tenant?

It severs the joint tenancy which becomes a tenancy in common. Smith v. Lombard, 251 Pac. 222 (California).

Is an acknowledgment of a mortgagee before the mortgagee as notary, good?

No; Norton v. Fuller, 251 Pac. 29 (Utah).

Are oral instructions binding on an escrowee?

Not if there are written instructions. Company v. Roberts, 250 Pac. 641 (Colorado).

To what extent are charitable devises valid?

In some states they are valid only up to a certain proportion of the estate. In re Purington, 250 Pac. 657 (California) and in others only if will was executed a certain time before testators death. Southern v. Marsh, 15 Fed. 2nd, 347 (Georgia).

Does deed "subject to mortgage" revive the mortgage if outlawed?

Not unless the purchaser also "assumes" the mortgage. Fontana v. Laughlin, 259 Pac. 669 (California).

Does the phrase "my estate" in a will include land?

Yes; in re McGavern, 250 Pac. 812 (Montana).

Is abstracter liable to purchaser for mistake in abstract furnished to seller?

Not in Wisconsin, because there is no privity of contract. Peterson v. Gales, 210 N. W. 407.

Does limitation run against a railroad?

Not in Vermont by statute if land is part of roadway. Railroad v. Bowers, 134 Atl. 608.

Does "color of title" doctrine apply to non-contiguous tracts?

No; hence where deed contains two such tracts, actual possession of one will not give constructive possession of the other. Morris v. Gibson, 134 S. E. 796 (Georgia).

Does filing general demurrer constitute appearance?

Yes; and gives court jurisdiction of the parties. Sirbeck v. Sunbeam, 249 Pac. 865 (Nevada).

Can a homestead be sold in a bankruptcy court?

No. Kirkpatrick v. Rogers, 134 S. E. 806 (Georgia).

Is "love and affection" a sufficient consideration in a deed?

Yes; Cockrell v. McKenna, 134 Atl. 687 (New Jersey).

Is the Rule in Wild's Case still followed?

Yes; hence a deed to a man "and his children" is held to vest a fee tail in him (which statute changed to a fee simple) if he then had no children. Boyd v. Campbell, 135 S. E. 121 (North Carolina) Larew v. Larew, 135 S. E. 819 (Virginia).

Are oil and gas in the ground subject to dower?

Yes; because they are real property. Manufacturers v. Knapp, 135 S. E. 1 (West Virginia).

When does owner of encroaching building have implied easement to maintain it?

When both lots were formerly owned by the same person. Bliss v. Sabolis, 153 N. E. 684 (Illinois).

Does warranty deed carry after acquired title to the property?

Yes; this is an estoppel by deed. James v. Griffin, 134 S. E. 849 (North Carolina).

Where executor has power to sell after widow's death, can he sell before with her consent?

No; powers are strictly construed. Aldenderfer v. Spangler, 153 N. E. 517 (Ohio).

Is wife's omission from mortgage cured by her later conveyance to stranger?

Yes; her inchoate dower is barred and her grantee cannot assert it against the mortgage. Louisa v. Grimm, 212 N. W. 324, (Iowa).

Can husband convey directly to himself and wife?

He can in Rhode Island, Lawton v. Lawton, 136 Atl. 241.

Must wife sign oil lease on community property?

Not in Texas if not homestead, Lambert v. Gant, 290 SW 548.

Is community property liable for husband's separate debt?

Not in Washington, Peterson v. Zimmerman, 253 Pac. 642.

Is mortgagee's power of sale revoked by death of mortgagor?

No; Baca v. Chavez, 252 Pac. 987 (New Mexico).

Who are proper parties defendant to foreclosure suit?

Those whose interests would be cut out by the foreclosure (such as junior encumbrances and owner of equity); but not prior encumbrances. Woods v. Bank, 16 Fed. (2nd) 856 (Arizona), Woods v. Company, 17 Fed. (2nd) 80 (Texas).

Which is superior, late confirmation of early concession, or earlier confirmation of later concession?

The earlier confirmation is superior regardless of date or superiority of concession. Carrere v. City, 111 S. 393 (Louisiana).

What is effect of purchase by one co-tenant at foreclosure sale?

He takes for the use of the other co-tenants, Breitman v. Jaehnel, 132 Atl. 291 (New Jersey).

Is remainder to "heirs" divided per capita or per stirpes?

This differs in different States; California holds per stirpes. Dickey v. Waldrond, 253 Pac. 706.

Must holographic will be signed at end?

Not in California; hence will beginning "Last will of John Smith," but not otherwise signed, is good. In re Morgan's Estate, 252 Pac. 702.

Do Rules in Shelley's or Wild's Cases, apply to devise to brother and sister "and their heirs forever"?

No there must be a "remainder" to heirs as to Shelley's Case, and the word "children" as to Wild's Case. Daniel v. Bass, 136 SE 733 (North Carolina).

Is a shallow part of a navigable stream considered navigable?

Yes. People v. Company, 219 N. Y. S. 497 (New York).

Can a receiver in a state court sell free of liens?

No, but one in Federal Court can. State v. Tidball, 252 Pac. 499 (Wyo.).

Is tax sale affected by wrong recital of date of sale?

Yes. The tax title is void. Cuevas v. Cuevas, 110 So. 863 (Miss.).

Does power to sell give power to mortgage?

No in Connecticut; yes in Kentucky; Colonial v. Brown, 135 At. 555; Sharp v. Sharp, 289 SW 250.

Can usuary be avoided by sale with option to purchase?

No; Cannon v. Company, 252 Pac. 699 (Washington).

Is a devise of all property an exercise of a power of appointment?

It is in Massachusetts, Harvard v. Frost, 154 N. E. 863.

Can husband have wife declared trustee for him as to lands carried in her name?

Usually not because law presumes a gift to her. Carter v. Oxendine, April 19, 1927 (North Carolina).

Does change of character of neighborhood terminate restrictions?

Only when the change is quite complete as where many business houses have been built. Downs v. Kroeger, Apr. 19, 1927 (California) Frigo v. Janek, April 4, 1927 (Michigan).

Is plaintiff in suit on title policy limited to amount paid for the land?

No, he can recover the increased value at the time of suit. Kentucky v. Hall, 292 SW 817 (Kentucky).

Should holders of first mortgage be parties to a suit foreclosing a second?

No, they are neither necesary nor property parties, as the decree cannot affect their rights. Giesy v. Aurora, May 9, 1927 (Oregon).

Which of two conflicting U. S. surveys is superior?

The earlier one, particularly if property has been conveyed with reference thereto. Kelsey v. Company, Apr. 14, 1927 (Florida).

Does surrender and destruction of deed re-vest title in grantor?

Held that title does not re-vest in grantor, even though deed was not recorded. Garrett v. Company, Apr. 15, 1927 (Arkansas). (Such transactions are sometimes held to bar the grantee by estoppel).

What is "Virtual representation"?

The principle whereby a suit against all of the living members of a contingent class is binding on any future born members. White v. Campbell 292 SW 51 (Missouri).

Is an abstracter liable to a subsequent purchaser?

Not in Wisconsin, because there is no privity of contract. Peterson v. Gates, 210 NW 407 (Wisconsin).

Can the Secretary of the Interior order a second or corrected survey

after land has been patented?

No. Work v. Beachland, May 4, 1927 (Dist of Col.).

Is a real estate mortgage, copies in the chattel mortgage book, sufficiently recorded?

Half the Supreme Court of North Carolina held it is, and half held it is not. Merchants v. Harrington, May 9, 1927.

Is a mortgage by tenant on a crop to be sown in the future, good?

Yes, but will be defeated if tenant, before sowing, surrenders his lease to landlord. Third v. Kniffen, May 9, 1927 (Washington).

Does right to "amend" restrictions give right to allow business?

No; clause in deed allowing amendment does not permit change of residence district to business. Couch v. Southern, 290 SW 256 (Texas).

Is grantor liable on warranty if grantee knew of encumbrances?

Yes; thus grantor is liable on warranty not made subject to leases, even though grantee knew of them and agreed to accept the tenants. Western v. Beaver, 253 Pac. 539 (Oregon).

Is it necessary to pay taxes before recording deed?

It is in some states by statute; including even drainage tax installments. State v. Holz, 212 NW 170 (Minnesota).

Does deed to individuals "for church and burial purposes" give reversion or abandonment?

Held not in New York as to deed dated in 1716. Vandebogert v. Church, 220 N. Y. S. 50, 58.

A PLAN THAT MAKES IT POSSIBLE FOR ABSTRACTERS TO DO AN ESCROW BUSINESS

The St. Paul Abstract Co., St. Paul, Minnesota, undoubtedly has incorporated in its services, as many different lines and activities, if not more, than any other "simon pure" abstract office.

It recently added an escrow department, not just an ordinary service, but one marked by liability and responsibility. An arrangement was made with a bonding company to furnish an "Escrow Agents Bond."

This makes it possible for abstracters and titlemen to legitimately engage in this business, and warrant the confidence of the public because of its defined responsibility.

In commenting upon the scheme, Henry Soucheray has the following to say:

The one ever present problem of the abstract-of-title-man is the necessity of expanding and enlaring his field of service. With a growing expense rate and a stationary earning power the abstract of title business faces a situation ably and fully solved by the title-insurance-men.

There is one service, not rendered by abstracters, which awaits development, that is, the escrow service.

The business of escrows today, where there is no title insurance company, is handled by the banks. Banks and trust companies as a rule, do not look upon the handling of escrows as of much moment, and usually are not equipped or fitted to render that service. Any one who has closed a deal in a bank will testify to this awkward service, where a clerk, already burdened with duties, hands over to a client certain papers of which he knows nothing and cares only that in the event these papers leave his hands, he shall be placed in possession of a stated amount of cash. The usual examination of papers must be made by the purchaser right at the tellers window and the bank has no accommodation for checking descriptions or rendering any service other than acting as messenger, handing over the instruments and accounting for the moneys involved. This is not escrow service.

Contrast this with the service that an abstracter can render. The parties may come to his office, look over the papers at their convenience, check the descriptions with his plats, and be advised exactly as to any change in the title or judgments against the grantors before the money is paid over. The extension of the abstract follows of necessity and the service of the abstracter is apparent. By this transaction the abstracter at once comes in intimate contact with all the parties to the transaction, and he can lay, right then and there, the foundation for future profitable business.

The handling of escrows requires all the knowledge possessed by the title man plus absolute responsibility. The knowledge is unquestioned but the responsibility must be established. Bonding companies have been approached by the writer and have suggested that they would willingly cover the acts of a title-man acting as a handler of escrows for a premium of $5.00 per $1000.00. A bond of about $5000.00 would seem sufficient.

This service could be developed as a national proposition, with the result that a chain of "BONDED ESCROW AGENTS" could be established with the help of our Association. Uniform forms and charges would add greatly to the efficiency of this proposed service.

Some Companies have adopted a flat rate of charge for this service. The rate is based on the value of the property and up to $7500.00 the escrow fee is usually $7.50, or thereabouts, and in transactions of over $7500.00 a greater fee is charged, usually at the rate of $1.00 per additional thousand.

If a service of this kind at first paid only the cost of the bond an abstracter would gain greatly by its establishment, considering only the contacts thus formed.

The securing of a bond and the inauguration of this service could be signalled by the adoption on one's stationery of the slogan: "Bonded Escrow Agent" which could also appear on the front window of the title man's place of business.

The business is here, the necessity of gathering it in is also here, and in time it can be so expanded that escrows in every part of the United States will be handled by those most competent to handle them, namely, the title men.

ELEGANT NEW HOME FOR GUARANTY TITLE CO., CORPUS CHRISTI, TEX.

The Guaranty Title Co., Corpus Christi, Tex., Henry Baldwin, President, is now located in its own new building. This structure is a monument to its growth and success, and would do credit to an institution in any city many times the size of Corpus Christi.

It is thoroughly modern, of fireproof construction and especially designed to facilitate the work of the company. The ground floor is occupied by the title company and its affiliated branch, the Baldwin Land Company.

New Building of Guaranty Title Co. and Baldwin Land Co., Corpus Christi, Texas.

It might be said that the present successful institution is the outgrowth of a disaster and disheartening circumstance. Mr. Baldwin had been in the abstract business for twelve years, and built a complete title plant and business. It was wiped out and destroyed completely in a few minutes in the tidal wave and flood that visited the city a few years ago.

Building as you might say, with broken tools, Mr. Baldwin conceived and achieved an ambitious venture, and the present company is the outgrowth.

The Guaranty Title Co. is capitalized at $100,000.00, and has built a surplus of over $150,000.00. It operates in six counties in the immediate territory, and was the first company in the United States organized for the purposes of guaranteeing titles in a community of such a small population as in its territory.

Henry Baldwin, the President, was one of the organizers of the Texas Abstracters Association which was formed in Waco in 1908. He "filled the chairs" in that association, and has served in many capacities in the American Association as committeeman and officer.

SOUTH DAKOTA PLANS TO HOLD REGIONAL MEETINGS.

1927 Convention Very Enthusiastic.

The annual convention of the South Dakota Title Association was called to order by President Fred W. Walz in the ball room of the St. Charles Hotel at Pierre on July 11, 1927, at 9:45 a. m.

The Honorable W. J. Bulow, Governor of South Dakota, delivered a short and hearty address of welcome. The response to the Governor's address was given by R. G. Williams of Watertown ("Stub"), who rejuvenated or disinterred or resurrected this association two years ago.

Calvin Coolidge, who is reported to be using worms for fish bait with considerable success in our mountain summer play ground, has been invited to attend our convention. The following letter from his secretary was read: "Rapid City, S. D., July 5, 1927. My Dear Mr. Rickert: The President greatly appreciates your kind invitation on behalf of the South Dakota Title Association, and it is with real regret that he finds himself unable to attend the convention in Pierre on July 11. He asks, however, that you will express to the officers his thanks for their thought of him and his best wishes for a successful gathering. Sincerely yours, Everett Sanders, Secretary to the President."

Mr. James S. Johns of Pendleton, Ore., who is Chairman of the Abstracter's section of the American Title Association, gave a very instructive and forceful talk on "Cooperation". His remarks dealt with service, accuracy, honor, fees, escrows, perfecting titles, and ways and methods of increasing the abstracter's financial income. If any abstracter present did not receive some benefit from this talk he would do well to go now before the homes for feeble-minded are full.

A luncheon was held at noon in the St. Charles Hotel.

The abstracts of title which had been entered in the contest were submitted to Mr. Otto B. Linstad and Mr. Karl Goldsmith, attorneys of Pierre.

Mr. John Sutherland, a practicing attorney of Pierre, and a member of the Hughes County Abstract Company, gave a very instructive talk on the "Liabilities of an Abstracter".

Mr. R. G. Williams spoke to us on "Light", comparing the improvement in the matter and form of abstracts of title to the progress from the tallow candle to the electric light and x-ray.

The Committee on Good of the Association recommended that regional meetings be held within our State and that a member of the Executive Committee attend these meetings; that the report that Registers of Deeds are making chattel Mortgage abstracts be investigated and a movement started to stop this illegal practice if it exists; that a uniform abstracter's certificate be adopted; and that a judiciary committee be appointed to investigate the constitutionality of the South Dakota statute regarding abstract fees, and the adoption of a uniform schedule of fees if said statute is found to be unconstitutional. On motion the report was adopted.

The Nominating Committee reported by nominating the following as officers and members of the executive committee:

President—Paul M. Rickert (Roberts County Abstract Company, Sisseton),

Vice President—M. J. Kerper (M. J. Kerper, Sturgis),

Secretary-Treasurer—J. O. Purintun (J. O. Purintun, DeSmet), and nominated the following as the two other members of the Executive Committee:

Fred W. Walz (Consolidated Abstract Co., Milbank), and A. L. Fish (Edmunds County Abstract Company, Ipswich).

Motion was made, seconded and carried that the president be sent to the mid-winter officers meeting of the American Title Association, to be held next winter, with actual traveling expenses to be paid by the South Dakota Title Association.

A recess was called for an hour during which time the delegates enjoyed a visit to the state Capitol.

Upon returning to the Convention hall the report of the committee on the abstract contest was received. The beautiful silver and bronze shield was awarded to Coe and Howard Title Co., of Aberdeen. A part of the committee's report is as follows: "In our opinion, the abstract submitted by Coe and Howard Title Co. of Aberdeen is entitled to the highest rating as an outstanding piece of work. Especial attention is called to the fact that they mention that they do not certify as to special assessments. Honorable mention is given the abstract of Brown Bros., Inc., of Bison."

PAUL M. RICKERT,
Secretary-Treasurer.

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WISCONSIN ASSOCIATION TAKES DEFINITE ACTION ON UNIFORM CERTIFICATE.

Also Votes to Send Three Delegates to National Convention.

This year being the twenty-first anniversary of the Wisconsin Title Association, it is natural that said Association would hold quite a Convention upon the attainment of its majority,—and it did.

After the registration of the members, of which there were approximately thirty-five, there was the usual roll call, et cetera. Under the head of "old business" came the uniform certificate. Sen. Julius E. Roehr, as chairman of the Uniform Certificate Committee, arose and presented the certificate, saying: "The underlying principle of a certificate is giving the examiner the most exact statement as to the title of the property, within the limits of the abstracter." After some discussion, the certificate, which is probably the ultimate perfection in service, was adopted. It reads as follows:

State of Wisconsin
County of

.... hereby certifies that the annexed abstract, which is furnished .... for his use and for the use of his successors in title, mortgages and guarantor of title, in passing on the title to the premises covered thereby, is a correct abstract of the title to the land described in the caption thereof, to-wit:.................. in said county and state; and that said abstract correctly shows all matters affecting or relating to the said title which are of record or on file in said county, including conveyances, deeds, trust deeds, land contracts, incumbrances, mortgages (satisfied or unsatisfied), mechanics' and other liens, attachments, notices of lis pendens, tax sales, tax deeds, probate proceedings, special proceedings, notices of Federal

liens and unsatisfied judgments and transcripts of judgments from United States and State courts entered or docketed within the past ten years against owners of record within that time or against ....; that said abstract also shows all bankruptcy proceedings and certified copies of orders of adjudication and orders approving bonds of trustees in bankruptcy proceedings by or against any party who, within three years last past, has been an owner of record of said land or against ....; on file or of record in said county; that all taxes and special assessments for the year 19...... and all prior years are paid in full.

This examination does not include the following:

(a) Taxes, general or special, for the year 19......;

(b) Improvement bonds issued in 19......;

(c) Deferred installment payments due in 19...... on bonds previously issued;

(d) Special assessments against the premises above described for public improvements instituted or completed since the general tax levy for the year 19......;

(e) ....

Dated at ...., Wisconsin, this .... day of ...., A. D. 19......, at .... o'clock ..... M.

....,
Abstracter.

Continued to date and recertified on this .... day of ...., A. D. 19......, at .... o'clock ..... M.

....,
Abstractor.

In the certificate above shown, if an abstracter does not wish to make an exception to the certificate he draws a line through it. The purpose of the exceptions is to show the examiner just what the abstracter has done, and what he has not done. The committee on the uniform certificate was composed of Sen. J. E. Roehr, W. E. Furlong and John T. Kenney.

The Convention adjourned at 12:30 for a luncheon provided through the courtesy of Marathon County Abstract Company and the Wausau Abstract and Title Company and Mr. T. P. Gorman of Wausau welcomed the abstracters.

In the afternoon Mr. John B. Burke of the Federal Land Bank of St. Paul, the American Title Association representative, spoke on "The Conclusiveness of Torren's Certificates" and told us how, both theoretically and practically, the conclusiveness of such a certificate amounted to about the same as tax assessor's descriptions. He cited many cases, both humorous and tragic, to show the ill effects and the lack of necessity for the Torrens system.

A Round Table discussion followed and many of the titlemen's problems were thoroughly discussed, pro and con. A great many worthwhile ideas were exchanged. The following were elected officers for the ensuing year:

President—Julius E. Roehr, Milwaukee.

1st V. P.—H. M. Seaman, Milwaukee.

2nd V. P.—Agnes E. Benoe, Ashland.

3rd V. P.—P. C. Zielsdorf, Wausau.

Sec'y—J. M. Kenney, Madison.

Treas.—W. S. Rowlinson, Grandon.

The 1928 Convention of the Wisconsin Title Association will be held in Milwaukee. The Convention may have been somewhat affected by the statement that Sen. Roehr made. He quoted the German ambassador, the Baron Ago von Maltzen, as saying, recently, that there were more pretty girls in Milwaukee, than in any other city in the world. Sen. Roehr did not, however, quote the Baron as saying anything in favor of the present, the formerly famous, Milwaukee beer.

After a fine banquet, provided by the Wisconsin Title Association, and an evening of toasts, talks, entertainment, and a fine dance in the hotel ball room, the Association's "coming of age party" was fittingly closed.

One of the remarkable things that came out in the Convention was that for the first time in twenty-five years, no form of Torren's Bill was introduced in the legislature, though our most active opponent Sen. Caldwell, who introduced the bill at two previous sessions was again present. This is undoubtedly due to the work of the organized titlemen of the state.

JOHN M. KENNEY, Secretary.

OFFICIALS OF AMERICAN TITLE ASSOCIATION VISIT MANY STATE CONVENTIONS DURING YEAR.

Several officials and representatives of the national association have visited the various state conventions held during the year.

President Woodford has attended the meetings of the Washington, Oregon and California Associations; Vice President Daly, those of Oregon and Washington; James S. Johns, Chairman of the Abstracters Section has visited many, they being the conventions of the states of Oklahoma, North Dakota, South Dakota, Idaho, Washington, Montana and Oregon; Richard B. Hall, Executive Secretary, attended the sessions of the Kansas, Missouri, Minnesota, New Mexico, Illinois, Tennessee and Florida Associations. Edward C. Wyckoff, Fred P. Condit and John E. Potter have visited the meetings of New York, Pennsylvania and New Jersey.

J. L. Chapman represented the national association at the Michigan meeting, and Henry B. Baldwin at the recent Texas convention.

The following were the national association visitors at the meetings mentioned: Edwin H. Lindow, Indiana Title Association; A. H. Rutgers, Nebraska Title Association; John Henry Smith, Iowa Title Association; Charles C. White, New York State Title Association; John B. Burke, Wis-

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consin Title Association and McCune Gill, Arkansas Title Association.

It is the desire of the national organization to render any and every assistance possible to the state associations, not only in their regular yearly work, but especially so in their state conventions.

NORTH DAKOTA ASSOCIATION TO STUDY UNIFORM CERTIFICATE AND ABSTRACT.

At the recent convention of the North Dakota Title Association, action was taken to study and draft a uniform certificate. No more practical or logical activity could be undertaken and it should be easy for this association to adopt some acceptable form. It was also decided to investigate the possibilities of a uniform abstract. The style generally in use in this state is almost uniform, due to the abstract contests held some few years in succession but further development might be possible.

This year's convention was held in Mandan, President John Bowers' home town, and it was a fine meeting. An interesting and enjoyable two days' session was held. The association of North Dakota abstracters is a very efficient one, and the year just ended was marked by its usual activities. North Dakota has the only law for licensing and qualifying of abstracters. There are 69 authorized to do business and 61 of them are members of the state association.

Secretary Arnot was selected as a delegate to the American Title Association Convention to be held in Detroit. This was in commendation of his excellent service rendered to the organization.

Officers elected for the year are: President, George B. Vermilya, McHenry County Abstract Co., Towner; Vice President, Wm. Barclay, of M. B. Cassell and Co., Finley; Secretary-Treasurer, A. J. Arnot, Bismarck.

NEW YORK APPOINTS COMMITTEE TO INVESTIGATE DEFECTS IN THE LAW OF ESTATES

The Committee on the Revision of the Law of Estates, created by the Legislature by chapter 519 of the Laws of 1927, met for organization at the Association of the Bar of the City of New York yesterday. Surrogate James A. Foley, of New York County, was elected chairman; Assemblyman Jenks, of Broome County, was elected vice-chairman, and Senator Dick of Monroe County, was elected secretary of the commission.

The committee consists of fifteen members. Under the terms of the act Governor Alfred E. Smith designated Surrogate Louis P. Hart, of Erie County; Surrogate George A. Wingate, of Kings County; Surrogate George A. Slater, of Westchester County, and Surrogate James A. Foley, of New York County; *Mr. Henry R. Chittick,* Hon. John G. Saxe and Mr. Cornelius W. McDougald, of the Bar of New York City. Senator John Knight, as president pro tem, of the Senate, appointed Senator Homer E. A. Dick, of Monroe County; Senator George R. Fearon, of Onondaga County; Senator Leonard R. Lipowicz, of Erie County, and Senator Thomas I. Sheridan, of New York County; Speaker Joseph A. McGinnies appointed Assemblyman Edmund B. Jenks, of Broome County; Assemblyman Herbert B. Shonk, of Westchester County; Assemblyman Horace M. Stone, of Onondaga County, and Assemblyman Maurice Bloch, of New York County.

The purpose of its work is to modernize and simplify the statutes relating to estates, to harmonize the difference between the statutes of descent and distribution and establish one system of interstate succession for real and personal property; to consider the advisability of the abolition of the right of dower and courtesy, the elimination of the present distinction between real and personal property in their treatment as assets of an estate and the investigation of other defects in the Real Property Law, the Personal Property Law, the Decedent Estate Law and other cognate statutes of the state.

The Title Hound Says

YOU'VE GOTTA GET TOGETHER IF YOU WANT TO GET AHEAD

These Regional Meetings are great stuff. If the titlemen would spend as much energy getting together as they do keeping apart, they'd be in a great business.

ARKANSAS ABSTRACTERS NOW PROTECTED BY BOND LAW.

Recent Legislative Enactment Insures Access and Use of County Records.

The February TITLE NEWS reported a decision of the Arkansas Supreme Court wherein the County Clerk was supported in his refusal to permit an abstracter access to the records of his office.

The abstracters contended that since time immemorial, they have been granted free access and use of the records and that they should be insured of it by reason of the nature of their business.

The courts held otherwise, and declared that they were the same as others because there were no particular grounds or safeguards to warrant anything different.

The abstracters therefore settled the matter by securing the enactment of a bonding law that will put them in a little higher standing and warrant them such privileges as they should have. The law is as follows:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS:

SECTION 1: Every person, firm or corporation, who is now engaged in the business of making abstracts of title to lands in this State or who may hereafter desire to engage in such business, and who possesses the qualifications hereinafter provided for in this Act may continue to engage in such business or enter therein as the case may be, upon compliance with the requirements of this Act.

SECTION 2: Any person who is a citizen of the county wherein he proposes to engage in such business, or any corporation whose manager, or agent who is to have charge of the actual business affairs of said corporation pertaining to such abstract business is a resident citizen of such county, and who is of good moral character and approved integrity may upon compliance with this Act have free access to all the public records of said county for the purpose of making abstract books and keeping same up to date, and may during work hours, be permitted to use such records for making abstracts when not in actual use by the clerk, but in no instance shall said records be removed from the office of said clerk.

SECTION 3: Before any person, firm or corporation shall have access to such record as hereinbefore provided for, he shall enter into bond to the State of Arkansas for the use and benefit of the county and all persons interested in the records of said county conditioned, that he will faithfully preserve and not mutilate, change or destroy any such records, and in case of an individual, he and each of his employees who shall be engaged in handling or working with any of such public records shall take and subscribe an oath "That he will diligently and faithfully preserve each and all of the public records which may come to his or her hands or possession under the provisions of this Act." The bond provided for in this Act shall be in the penal sum of not less than two thousand dollars or more than ten thousand dollars, the exact amount thereof to be determined by the Judge of the Circuit Court of the county, or in his absence the County Judge and if fixed by the County Judge, his action may be revised by the Judge of the Circuit Court at the instant of either the clerk or any citizen of the county or the person who enters into such bond and the decision of the Circuit Judge thereon

in either event as to the amount thereof shall be final. Such bond to be filed with the clerk of the county court and any person who is damaged by a breach of the conditions of such bond shall have a right to action thereon, and in case of corporations service of summons upon the person in charge of the business of such corporation in said county shall be sufficient service upon said corporation and in case of a firm or partnership service upon the person in charge of such business shall be sufficient service upon each member of such firm or partnership.

SECTION 4: The bond herein provided for shall be approved by the Judge of the Circuit Court and in his absence by the Judge of the County Court whose decision may be reviewed by the Judge of the Circuit Court upon the application of any citizen or clerk.

SECTION 5: In case any dispute should arise between the clerk and such person proposing to engage in the business of making such abstracts as to whether or not such person has the qualifications prescribed by this Act or has complied with the provisions thereof, such disputes shall be decided by the Judge of the Circuit Court upon application of such person and after reasonable notice to the clerk and upon such proof as may be offered by either party.

SECTION 6: This Act shall apply to persons, firms and corporations who are now engaged in such business but such persons, firms or corporations shall have sixty days from the time this Act goes into effect to comply with the provisions thereof.

SECTION 7: The clerk shall not be liable for the preservation of such records while they are in the hands of the abstracters as herein provided for.

SECTION 8: Upon full compliance with all the provisions of this Act by any person, firm or corporation, it shall be the duty of the clerk to designate a reasonable space in his office for such person, firm or corporation to work.

SECTION 9: The provisions of this Act may be enforced by mandamus proceedings in the circuit court of the proper county.

SECTION 10: All laws and parts of laws in conflict herewith are hereby repealed, and this Act shall take effect and be in force from and after its passage.

Approved Mar. 22, 1927.

The Miscellaneous Index

Items of Interest About Titlemen and the Title Business

The "Real Estate Magazine", official publication of the Philadelphia Real Estate Board, recently published an interesting article by Wayne P. Rambo, Chairman of the American Association's Legislative Committee, and Special Counsel of the Market Street Title & Trust Co., Philadelphia. It was entitled "The Do's and Don'ts of Closing a Real Estate Contract" and covered the subject in a thorough and practical manner.

Any Realtor would profit and benefit by reading it.

The Guarantee Abstract Co., Georgetown, Texas, John Ellyson, Manager, is one of the companies that figures every way to add additional activities to its business, and takes advantage of every opportunity.

They have recently added a report of real estate recordings, and issued it in a very attractive style.

Other items offered are: a mortgage expiration list of all mortgages in force to Jan. 1, 1927; supplemental expiration lists for each six months period since; a bi-weekly report of chattle mortgages, as well as a list of chattels for a prior period.

These are all produced in a uniform style, punched for binding and the company also offers binders for them.

This company features its abstracts under the name of "Guaranteed Green Cover Abstracts."

The statements of the Potter Title & Trust Co., and the Potter Title & Mortgage Guarantee Co., for the period ending June 30, 1927, have been presented in a very attractive and elaborate folder.

This is the first statement of the new organizations, and an interesting story is included. It is as follows:

The Potter Title and Trust Company was incorporated in 1902 under the laws of Pennsylvania, taking over the business of the Potter Abstract Company which had succeeded to the title business founded in Pittsburgh in the year 1888 by Mr. John E. Potter.

In 1907 the Banking Department opened for business and seven years later, in 1913, the Trust Department was established as a feature of the Company's business. The volume of business transacted by the Title and Mortgage Departments grew to such an extent that it was found necessary to separate them from the Banking and Trust Departments by the formation of a Corporation known as the Potter Title and Mortgage Guarantee Company. This latter company opened for business on March 1, 1927, with a full paid Capital and Surplus of $600,000.00. It has taken over the Title and Mortgage Departments of the Potter Title and Trust Company. The stock of the new Corporation is owned by the Potter Title and Trust Company.

The same Board of Directors govern the affairs of both corporations, while the President and Vice Presidents occupy the same positions in both companies. The same careful and efficient management which has characterized the Potter Title and Trust Company since its organization controls the affairs of the Potter Title and Mortgage Guarantee Company.

Both corporations are under the supervision of the Pennsylvania State Banking Department which exercises a strict oversight over all financial institutions in Pennsylvania which operate under a State Charter.

The Missouri Abstract & Guaranty Co., Kansas City, Mo., announces an increase of its capital stock from $100,000.00 to $300,000.00 and change of name to the Missouri Abstract & Title Insurance Co.

C. B. Vardeman, a past President of the Missouri Title Association is Vice President and Manager of the company.

Announcement is also made that it will engage in a state wide title insurance business through agency and representation agreements with abstractors throughout the state.

The Title Guaranty Co., Denver, Colorado, has recently added extensive equipment and enlarged its scope of activities. It purchased the Landon Abstract Co. and also the Jefferson County Title Company.

These additions gave it complete abstract plants in four counties; the City and County of Denver, and the adjoining counties of Adams, Arapahoe and Jefferson.

M. Elliott Houston is President, Joshua G. Houston, Vice President, and Golding Fairfield, Vice President and Title Officer.

Announcement is made of a new title organization in Seattle, Washington, and an incorporation charter was issued at Olympia recently to the Puget Sound Title Insurance Company, the objects of which are to insure titles to real estate and to compile abstracts of title. The directors named in the articles are E. S. McCord, attorney; William Calvert, president San Juan Fish Company; Frederic K. Struve, president Furth Estate Corporation; Moritz Thomsen, president Centennial Mill Company; Harry R. Lawton, vice president Peirce, Fair & Co.; Walter C. Sivyer, presi-

dent Walter C. Sivyer & Son; Hugo E. Oswald, title officer; and W. H. Winfree, president Puget Sound Title Insurance Company.

The new company is taking over the complete set of title records compiled by the King County Title Company, which was organized a little more than a year ago for the purpose of constructing a new and modern title plant. The title company adapted motion picture photography and projection to the compilation of the records of King County. The site of the new title insurance company will be at 726 Third Ave., across the street from the Chamber of Commerce Building and will be ready for business some time next month.

Karl Mann, Secretary of the Idaho Title Association, suggested to the Idaho abstracters that they bring a specimen of their abstracts to the Idaho state convention, and that after the convention the crowd had had the opportunity of inspecting each others work, the samples be given to the law school of the state university.

This is a mighty fine idea for the abstracters in every state to follow. One is almost safe in saying that no law school in the country has any presentable abstracts on hand for the use of the students in their study of real property law, which includes examination of titles.

Every state association should get its members to send in their many years collection of uncalled for abstracts, and distribute them to the law schools. Discretion should be used also in only sending presentable and fairly modern ones.

Charley White's article on "Federal Liens" as given at the Atlantic City Convention, appearing in the Printed Proceeds of that meeting, and later re-printed in pamphlet form, has been reprinted in the April, 1927, issue of the West Virginia Law Quarterly.

This has been accepted as the authority on this subject. The Association had many requests for copies, and so great was the demand that the supply was exhausted. The Department of Justice, the Department of Internal Revenue, various law schools, attorneys and individuals all over the country requested copies of the pamphlet.

Announcement is made of the incorporation of the Union Abstract & Title Company, Omaha, Nebraska. The Company is a consolidation of the abstract plants of Joseph J. Kliment and M. T. Brennan. The active officers of the company are Joseph J. Kliment and Edward J. Proskocil. The company has leased a suite of rooms in the new Union State Bank Building. Mr. Kliment, who has been in the abstract business for 14 years in Omaha, is President of the company. Mr. Proskocil, who is Secretary and Treasurer of the company, has been employed by Mr. Kliment for the past three years.

The Guarantee Title & Trust Co. of Cleveland, Ohio, has issued an attractive booklet entitled "New Laws and Amendments Affecting Title to Real Estate". It explains the changes in present laws as well as the new ones passed by the last Ohio Legislature, and which are of concern in title matters.

The book is available to attorneys, examiners and any others interested and who could use it, and makes a valuable hand-book and reference.

Announcement is made of the organization of the Republic Title Guaranty Co., Denver, Colorado, with a capital of $1,000,000.00 and a surplus of $653,633.47. Offices will be in the Republic Building, owned by the company, and which is Denver's newest 12 story building.

Officers and Directors include the following:

Jacob V. Schaetzel, President, Attorney at law, member of The Denver, Colorado and American Bar Association and former Secretary of The Denver Bar Association.

Foster B. Gentry, formerly Divisional Sales Manager of The General Motors Co., of Detroit, 1st Vice President.

Herman A. Burkhardt, Treasurer. Treasurer of The E. Burkhardt and Sons Steel and Iron Works Co.

G. Meredith Musick, Secretary, Architect.

Board of Directors: R. J. Dutton, Chairman of the Board, General Contractor; Adolph Kunsmiller, Vice-President and Cashier of The American National Bank of Denver; Herman A. Burkhardt, Steel and Iron Works; G. Meredith Musick, Architect and designer of the Republic Building; Foster B. Gentry, Vice-President; Edgar Jenkins, Secretary Colorado Title Association and The Arapahoe County Abstract and Title Co.; Hammond J. Watts, Brick Contractor; Walter E. Schwed, Attorney; Nelson L. Drew, Vice-President Newcomb Realty Co.

The many friends throughout the country of Will E. Crittenden, Secretary of the Guarantee Title & Trust Co., Cleveland, Ohio, will be shocked to learn of his death on June 22.

Mr. Crittenden was one of the pioneer titlemen of the country, and had a nation-wide acquaintanceship.

Announcement is made of the formation of a new title company in Nashville, Tennessee. The organization is headed by M. B. Kirby, Vice President and Manager, and who will have associated with him, Andrew L. Todd. Mr. Kirby was formerly connected with the Title Guaranty Co., of Nashville, and Mr. Todd, President of the new company, has represented the Union Central and New York Life Insurance Companies for farm loans, for several years.

Work has commenced upon the construction of a title plant.

The Florida Title Co., Miami, features a slogan which it drives to the attention of everyone. It is "You Never Know—Until Your Abstract Says So."

Announcement is made of the consolidation of the San Antonio Abstract & Title Co., with the National Mortgage Co., San Antonio, Texas, under the name of the National Title & Trust Co.

The company has a capital of $200,000.00 and will do a general title, mortgage and trust business.

J. Grover Wells, past President of the Texas Abstracters Association is Title Officer of the company.

The public is slowly but surely learning about and becoming educated to the importance of title matters and the many things necessary to be done in every real estate transaction. This is being done and brought about by actual experience in these kind of affairs by the advertising and publicity of title companies and by the general educational campaigns conducted by other agencies. An interesting one pertaining to the title business has recently appeared in the syndicated newspaper column appearing in many papers over the country entitled "YOUR MONEY PROBLEMS." This is conducted by Harland H. Allen and the one referred to was entitled "Running Down the Title." It states the following:

One of the most exciting things about buying real estate is tracing the title to the property. Always in such a transfer one should have a lawyer or title insurance company "run down the title," that is, search the records to ascertain that the man who is selling the property has a right to do so.

Often there is found what is known as a "flaw" in the title. This means that somewhere in the chain of deeds, somebody did not have a clear title to the property.

We often hear it said that one is not safe to stop tracing the title until every path traveled by the "original settler" has been gone over. Certainly you are never safe until you have gone back of the third or fourth generation.

One must be very patient, for if the property is a part of an old estate, innumerable records must be gone through; and in the event that the title is not clear, and you pay for the property, some third party may come along afterwards and be able to prove that he has a better right to it than you have.

To ascertain if the title to a piece of property is clear, it is necessary to search the records of the public office where they are kept. A record of all the transactions that

will affect the ownership of the land is called an "abstract of title."

There are several ways of conveying title to property. One is by deed. The principal kinds of deeds are "warranty" and "quitclaim." The former not only conveys the property, but also makes certain "warrants" concerning the title, such as assuring the new owner that the maker's title is sound, while the quitclaim deed grants only the last owner's interest in the property, and says nothing about the title. Then if the title is defective, the new owner has no claim on the seller. This form of deed is one of the most often used where one of several heirs or joint owners of real estate wishes to convey his share to another.

Title of property can, of course, be given by will, and also by inheritance. One who is really the rightful owner can lose the title, too, by "adverse possession." By adverse possession is meant the actual, open and continuous possession hostile to the true owner for a long period of time, usually twenty years. If the rightful owner doesn't step in to interfere with this possession during all this time, he is barred by law from taking action afterward against the holder.

Very few amateurs are qualified to "run down the title" of property they buy. One can get this done professionally by a lawyer, an abstract company, or a title guaranty company.

The Cherokee Capitol Abstract Company, Tahlequah, Oklahoma, is issuing a reproduction of an abstract and which is a pamphlet directed to spread education and propaganda for a better understanding of the abstract business. The following information is the text of this very interesting and profitable bit of publicity:

WHAT IS AN ABSTRACT?

An Abstract of Title is an orderly arrangement of the various public records showing all the essentials and omitting the un-essentials, affecting the title to the property in question.

It has been said by our Supreme Court that "the business of abstracting title to real estate requires special knowledge and skill and anyone who engages in such business impliedly represents that he possesses such knowledge and skill." "The Business of abstracting is an EXACT science." "An abstracter must use the highest degree of skill and diligence in compiling same."

The only legal requirement for one who wishes to engage in the business of abstracting is that he shall file a bond in the sum of $5000.00 with the County Commissioners.

In compiling an abstract in Cherokee County, one of the smallest counties in the state, the abstracter must search through 70,000 deeds, mortgages, etc., 8,300 court cases and 250 large record books. It is evident that it is not possible for the abstracter to search all these records for each abstract, so he has all these items indexed either by land or by name.

The abstract, besides showing deeds, mortgages and court cases, should show any other liens, including judgments, mechanic's liens, taxes on land and personal taxes and income taxes due the United States when certified to the County Clerk.

The last sheet of the abstract is the "Certificate," which is a recitation of the records searched by the abstracter, and a statement of the time or minute on which the search ceased.

The Oklahoma Title Association, an organization of abstracters of the state having their own indexes to the county records, has adopted a uniform certificate which is very broad and which covers all matters which the complete abstract should cover. This certificate is known by the monogram of OTA which appears on the following sheet. Application has been made to register this monogram in the United States Patent Office and its use is limited to members of the Oklahoma Title Association using the uniform certificate.

The Cherokee Capitol Abstract Company has complied with the foregoing requirements for a successful abstracter in the following ways. It has been in business for eighteen years and under the present management for fourteen years. No person has ever lost a dollar through an abstract made by this company.

The Cherokee Capitol Abstract Company is a member of the Oklahoma Title Association and the American Title Association, one of its officers being Vice President of the Oklahoma Title Association.

The Cherokee Capitol Abstract Company has a surety bond, its bond being signed by one of the leading surety companies in the United States.

The Cherokee Capitol Abstract Company has a complete set of indexes compiled from the records of the County, both County Clerk and Court Clerk, and not copied from the indexes of those offices.

The Cherokee Capitol Abstract Company is authorized to use the uniform certificate.

The Cherokee Capitol Abstract Company is the present holder of the Abstract Trophy Cup for the best abstract, having won the same in state-wide competition in February, 1926.

The Cherokee Capitol Abstract Company is now at home in its large, new office in the Hotel Thompson Building, where, with its complete new fixtures and improved plant, it is prepared to handle a larger volume of business with greater dispatch. It is completely equipped to write all kinds of deeds, mortgages, contracts, etc. There are two Notary Publics in the office.

The Cherokee Capitol Abstract Company also writes all kinds of insurance. It represents nine of the large stock fire insurance companies and four leading stock surety companies.

You are invited to come in and talk over your problems of conveyancing, financing and insurance.

November 24, 1926.

THE CHEROKEE CAPITOL ABSTRACT CO.
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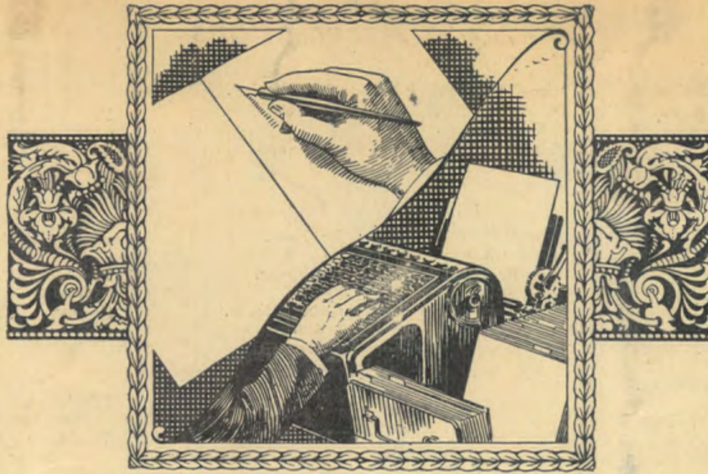
1849  1927

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