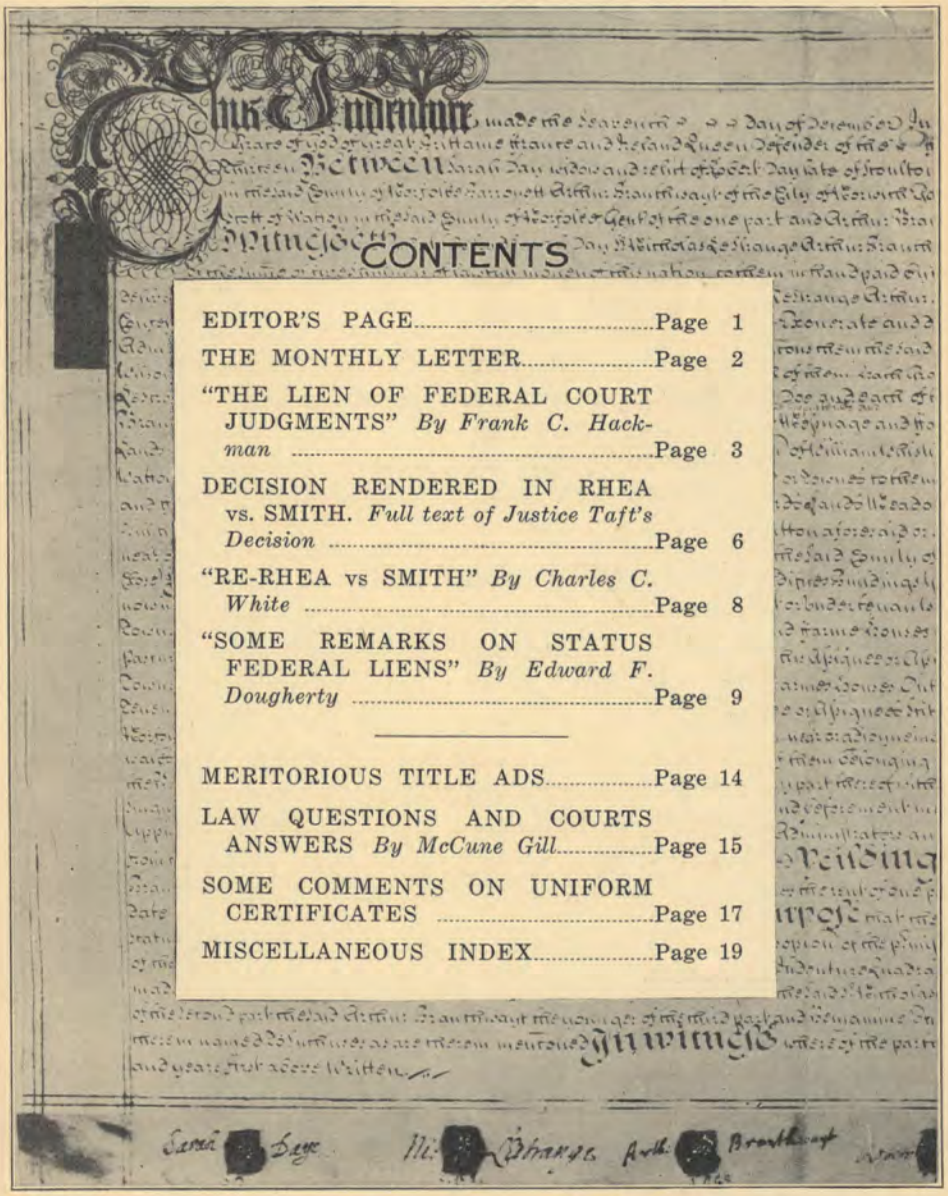
Title News

Vol. 6 *NOVEMBER, 1927* *No. 10*



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Our Title Men Live By This Code of Ethics

This is the code of ethics which actuates the members of our association. It outlines a course of conduct which *you* have the *right* to expect from every one of us:

FIRST:—We believe that the foundation of success in business is embodied in the idea of service, and that Title Men should consider first, the needs of their customers, and second, the remuneration to be considered.

SECOND:—Accuracy being absolutely essential in the examination of titles, Title Men should so arrange their records as to eliminate the possibility of mistakes.

THIRD:—Ever striving to elevate the title business to a plane of the highest standing in the business and professional world, the Title Man will always stand sponsor for his work and make good any loss, occasioned by his error, without invoking legal technicalities as a defense.

FOURTH:—The examination of title being to a large extent a personal undertaking, Title Men should at all times remember that fact, and endeavor to obtain and hold a reputation for honesty, promptness, and accuracy.

FIFTH:—The principal part of business, coming from real estate dealers, lenders of money and lawyers, it is obvious that relations with these men should at all times be friendly. To further this friendship we declare ourselves willing to aid them in all ways possible in meeting and solving the problems that confront them.

SIXTH:—We believe that every Title Man should have a lively and loyal interest in all that relates to the civic welfare of his community, and that he should join and support the local civic commercial bodies.

TITLE INSURANCE SECTION

The American Title Association

TITLE & TRUST BLDG.
KANSAS CITY, MO.

The above is the first of a series of advertisements being presented by the Title Insurance Section and appearing in certain national trade publications.

TITLE NEWS

Issued Monthly by and as the Official Publication of

The American Title Association

Publishers, Kable Brothers Company, 404 N. Wesley Ave., Mount Morris, Ill. Price, $2.00 per year.
Editor—Richard B. Hall, Title & Trust Building, Kansas City, Mo.
Published monthly at Mount Morris, Illinois; Editorial office, Kansas City, Mo. Entered as second class matter, December 25, 1921, at the post office at Mount Morris, Illinois, under the Act of March 3, 1879.

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Editor's Page

THIS is a "Federal Lien Special." The recent decision of the United States Supreme Court in the case of Rhea vs. Smith rather "upset the apple cart." A full text of this decision appears herein. It is further explained by two very good articles. Charles C. White, the Association's federal lien (and other) authority gives his viewpoint and helpfulness on the points involved. It is very interesting to note that the things predicted by Mr. White in the paper on Federal Liens prepared for the Association over a year ago, were substantiated and approved by Chief Justice White. Another explanation and some very interesting views and suggestions are given by Ed. F. Dougherty, Counsel of the Federal Land Bank of Omaha.

THE feature article this month likewise deals with Federal Liens, and we certainly take pride in presenting our first article by that well known title authority, Frank C. Hackman of Seattle, Washington. Mr. Hackman is known to the title men of the entire country. He has been writing on title subjects for a great many years, and they have appeared in many publications. In this article written some months ago, and before the decision in Rhea vs. Smith, Mr. Hackman points to several things, and they were all substantiated in the decision rendered some time later. Mr. Hackman is a member of the legal department of the Washington Title Insurance Co., and readers of TITLE NEWS will be greatly pleased to have this article for the publication and are appreciative of Mr. Hackman's interest and consideration.

The Title Hound says:

Every time a bunch of abstracters get together in a convention and hear a lot of stuff about how to better and enlarge their business, they sure wish they could do the same, but can't see how.

Jimmy Johns sure makes their mouths water with what he tells these state meetings, but most of them just have one thought and that is, "It might work some places but they wouldn't stand for it in my county."

There will never be anything better for the abstracters than what they make for themselves.

Jump into the deep water and get all soaked with success in new enterprises. It will make you feel mighty good.

YE EDITOR committed one of those awful mistakes last month. Mr. F. C. Raymond, winner of the second individual prize in the 1927 Membership Contest, was mentioned as being Secretary of the Washington Title Association. Mr. Raymond lives in Portland, Oregon, and is the Secretary of the Oregon Title Association and Oregon gets the credit and congratulations for this showing made in the membership campaign.

A FEW extra copies of the October TITLE NEWS containing the Detroit Convention Proceedings are yet available. The supply is very limited, so anyone wanting them should send a request immediately.

DUES paying time will soon be here. Members are urged to send their state associations their 1928 dues just as soon as notice of them being payable is received. The Directory Number of TITLE NEWS will appear in the very early spring and everyone should send their state dues in promptly to facilitate the work connected with the Directory, as well as relieve the hard working state secretaries from repetition of work.

EVERY member of the Association is urged to attend the Mid-Winter Meeting, announced in this issue. Be there!

The American Title Association

OFFICE OF EXECUTIVE SECRETARY
TITLE & TRUST BLDG
KANSAS CITY, MO.

November 15, 1927.

Fellow Titlemen:

The unexpected growth of the Association within the past very few years naturally brought demands for a larger program of activities than anticipated and occasioned many problems for those in charge to solve. Not the least of them is the very perplexing one of financing the organization during the next two years.

It is frankly admitted that the present method of depending upon a voluntary sustaining fund raised by solicitation is very unbalanced and unsatisfactory. However, as has been announced, a new, more equitable and dependable plan is being evolved. It cannot be put into operation immediately so the old one must be continued for the present period.

The situation warrants your immediate consideration. There must be a better response than received to date. Many intend to send in their pledge cards but have just let it go by. If you have not already done so, fill out and mail immediately.

Sincerely yours,

Richard B. Hall

Executive Secretary.

The Lien of Federal Court Judgments

By F. C. Hackman of Seattle, Washington, Bar

The law governing the lien of judgments of courts of the United States does not appear to be understood generally. This is manifested by the lack of accord between the provisions of the statutes of various states and the federal law, as also by the entire absence of any statutes in some states, relating to the matter, and by the fact that judgments of federal courts are deemed and treated as liens in some jurisdictions notwithstanding that neither the federal nor state statutory requirements are complied with. It appears, therefore, that it will not be unprofitable to discuss this matter in the columns of this publication and to set forth the principles of the law as simply and clearly as possible.

It must be first recognized that every sovereignty has the power to prescribe t e jurisdiction and procedure of its own courts, and that the United States and each state as a sovereignty has this power, the one independent of the other. So Congress has power to prescribe the force and effect as liens of the judgments of federal courts, and each state like power with regard to judgments of its courts.

It must also be recognized that judgments are liens by virtue of statutory provisions and not otherwise.

The federal law concerning the lien of judgments of federal courts is divisible, by reason of its character, into two periods, the dividing point of time between which is Aug. 1, 1888. Prior to this date judgments of federal courts operated as liens by implication, while since this date they have been liens by express statutory provisions, as will be hereinafter explained.

When the federal government was created, Congress elected to adopt the modes of procedure in actions at law in each state and make the same apply to procedure in like causes tried in the federal court or courts within that state. By reason of this adoption of the state law, judgments of federal courts were deemed and held to be, by implication, a lien on the debtor's property within the jurisdiction of the federal court rendering the judgment in each state where the state law gave that effect to judgments of its own courts of general jurisdiction. So, in a state which did not provide that judgments of its courts should have effect as a lien, the judgments of a federal court within that state likewise did not operate as a lien.

Quite generally the territorial jurisdiction of a state court of general jurisdiction has been and is limited to a county, and the operative effect of a judgment of such a court as a lien is coextensive therewith, but provision is made for the extention of the lien to other counties in some prescribed mode. The territorial jurisdiction of a federal court has been and is more extensive, including more than one county, even a whole state, so that the lien of a federal court judgment, being co-extensive with the court's jurisdiction, was held and deemed, during the first period that has been mentioned, and in some jurisdictions is yet, as hereafter mentioned, to attach to the debtor's property situate within that territorial area, without regard to county lines, and without regard to or compliance with the state's mode or system of extension of the lien of the judgments of courts of the state beyond the county of rendition. This was necessarily so, because the federal government did (and does) not have officers in every county to perform functions such as state officers in counties perform for the state. State officers (and county officers are state officers) are not subject to federal control; Congress may not impose federal duties upon them. So Congress had no means to effect the extension of the lien of the judgments of federal courts to other counties than that in which rendered in accordance with the mode fixed by the state law. And, of course, a state lacked the power to make its system or mode of evidencing or recording judgment liens apply to judgments of federal courts.

This brought about situations that imposed hardships upon the general public. Judgments of a federal court were of record in the office of the clerk of that court in the county where that clerk had his office, but not of record in other counties within the jurisdiction of the court though a lien on the debtor's property therein; and, of course, not of record in any case in the office of the state officials where records of the judgments of the courts of the state were required by the state law to be kept. People were generally acquainted with the state system of evidencing state court judgment liens, but not with the federal system. They bought, sold, mortgaged, or took mortgages, or otherwise dealt in land, in reliance upon the recording system of the state for title instruments and judgment liens and, so dealing, many afterwards discovered the properties they dealt with were subject to the lien of a judgment or judgments rendered in a federal court, there of record in a city and county often outside of and far distant from the county in which the land so dealt with was situate.

Furthermore, this status of the law brought about inequality between suitors in state and federal courts in respect to the territorial extent of judgment lien, as is manifest from what has been said.

Such was the law and its consequences prior to Aug. 1, 1888, when Congress passed the act of that date. (U. S. Comp. St., 1916, sec. 1606; 4 Fed. Stat. Ann., 2 ed., p. 608.)

It was, so a court has said (Dartmouth Savings Bank v. Bates, 44 Fed. 456), the consequences of this state of the law, the hardships imposed on the public, the inequality between the judgment lien rights of suitors in state and suitors in federal courts, which induced Congress to pass the aforementioned Act of Aug. 1, 1888. The writer's study of judicial decisions touching the liens of federal court judgments rendered during this early period persuades him that Congress may have also been induced to pass the act mentioned in order to settle settle considerable uncertainty and divergence of opinion then existing in regard to many issues which arose upon the subject in question. Some states, for example, had passed acts which sought to fix the mode which should be followed to give judgments of federal courts effect as a lien; acts which attempted to usurp the prerogative of Congress in this matter. In some Southern states such acts were upheld, while in other states in the North and West they were not.

But whatever the inducement may have been, the act was passed, being the first act expressly declaring that judgments of federal courts should operate as a lien on the debtor's property and the manner, extent and conditions thereof. Amended, as hereinafter explained, it remains the law to this date.

As originally passed this act read as follows:

"Section 1. The judgments and decrees rendered in a circuit or district court of the United States within any state, shall be liens on property throughout such state in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such state: Provided, that whenever the laws of any state require a judgment or decree of a state court to be registered, recorded, docketed, indexed, or any other thing to be done, in a particular manner, or in a certain office, or county, or parish in the *State of Louisiana* before a lien shall attach, this act shall be applicable therein whenever and only whenever the laws of such state shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the state.

"Section 2. That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

"Section 3. Nothing herein shall be construed to require the docketing of a judgment or decree of a United States court, or the filing of a transcript thereof, in any state office within the same county or parish in the *State of Louisiana* in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county."

In enacting this law, Congress adhered to its historic and consistent policy of conforming the procedure in law actions in federal courts in each state to that prevailing in the courts of the state, and sought to bring to pass a greater conformity. The provisions of section 1 down to the word "Provided," were but an express declaration of what the law had previously been by implication. The rest of the section, that embraced in the proviso, laid down a new rule.

This act declares that judgments and decrees of a federal court within any state shall be liens on the debtor's property throughout such state in the same manner, to the same extent and under the same conditions only as if such judgments had been rendered by a state court of general jurisdiction. But quite generally state laws require that, in order to be a lien, a judgment must be registered, recorded, docketed, indexed, or the like, by a state officer in his office in the county. Not being able to command these officers to perform such acts in respect of federal court judgments, but desirous of having the state system made applicable to them, Congress, by the proviso in section 1, grants to each state authority to make its system apply to judgments of federal courts. Congress does not authorize a state to impose on federal judgment creditors obligations or conditions different from those imposed on creditors to judgments of the courts of the state. Conformity is sought and authorized. In those states which do not enact the legislation called for by the federal law, or in those states whose enenactments are not in accord with the authority granted by this act of Congress, the judgment of a federal court is nevertheless a lien (if, of course, a judgment of a court of the state has that effect), but without compliance with the state's system of county recording, docketing, indexing, or the like in a county office. By neglect to enact a law of the character prescribed, or by enacting a law not in accord with the authority granted by Congress, a state legislature cannot deprive or restrict the force and effect of judgments or the power of federal courts within the state.

Congress made one express exception from this grant of power, that set out in section 3. Therein Congress expressly declared that the authority conferred by section 1 should not extend or apply to the effect as a lien of federal court judgments in the county where rendered. A judgment of a federal court should be a lien on the debtor's property in the county wherein the federal court rendered judgment, in the same manner, by analogy, to the same extent, and under the same conditions as if such judgment had been rendered by a state court of general jurisdiction, without, however, being docketed, recorded, indexed, or the like in the state office in that county as a state court judgment would have to be under the state law. The entry, docketing, indexing, or the like, by analogy to the state mode, in the office of the clerk of the federal court rendering the judgment created the lien.

It seems plain that Congress had the idea that the record of federal court judgments in the office of the federal court clerk in the county in such cases, was as easily accessible and as well-known to the public as records of state court judgments. But federal courts hold sessions and render judgments in counties in which permanent offices of such courts are not kept, and, consequently, no federal record would exist and be available in those counties for the ascertainment of federal judgment liens on property therein, and section 3 would not admit of the utilization of a state record to meet such a situation. This, it appears, Congress overlooked when passing the act in question; and, so it seems, by inference, it was this situation which induced Congress to amend section 3 by the Act of March 2, 1895 (ch. 180; 28 St. L. 814), by re-enacting that section with the addition thereto of a clause reading:

"if the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

Now this amendment eliminated from section 3 all judgments of federal courts rendered in counties in which the clerk of such courts did not have permanent offices, and brought such judgments within the scope of section 1. Expressed in homely phraseology, Congress said, by this amendment, to each state: The power I grant you in section 1 shall not extend to judgments rendered by our courts in counties in which the clerks of our courts keep a permanent office. In such cases the record of judgments in that office is open to public inspection and as convenient and accessible as the record of judgments of your courts in that county.

As thus amended the Act of Aug. 1, 1888, remained unchanged until the Act of Aug. 17, 1912 (ch. 300; 37 St. L. 311), which took effect, according to an express provision in the act, on Jan. 1, 1913. For some reason or another this Act of Aug. 17, 1912, expressly and specifically repealed section 3 of the Act of Aug. 1, 1888. Was it thereby intended to repeal section 3 of the Act of Aug. 1, 1888, AS AMENDED BY THE ACT OF MARCH 2, 1895? Can it be construed as having had that effect? This has not been determined, nor will this problem be answered herein. It is hardly necessary to answer the query, because there followed the Act of Aug. 23, 1916 (ch. 397; 39 St. L. 531), which expressly and specifically repealed section 3 of the Act of Aug. 1, 1888, AS AMENDED BY THE ACT OF MARCH 2, 1895. This repealing act contained the declaration that it shoud take effect on Jan. 1, 1917. These two repealing acts eliminated section 3, and so the first and second sections of the Act of Aug. 1, 1888, heretofore quoted, remain today in full force and effect without any exceptions whatever that previously existed by virtue of section 3 as originally incorporated in that act or as amended. By the repeal of section 3, Congress said (expressing this imaginary talk in homely words) to each state: By the way, we have cut out the exception we made in our grant of power to you to make your system or mode of evidencing the lien of judgments of your courts applicable to judgments of our courts. You can now make your system apply to all judgments of our courts.

Some states have availed themselves of this authority granted by Congress. But where this is so, the acts passed have not been or are not in accord with the letter or intent of the federal law, or, enacted prior to the repeal of section 3 of that law, are not comprehensive enough to apply to the judgments excepted by section 3 while in effect. Therefore in some states there is no proper or sufficiently comprehensive state law to make the benefits of the federal act available to citizens dealing in land.

The state laws governing judgment liens and those passed pursuant to the authority granted by the federal law in question, vary greatly among the states, so that each of the latter presents some special and peculiar question as to its conformity or non-conformity with the federal act, and, therefore, as to whether and to what extent, if any, it is valid.

It seems plain that a state law which prescribes a mode for the establishment of a federal court judgment lien in counties other than the county of rendition similar to that prescribed for the extension of the lien of judgments of courts of the state are valid beyond question.

The conformation of federal court judgments in the county of rendition to the mode, including place of record, prescribed by the state law for judgments of its courts rendered in that county is the real problem. If the state law requires like acts of both state and federal court judgment creditors, it is unquestionably valid. For example, where a transcript of a judgment, or docket entry thereof, of all courts, state and federal, must be filed with the recorder of every county, including that in which the judgment is rendered, to create a lien on the debtor's property situate in the county, there is complete equality of duty and right between creditors to both state and federal court judgments. Such law appears valid.

But where a state court judgment is given effect as a lien in the county where rendered when entered, docketed, or indexed in the office of the clerk of that court; and the judgment of a federal court rendered in that same county is not effective as a lien until a certified transcript of such judgment or of a docket entry thereof in the office of the clerk of that court is entered, docketed, or indexed, in the office of the clerk of the state court in and for that same county in like manner as state court judgments are required to be, the validity of the state act so providing is subject to question. The difference, in this supposed case, in mode of creation of the lien between the judgments of the state and federal courts, and in the point of time of commencement of the lien, arising from the commencement of the lien of the state court judgment on its docketing in the office of the court of rendition, while, in order to attain that same result, the federal judgment creditor must first secure the re-

quired transcript and then have it docketed in the office of the clerk of the state court in the county, does not, however, appear to be material. In re Jackson Light and Traction Co., 265 Fed. 389, affirmed 269 Fed. 223; Rhea v. Smith, 308 Mo. 422, 272 S. W. 964.

A former California act is an example of an ineffectual enactment. It gave a creditor to a state court judgment a lien upon and from the time of docketing his judgment in the office of the county clerk, and in any other county on and from the time of filing a certified transcript of the original docket with the recorder of the county. But the act required a judgment creditor to a federal court judgment to file, in order to obtain a lien, even in the county where his judgment was rendered, a transcript or copy (possibly both, for the act was ambiguous in this matter) of his judgment with the county clerk and then with the county recorder, and wait until it was there indexed and recorded before his lien attached. Manifestly this statute did not authorize and direct judgments of federal courts to be docketed or recorded in conformity to the rules and requirements relating to the judgments and decrees of courts of the state, but created a different system for federal court judgments. Accordingly, it was held ineffectual and inoperative. Lineker v. Dillon, 275 Fed. 460.

The Supreme Court of Pennsylvania has rendered a decision based upon what appears to be a failure to note the changes in the Act of Aug. 1, 1888, made since its enactment, and heretofore noted. The issue as stated in this decision (rendered in 1919) was "whether certain judgments obtained in the United States District Court for the Western District of Pennsylvania, sitting at Pittsburgh, Allegheny County, Pa., are liens upon lands of the defendants situate in Allegheny county, Pa., without exemplification of the records of said judgments having been filed in the prothonotary's office of the court of common pleas of Allegheny county." The court observed that the federal act of Aug. 1, 1888, gave to judgments of the United States the "same effect given by the states to the judgments of their own courts." The court stated:

"The Act of General Assembly of Pennsylvania approved June 21, 1895 (P. L. 247), contains this proviso, which in no sense conflicts with the act of Congress, and is clearly within the power of the state to enact; 'Provided, that nothing herein contained shall be construed to require the docketing of a judgment or a decree of a United States court, or the filing of a transcript thereof, in or within the same county in which the judgment or decision is rendered by such United States court.'

"Unless there be subsequent legislation either by Congress or the state, which, in some manner or to some extent, limits the effects of judgments of the United States courts, these judgments are liens in Allegheny county, notwithstanding exemplifications of their records have not been filed in the prothonotary's office of the court of common pleas of said county.

"There is no later act of Congress which appears to bear upon the question of such liens, and there is but one act of the General Assembly of Pennsylvania, relating to judgments and decrees of United States courts. This act was approved June 5, 1913 (P. L. 418), and is as follows:

" 'An act to provide for the filing, docketing, and indexing of judgments and decrees of the district and Circuit Courts of the United States.

" 'Section 1. Be it enacted, etc., that it shall be the duty of the respective prothonotaries of the several courts of common pleas of this commonwealth, upon payment of the fees allowed by law for similar services, to receive and file of record in said courts all judgments and decrees rendered in any District or Circuit Court of the United States, when the same are presented duly certified by the clerk of the court in which any such judgment or decree has been rendered, and to docket and index as liens each of said judgments and decrees, with and in the same manner as judgments and decrees recovered or entered in the said courts of common pleas are respectively required to be docketed and indexed in order to make the same liens upon real estate.'

"The act of 1913 does not repeal the act of 1895. It simply provides for the filing, docketing, and indexing of judgments and decrees of the federal courts when the same are presented duly certified by the clerk of the court in which any such judgment or decree has been rendered.

"In some cases, in order to give effect to the judgment, it should be duly certified to the county or counties where the land is situate, but not to the county in which the judgment or decree is rendered by the United States court." Seventeenth St. Land Co. v. Hustead,—Pa.—, 106 Atl. 540."

Let us analyze this decision. The state act of June 21, 1895, was approved, became a law, after Congress had, by the Act of Mar. 2, 1895 (heretofore set forth in this article,) amended the Act of Aug. 1, 1888, and unquestionably the proviso in the state act was intended to except from the state statute relating to federal court judgment liens the exceptions set out in section 3 of the federal act. The subsequent state act approved June 5, 1913, was passed after Congress had enacted the Act of Aug. 17, 1912, which repealed section 3 of the Act of Aug. 1, 1888 (as heretofore herein related), and appears to have been based upon the construction that this repeal of section 3 operated to repeal section 3 as amended by the Act of Mar. 2, 1895, so as to eliminate all the exceptions set forth in section 3 as originally enacted and subsequently amended, and make all federal court judgments amenable to the provisions of section 1 of the federal Act of Aug. 1, 1888. At the time this Pennsylvania decision was rendered (Jan. 4, 1919), the federal Act of Aug. 23, 1916, repealing section 3 of the Act of Aug. 1, 1888, as amended by the Act of Mar. 2, 1895, had been passed and become effective Jan. 1, 1917. Hence, the state act of June 5, 1913, had become applicative to all judgments of federal courts rendered in the state, and established the mode for making them effective as liens in the county wherein rendered as well as in any other county in the state. In saying "There is no later act of Congress (referring to the Act of Aug. 1, 1888) which appears to bear upon the question of such liens," the Court appears to have overlooked the amendment to that Act of Mar. 2, 1895, and the repealing acts of Aug. 17, 1912, and Aug. 23, 1916. The vital and important fact to a correct decision of the case was the date when the judgments in issue were rendered, and this fact is not stated. This decision does not hold, as a hasty reading of it might suggest, that a state is not authorized by the Act of Aug. 1, 1888, as it now stands, to conform judgments of a federal court, in the county wherein rendered, to the state system applicable to state court judgments in the county of rendition.

An example of a statute presenting an uncertainty as to its validity in one of the particulars under consideration is that of Washington. A judgment of a state court is a lien in the county where rendered when the written judgment is filed with the county clerk. But the judgment of a federal court is, by the state statute, not a lien until a transcript or abstract of it is filed AND INDEXED in the office of the county clerk.

Decision United States Supreme Court Defines Standing of Federal Liens

Missouri Case Completely Changes Status and Practice, New State Laws Necessary

WILLIAM A. RHEA, PETITIONER, v. THOMAS C. SMITH, No. 199; SUPREME COURT OF THE UNITED STATES.

4063— U

A statute of Missouri provides that the lien of a judgment of the Federal court upon lands in the county in which it sits can not be a lien unless a transcript of the judgment shall be made and filed in the office of the clerk of the circuit court of the State, a court of general jurisdiction of the first instance, in that county. No such transcript of a judgment in the State circuit court is required to create a lien for its judgment, the lien taking effect upon entry on its record. The Supreme Court of the United States holds that the necessary conformity in the creation, extent and operation of the resulting liens upon land as between Federal and State court judgments is not secured.

Mr. Chief Justice Taft delivered the opinion of the court. The full text follows:

This case involves the validity of a lien of a judgment of the Federal District Court of the Western District of Missouri sitting at Joplin, upon land of the judgment debtor in Jasper County in that district, of which Carthage is the county seat. It turns on the question whether the law of Missouri providing for the registration, recording, docketing and indexing of judgments of the United States district courts for the purpose of making them liens upon land in that State, conforms to the provisions of the State law upon the same subject in reference to liens of judgments of the courts of record of the State. If it does, the lien and the title of the petitioner fail, and the judgment of the Supreme Court of Missouri must be affirmed. If not, then the case must be reversed.

Sought to Determine Title to Real Estate.

The suit herein was brought in Jasper County by William A. Rhea, in one count to determine title to certain real estate in that county, and in another by ejectment to recover its possession. There was a judgment for the defendant in the trial court, and he appealed. The facts were as follows:

Blanche H. Whitlock was the common source of title of the plaintiff and the defendant, and in 1921, owned the property in dispute. As plaintiff, she had brought a suit in the United States District Court for the Southern Division of the Western District of Missouri at Joplin in Jasper County. On Jan. 10, 1921, the suit was dismissed and the costs of the case were adjudged against her in the sum of $8,890.20. On Apr. 5, 1921, she conveyed the property in dispute to the defendant, Thomas C. Smith, for a consideration of $5,000. On July 22, 1921, execution was issued upon the judgment in the Federal Court, and under it the marshal sold part of the land and conveyed it by his deed to the plaintiff Rhea for $200. In December, 1921, another execution was issued under which the marshal sold and conveyed to Rhea the remainder of the land in dispute for $25. The contention of Rhea is that the judgment of the Federal Court is a lien on the real estate from its rendition, that he acquired title to the fee through the execution sales, and that it was superior to any title acquired by subsequent conveyance of the judgment debtor. Smith, the respondent, contended that in the absence of a transcript of the judgment of the Federal Court filed in the office of the Clerk of the Circuit Court of Jasper County as required by the Missouri law, the judgment was not a lien, and the conveyance to Smith, the respondent, by the judgment debtor was free from its encumbrance. The case was appealed to the Supreme Court of Missouri and heard by the Second Division. One of the judges having been absent and the two judges constituting the division differing in opinion, the case was heard en banc, and a majority of the court affirmed the judgment below, two of the judges dissenting.

In Wayman v. Southard, 10 Wheat. 1, 21, 22, this Court said through Chief Justice Marshall, referring to the effect of the last clause of section 8 of Article I of the Constitution, authorizing Congress to make laws necessary and proper for carrying into execution powers vested in any department of the Government:

"That a power to make laws for carrying into execution all the judgments which the judicial department has power to pronounce is expressly conferred by this clause, seems to be one of those plain propositions which reasoning cannot render plainer. The terms of the clause neither require nor admit of elucidation. The Court therefore will only say that no doubt whatever is entertained on the power of Congress over subject."

Effect of Statute Considered Previously.

By section 37 of the Process Act of May 19, 1828, 4 Stat., c. 68, pp. 278, 281, writs of execution and other final process issued on judgments and decrees, rendered in any of the courts of the United States were to be the same as those used in the courts of the State provided, that it should be in the power of the courts, if they saw fit in their discretion, by rules of court, so far to alter final process in said courts as to conform the same to any change which might be adopted by the legislatures of the respective States for the State courts.

The effect of this statute was considered in Massingill v. Downs, 7 How. 760, in which the question was of the validity of a lien of a judgment obtained in the Circuit Court of the United States for the District of Mississippi in 1839. In 1841 the State of Mississippi had passed a law requiring judgments to be recorded in a particular way in order to make them a lien upon property. It was held that the statute did not abrogate the lien which had been acquired under the judgment of 1839, although the latter had not been recorded in the manner required by the State. Mr. Justice McLean, speaking for the Court, said:

"In those States where the judgment on the execution of a State court creates a lien only within the county in which the judgment is entered, it has not been doubted that a similar proceeding in the Circuit Court of the United States would create a lien to the extent of its jurisdiction. This has been the practical construction of the power of the courts of the United States, whether the lien was held to be created by the issuing of process or by express statute. Any other construction would materially affect, and in some degree subvert, the judicial power of the Union. It would place suitors in the State courts in a much better condition than in the Federal courts."

It was held therefore in that case that the plaintiffs in the judgment had acquired a right under the authority of the United States and that that right could not be affected by subsequent act of the State. This principle was affirmed in Brown v. Pierce, 7 Wall 217, and Williams v. Benedict, 8 How. 107.

Such was the state of the law until the passage of the Act of Aug. 1, 1888, c. 29, 25 Stat. 357, which was the first formal act to regulate fully the liens of judgments and decrees of the courts of the United States. The whole Act was as follows:

"An Act to regulate the liens of judgments and decrees of the courts of the United States.

State Regulations Applied to Liens.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that judgments and decrees rendered in a circuit or district court of the United States within any State, shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments and decrees had been rendered by a court of general jurisdiction of such State: Provided, That whenever the laws of any State require a judgment or decree of a State court to be registered, recorded, docketed, indexed, or any other

thing to be done in a particular manner, or in a certain office or county, or parish in the State of Louisiana, before a lien shall attach, this Act shall be applicable therein whenever and only whenever the laws of such State shall authorize the judgments and decrees of the United States courts to be registered, recorded, docketed, indexed, or otherwise conformed to the rules and requirements relating to the judgments and decrees of the courts of the States.

"Section 2. That the clerks of the several courts of the United States shall prepare and keep in their respective offices complete and convenient indices and cross-indices of the judgment records of said courts, and such indices and records shall at all times be open to the inspection and examination of the public.

"Section 3. Nothing herein shall be construed to require the docketing of a judgment or decree of a United States court, or the filing of a transcript thereof, in any State office within the same county or parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county."

The third section was amended by the Act of Mar. 2, 1895, 28 Stat. 813, ch. 180, to read as follows:

Amending Act Repeated in 1916.

"Nothing herein shall be construed to require the docketing of a judgment or decree of a United State court or the filing of a transcript thereof in any State office within the same county or the same parish in the State of Louisiana in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county, if the clerk of the United States court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

By Act of Aug. 23, 1916, the amending act of 1895 was repealed, ch. 397, 39 Stat. 531.

The legislation of Missouri (Mo. Rev. Statutes, 1919) adopted in an effort to comply with the requirements of section 1 of the Congressional act of 1888 was as follows:

"Sec. 1554. Lien of Judgment in Supreme Court, Courts of Appeals, and Federal Courts in This State.—Judgments and decrees obtained in the Supreme Court, in any United States district or circuit court held within this State, in the Kansas City Court of Appeals or the St. Louis Court of Appeals, shall, upon the filing of a transcript thereof in the office of the clerk of any circuit court, be a lien on the real estate of the persons against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

"Sec. 1555. Lien in Courts of Record Generally.—Judgment and decrees rendered by any court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held.

"Sec. 1556. The Commencement, Extent, and Duration of Lien.—The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered."

Federal Judgments Still Liens in Some States.

It is clear that Congress by the first section of the Act of Aug. 1, 1888, quoted above, intended to change and limit the existing rule, as stated by this Court, through Justice McLean, in Massingill v. Jones, supra, that Federal court judgments were a lien upon lands throughout the territorial jurisdictions of the respective Federal courts, but intended to do this only in those states which passed laws making the conditions of creation, scope and territorial application of the liens of Federal court judgments the same as state court judgments, so that where any state has not passed such laws, the rule that Federal judgments are liens throughout the territorial jurisdiction of such courts must still be in force. Dartmouth Savings Bank v. Bates, 44 Fed. 546; Shrew v. Jones, 2 McLean 78—Fed. Cases No. 12818, 22 Fed. Cases 40.

The Missouri Statutes prescribe that judgments rendered by any state court of record shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held, and the lien shall commence on the day of the rendition of the judgment and shall continue for three years.

They further provide that judgments obtained in the Supreme Court of the State, in any Federal court held within the State, and in the Court of Appeals of either Kansas City or St. Louis, shall upon the filing of a transcript in the office of the clerk of any circuit court be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

Conformity Should Exist As to Original Courts.

It is very clear from this recital that a lien of a judgment of the Federal court upon lands in the county in which it sits, if we give effect to the state statute, can not be a lien unless a transcript of the judgment shall be made and filed in the office of the clerk of the circuit court of the State in that county, whereas no such transcript of a judgment in the state circuit court is required to create a lien for its judgment, but the lien takes effect the minute that it is entered on its record.

Not only is this true with respect to the state circuit court of the county, a court of general jurisdiction, but it is also true of judgments in the county court and in the probate court of that county which are courts of record.

The majority opinion of the State Supreme court in this case expresses the view that the difference is of so slight a character that it ought not to be regarded as a failure to conform to the Federal statute. The opinion further points out that judgments of the Supreme Court of the State and of the courts of appeals of St. Louis and Kansas City can only become a lien upon the real estate of a judgment defendant in a particular county upon the filing of a transcript of them in the clerk's office of the circuit court where the land lies.

Thus it is said that the United States District and Circuit Courts are put on the same basis as these appellate State courts having like the Federal District Court a larger jurisdiction than a county.

It is obvious, however, that the district court of the United States is a court of first instance of general jurisdiction just as the circuit courts of the various counties in Missouri are courts of general jurisdiction of the first instance. The conformity required should obtain as between them and not as between the Federal court and the State appellate courts.

Exactness Required In Fixing Priority.

We are dealing here with a question necessarily of great nicety in determining the effect and the priority of liens upon real estate, and the subject requires exactness. Merely approximate conformity with reference to such a subject matter will not do, especially where complete conformity is entirely possible.

The Supreme Court of Missouri in its opinion says it would take but a short time and very little trouble to transcribe a judgment of the Federal court sitting in a county seat and to file it in the office of the clerk of the State circuit court in the same place on the day of its rendition and thus put it on par with the lien of any judgment of the State circuit court rendered on the same day.

It may be that the transcript of the judgment if properly filed even if the transcribing be delayed, as in usual course it is likely to be for several days, would not prejudice the holder of a judgment in the Federal court, because its lien would date from its rendition in the Federal court.

The risk to be run, however, is in the danger that the agent or attorney of a judgment creditor in the Federal court may forget to have the judgment transcribed and filed in the clerk's office of the circuit court of the county.

Such forgetfulness by those charged with the duty is a factor to be considered and makes a real difference between the provision for the lien of the Federal court judgment and the instant attaching of a lien upon the entry of the State court judgment without further action.

Situation in Prior Case Found to Be Different.

Reference is made by the State supreme court to Re Jackson Light and Traction Company v. Newton, 269 Fed. 223, a decision of the Circuit Court of Appeals of the Fifth Circuit concerning a judgment rendered in Mississippi hold-

ing that the required conformity was furnished by the State statute. The statute required the enrollment of a judgment in the State court of general jurisdiction in order that it might become a lien upon the property in the county of its jurisdiction, only if enrolled 20 days after the term of entry of the judgment. The judgments of the Federal court, the State supreme court and the chancery courts also became liens from the time they were enrolled in the county where the land lay. We think that case may well be distinguished from this one because necessity of enrollment was exacted as to every court.

The majority opinion of the Supreme Court of Missouri further dwells upon a significant thought to attach to the purpose of Congress in repealing section 3 of the statute of 1888 as amended by the statute of 1895. That section thus amended specifically forbade any State statute seeking conformity to require the docketing of a judgment or decree of a Federal court, or the filing of a transcript thereof if any State office withn the same county in which the Federal judgment or decree was rendered, in order to be a lien on the property in that county, if the clerk of the Federal court had a permanent office and a judgment record open at all times for public inspection in such county.

It is said that the repeal of that section indicates Congress' intention to permit the requirement in the State statute that there should be some additional record in the State court in the county where the Federal court sits of the Federal judgment without destroying the required conformity. Even if this be conceded, it does not show that in order to secure conformity there must not be a similar requirement for a formal record in the State court of the county of its judgment to create a lien. It is the inequality which permits a lien instantly to attach to the rendition of the judgment without more in the State court which does not so attach in the Federal court in that same county that prevents compliance with the requirement of section 1 of the Act of 1888. In the Mississippi case, above referred to, there was the same formality of enrollment within 20 days after the judgment in order to secure a lien in both the State court and the Federal court in the county where both sat.

We think that the three sections, 1555, 1556 and 1554, do not secure the needed conformity in the creation, extent and operation of the resulting liens upon land as between Federal and State court judgments. The lien of Federal court judgments in Missouri therefore attaches to all lands of the judgment debtor lying in the counties within the respective jurisdictions of the two Federal district courts in that State. This requires a reversal in this case of judgment of the Supreme Court of Missouri. The cause is remanded for further proceedings not inconsistent with this opinion.

In Re Decision in Federal Lien Case of Rhea vs. Smith

By Charles C. White, Cleveland, Ohio

The writer has been asked to discuss the case of *Rhea vs. Smith* relative to the lien of judgments in federal courts recently decided by the Supreme Court of the United States.

Preliminary to such discussion, attention is called to the article on "Federal Liens" appearing in the proceedings of The American Title Association, 1926, and re-published in pamphlet form by the Association. In this article the following propositions were laid down as being based upon the statutes and reported cases:—

1. Prior to 1888 the lien of the judgment of a federal court was a lien throughout the territorial jurisdiction of the court.

2. By the law of Aug. 1, 1888 provision was made that federal judgments should not be a lien until docketed, provided that judgments in state courts must be docketed and provided. a state law was passed permitting the docketing of federal judgments.

3. States whose judgments are a lien upon rendition only cannot take advantage of the Act of 1888.

4. Any law passed by a state legislature for the purpose of taking advantage of the privilege permitted by the 1888 statute must put federal judgments exactly on a par with judgments rendered in state courts.

It is highly gratifying to the writer to know that his contentions have been upheld by the Supreme Court of the United States in the case of *Rhea vs. Smith.*

The case is reported in *42 Supreme Court Reporter 698* and the decision in the Missouri Supreme Court (reversed by the United States Supreme Court) is reported in *308 Mo. 402* and in *272 S. W. 964.*

The pertinent Missouri statutes are found in the 1919 Revised Statutes of Missouri and are as follows:—

"Section 1554.—Judgments and decrees obtained in the Supreme Court in any United States district or circuit court held within this state, in the Kansas City Court of Appeals or the St. Louis Court of Appeals, shall, upon the filing of a transcript thereof in the office of the clerk of any circuit court, be a lien on the Real Estate of the person against whom such judgment or decree is rendered, situated in the County in which such transcript is filed.

"Section 1555.—Judgments and decrees rendered by any court of record shall be a lien on the Real Estate of the person against whom they are rendered, situated in the County for which the court is held.

"Section 1556.—Provides that the lien shall last for three years and shall attach to after acquired lands. Also provides for priority (or rather lack of priority) of judgments rendered in same term."

FACTS.—On Jan. 10, 1921, judgment was rendered against A in the United States District Court for the Southern Division of the Western District of Missouri, sitting at Joplin which is the County seat of Jasper County. No transcript was filed with the clerk of the circuit court of Jasper County as required by Section 1554 of the Missouri Revised Statutes quoted above.

On Apr. 5, 1921, A conveyed the land in question to the defendant, Smith.

In July and December, 1921, executions were issued on the judgment and the land in question was sold by the United States Marshal to the plaintiff, Rhea.

The contest was between Rhea and Smith as to who had the better title to the land, this question of course hinging upon the question as to whether or not the federal judgment was a lien without the transcript required by the Missouri statute. In other words, was Section 1554 of the Missouri statutes, taken in connection with Section 1555, such a "conformity statute" under the Act of Aug. 1, 1888, as would make it necessary in Missouri to docket a federal judgment in order that it should become a lien? Or was the Missouri statute a "vain thing" as being an attempt to conform which did not conform?

The Missouri Supreme Court decided that the Missouri statute was a good conformity statute and that the federal judgment in question was not a lien, because no transcript had been filed as required by Section 1554. The opinion of the court was rendered by Judge White (no relative of the writer) and with him concurred four other judges. Judge Blair (with whom concurred one other judge) vigorously dissented and held that the Missouri statute was not sufficient to accomplish the purpose intended.

The case was taken to the Supreme Court of the United States where an opinion was rendered by Chief Justice Taft on May 31, 1927. The pertinent parts of the opinion are as follows:—

"It is clear that Congress, by the first section of the Act of Aug. 1, 1888, quoted above, intended to change and limit the existing rule, as stated by this court,

through Justice McLean, in *Massingill vs. Downs*, supra, that federal court judgments were a lien upon lands through the territorial jurisdictions of the respective federal courts, but intended to do this only in those states which passed laws making the condition of creation, scope, and territorial application of the liens of federal court judgments the same as state court judgments, so that where any state has not passed such laws the rule that federal court judgments are liens throughout the territorial jurisdictions of such courts must still be in force. *Dartmouth Savings Bank vs. Bates, 44 Fed. 546; Shrew vs. Jones, 2 McLean 78, Fed. Case No. 12818.*"

"The Missouri statutes prescribe that judgments rendered by any state court of record shall be a lien on the Real Estate of the person against whom they are rendered, situated in the County for which the court is held, and the lien shall commence on the day of rendition of the judgment and shall continue for three years. They further provide that judgments obtained in the Supreme Court of the State, in any federal court held within the state, and in the court of appeals of either Kansas City or St. Louis, shall, upon the filing of a transcript in the office of the clerk of any circuit court, be a lien on the Real Estate of the person against whom such judgment is rendered, situated in the County in which such transcript is filed."

"It is very clear from this recital that a lien of a judgment of the federal court upon lands in the County in which it is situated, if we give effect to the state statute, cannot be a lien unless a transcript of the judgment shall be made and filed in the office of the clerk of the circuit court of the state in that County; whereas no such transcript of a judgment in the state circuit court is required to create a lien for its judgment, but the lien takes effect the minute it is entered on the record. Not only is this true with respect to the state circuit court of the County, a court of general jurisdiction but it is also true of judgments in the County court, and in the probate court of that County which are courts of record."

"It is obvious, however, that the district court of the United States is a court of first instance of general jurisdiction just as the circuit courts of the various Counties of Missouri are courts of general jurisdiction of the first instance. The conformity required should obtain as between them, and not as bewteen the federal court and the state appellate courts."

"We think that the three sections 1555, 1556 and 1554 do not secure the needed conformity in the creation, extent and operation of the resulting liens upon land as between federal and state court judgments. The lien of federal court judgments in Missouri therefore attaches to all lands of the judgment debtor lying in the Counties within the respective jurisdictions of the two federal District Courts in that state. This requires a reversal in this case of the judgment of the Supreme Court of Missouri."

Clearly the four propositions laid down at the outset of this discussion are now the law, settled by the highest court in the land.

The court's decision is epitomized in the head note, or syllabus, as follows:—

"By Act Aug. 1, 1888, 25 Stat. 357 regulating liens of judgments and decrees of courts of the United States, Congress did not intend to change the rule that federal court judgments were liens on land throughout the territorial jurisdiction of the respective federal courts, except in those states which pass laws making the conditions of creation, scope, and territorial application of liens of federal court judgments the same as state court judgments."

"Under Rev. St. Mo. 1919, Secs. 1554, 1555 and 1556, lien of judgment of federal court on lands in County in which court is situated cannot attach, unless a transcript of the judgment shall be made and filed in the office of the clerk of the circuit court of the state in that County, though no such transcript of judgment in state circuit court is required before lien attaches; hence the conformity affecting the creation, scope and territorial application of liens of federal and state court judgments required by Act Aug. 1, 1888, 25 Stat. 357, does no exist, and, under the rule prevailing before enactment of such statute, federal court judgments are liens on land throughout the territorial jurisdiction of such courts, without filing the required transcript."

It will be noted that there is nothing either in the opinion or syllabus which would indicate that there has been any departure from the fundamental rule that a court's judgment is co-extensive with its territorial jurisdiction. A lien of the judgment of a United States District Court is a lien on land situated in every County in the district, but there is nothing in *Rhea vs. Smith* to indicate that it is a lien in a County in another district of the same state; nor whether a judgment in one division of a district is a lien in another division.

The one proposition that the writer would like to emphasize again is that *any state which requires rendition alone to establish the lien of a judgment is not in position to pass any so called "Conformity statute."* Such a state must first provide for a docketing of its own judgments before it can take advantage of the federal law of Aug. 1, 1888. In such a state search must be made for judgments in the office of the clerk of the United States District Court, since such judgments are a lien in every County in the district.

Some Remarks on Decision in Rhea vs. Smith

By Edward F. Dougherty, Omaha, Nebraska

Perhaps your attention has already been called to the decision of the Supreme Court of the United States, rendered on May 31, 1927, in the case of William A. Rhea vs. Thomas C. Smith, wherein the court held that the Statute in the State of Missouri, providing for the recording, etc., of judgments of the United States District Court for the purpose of making them liens upon lands in the several Counties of the State, does not conform to the provisions of the United States Statutes upon this subject and that therefore the lien of the judgment of the United States District Court in the particular case at bar, was held to be enforcible against the judgment debtor, even though a transcript of the judgment had not been filed with the Clerk of the State Court in the County where the land was situated.

The Court went further than this and held substantially, that since the State Statute on this subject did not conform to the United States Statute, a judgment rendered in a Federal Court would constitute a lien upon any lands of the debtor situated in the territorial jurisdiction of the particular Federal Court which rendered the judgment.

In the States of Nebraska, Iowa and Wyoming, situated within the Eighth Federal Land Bank District, in which I am interested by being counsel for the Federal Land Bank of Omaha, similar Statutes have been enacted in an endeavor upon the part of the State Legislatures to enact measures that would restrict the extent of the lien of the judgment rendered in the Federal Court to lands within Counties wherein a transcript of the Federal Court judgment had been filed in the office of the Clerk of the District Court.

Now it is certain, under the decision in Rhea vs. Smith, that the Statutes of none of the three States named are in conformity with the provisions of the United States Statute and that therefore the lien of the judgment rendered in the District Court of the United States constitutes a lien upon lands of the judgment debtor throughout the entire District wherein the judgment was rendered or may be rendered in the future.

The particular point upon which the Supreme Court based its decision is that under the laws of the State of Missouri the lien of the judgment rendered in the

(Continued on page 11.)

THE TITLE GUARANTEE & TRUST CO.

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November 10th
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Fellow Titlemen:

During the past two years the advertising committee of our Association has put in considerable time and effort in collecting advertising material from our members. Those of you who attended the conventions at Atlantic City or Detroit realize the amount of work involved in the proper assembling of this display, and also appreciate the benefits to be derived therefrom by the delegates.

It is very apparent that a continuance of this work will be increasingly profitable not only for the value in exhibiting it at the conventions, but by having the material available at all times for use and study. However unless all members cooperate with us, this exhibit will not be national in its scope, and therefore uninteresting.

Our committee would appreciate the placing of the name and address of the undersigned on the mailing list of all members, so that sufficient material may be received during the ensuing year to form a complete and larger exhibit. Please send to me, specimens and samples of all the advertising you use during the coming year.

Very truly yours,

Leo S. Werner

Leo S. Werner
Chairman Advertising Committee

(Continued from page 9.)

State Court attaches immediately to the lands in the County wherein the judgment is rendered. Whereas under the Statute the lien of a Federal Court judgment would not attach until a transcript of the judgment was filed in the office of the Clerk of the State Court of the County wherein the land is situated. The Court held that the State conformity Statute should have permitted the lien of the judgment rendered in the Federal Court, to attach immediately to lands lying within the County wherein the Federal Court judgment was rendered, in the same manner as judgments rendered in the State District Courts attached.

Incidentally, quite by accident I believe, the Statutes of the State of South Dakota are in conformity with the provisions of the United States Statute for the reason that all judgments of any courts are required to be filed and docketed before becoming liens in the State of South Dakota.

It is quite reasonable to assume that the Legislatures of the other States have committed this same error and that therefore the Statutes of the several States on the subject are of no effect at this time and in consequence the lien of a judgment of the Federal Court may be coextensive with the territorial jurisdiction of the Court.

In view of this decision of the Supreme Court and because of the likelihood that many of the conformity Statutes on this subject may be defective in the same manner as the Missouri Statute was held to be defective, perhaps the attention of all members of the American Title Association should be directed to this case and to its effect upon the Statutes of other States.

In those States where the conformity Statutes are defective, it is apparent that the abstracters are exposed to liability for judgments rendered in the Federal Courts in the past and to liability under their certificates to abstracts in the future, if certifications with respect to judgments in Federal Courts are not excluded from the certificate. If Federal Court judgment liens purport to be included in the abstracter's certificate, it is necessary obviously that the abstracter obtain a reliable judgment search in every division of the Federal Court within the Federal Court district wherein the land under examination is situated.

In addition to the interests that the abstracters will have in this case, attorneys who examine abstracts will realize that to protect their clients they must require more than the mere certification as to judgments rendered in or transcripted to the County wherein the land under examination may be situated. Even though the abstracter's certificate may be broad enough to render the abstracter liable for the omission of a Federal Court judgment which is a lien upon the land covered by the abstract, it is probable that a prudent examining attorney, before approving a title, should call the abstracters attention to this decision of the Supreme Court and require searches and specific certification showing that there are no judgment liens against the particular land rendered in any of the divisions of the Federal Court of the Federal Court district wherein the land lies. This suggestion is offered because merely reliance upon a broad abstracter's certificate would not save a client from a lawsuit which might involve the loss of the land purchased or mortgaged and a futual suit against an irresponsible abstracter.

Finally it is suggested that members of the American Title Association should unite in securing the passage of proper amendatory laws in the several States wherein the present conformity Statutes on this subject are deficient. In nearly all of the States the Legislatures will not meet again for some time so, meanwhile, title men are confronted with the dangers that are brought to light by this decision of the Supreme Court of the United States.

It requires no great stretch of imagination to see that if title examiners and abstracters are to relieve themselves from the dangers to which they are exposed in those States where the conformity Statute is defective, as in the State of Missouri, considerable expense will be added to the borrower who is obtaining a mortgage loan or to the seller who agrees to furnish an abstract showing a marketable title.

Of course, abstracters who now will be required to furnish the additional information may rejoice in having thrust upon them this additional source of revenue, but after all I believe that the consensus of opinion will be that the situation should be remedied at the earliest possible date and that we should all grin and bear it while the present situation must continue.

OHIO TITLE ASSOCIATION HOLDS SUCCESSFUL MEETING.

The 1927 meeting of the Ohio Title Association held in Columbus on Oct. 14 and 15 was the best ever in the history of the organization. A large crowd was in attendance, setting a new record. An excellent program had been provided and it was a good convention in every detail.

A fine report was made on the membership drive during the year. Secretary George Coffey added many new members as a reward for his hard work.

The Secretary made a detailed report of the year's work and showed that the association had been very active.

President Carl H. Beckham gave an address on "Aims and Advantages of State Association." He stated that notwithstanding the increase of dues at the last annual meeting that there had been an actual increase in membership in the last year. He pointed out that in the larger counties there is one full time person engaged in the title business for about three thousand population while in many of the rural counties the proportion runs as high as ten thousand or fifteen thousand. Among other things he suggested that the title men must look after their own business and that an organization like this may be of much service to its members as it furnishes a means through which they may cooperate for the betterment of their business.

Following the address of the President Mr. Edmund F. Arras, President of The Columbus Real Estate Board and representing The Ohio Association of Real Estate Boards, gave a very fine address on "Mutuality of Interests." He stated that he did not realize that there were so many interests in common between Realtors and Title Men until he began to prepare his address. He made a number of suggestions as to how the two groups might cooperate and of the services which the realtor would like to have from the title man. His address was very well received.

The secretary then read a telegram and letter from Mr. Walter M. Daly, President of The American Title Association, extending his best wishes for a successful and profitable convention and suggesting the holding of Regional Meetings and asking that The Ohio Title Association endorse by resolution an increase in the dues of The American Title Association.

The remainder of the afternoon session was taken up with a Round Table discussion led by Mr. Chas. C. White. A number of different subjects were taken up but most of the time was spent in the discussion of "Regional Meetings," "Qualifications for Membership in Ohio Association" and "The Basis for Determining Abstract Charges."

After discussion, in which many members participated, it was moved by Mr. Thraves, seconded and carried that it is the sense of The Ohio Title Association that there should be Regional Meetings and that the incoming Executive Committee work out the details in regard to the holding of these.

It seemed to be the sense of the Association that the constitution expresses the qualification for membership as well as can be stated. It was moved, seconded and carried that the Membership Committee construe the qualifications liberally.

A number of members participated in the discussion in regard to the basis for determining abstract charges. Some are making a larger charge where the property is more valuable while others felt that such was not practicable, at least at the present time, in their community.

It was moved, seconded and carried that the President appoint a committee of three on *RESOLUTION* and also a similar committee on *NOMINATIONS*. On RESOLUTION were appointed—Chas. C. White, W. P. Ainsworth and W. E. Peters; on NOMINATIONS—O. L. Pealer, Ross J. Wetherald and Coit L. Blacker.

At 5 p. m. the meeting adjourned until Saturday morning.

An Association dinner was held at 6:30 p. m. with thirty-five present. The President called on several for brief talks.

The meeting was called to order on Saturday morning at 9:25 a. m. The President introduced C. V. Trott of Columbus, President of The Ohio Mortgage Association. Mr. Trott stated that title to property is at the foundation of society, which probably accounts for the slowness in changing some of the laws which perhaps ought to have been changed long ago. He made a number of suggestions and stated that he saw no reason why Title Companies should not be permitted to write title insurance anywhere in the state just the same as other insurance companies. His address was very much appreciated.

Mr. W. E. Peters then gave an address on "Evolution of Counties." This address showed a large amount of original research and was illustrated with maps showing the exact steps which have been taken in the formation of the counties in Ohio.

Practically all the remainder of the session was devoted to a discussion of "State Wide Title Insurance." Mr. George L. Bremner presented the subject "From the Standpoint of the Title Company," Mr. Meade G. Thraves "From the Standpoint of the Abstracter" and Mr. Carl Kessler of The Kessler-Patterson Co., Columbus, "From the Standpoint of the User."

Mr. Bremner stated that there is a growing demand for title insurance but felt that until the title insurance companies of Ohio were permitted to appoint local title companies as their representatives who can be authorized to issue policies over their own signature there will be no complete assurance that the title companies in the less populated districts will profit from the impending transition from abstract and certificates of title to Title Insurance.

Mr. Thraves felt that title insurance will be demanded by mortgage companies and others and unless some plan to furnish this is worked out by the title companies who really understand it, that someone else will undertake it. This association should help solve this problem in the interest of the title companies, the abstracters and the public.

Mr. Kessler, of the Kessler-Patterson Company of Columbus, stated that his company was interested in title insurance because it is trying to go beyond the ordinary in regard to subdivisions. His company made a careful study of the idea and decided to take out a policy on a subdivision which it was making from the viewpoint of the subdivider and was a master stroke. All that the buyer receives he gets under title insurance and more.

Considerable discussion followed. This was interrupted by the President to give Mr. Anthony Rutglers of the Union Title and Guarantee Company, Detroit, Michigan, an opportunity to address the convention. Mr. Rutglers read a very carefully prepared paper on the subject of "Title Insurance," in which he discussed the different methods of evidencing titles and some of the points wherein he felt that title insurance was an improvement over the other methods.

It was moved, seconded and carried that the chair appoint a committee of seven consisting of five from the Title Insurance Companies and two Abstracters who are to make a careful study of this question and recommend, if practicable, a feasible plan for State Wide Title Insurance. The President appointed Chas. C. White of Cleveland, chairman, O. L. Pealer, Warren, Leo. S. Werner, of Toledo, Coit L. Blacker of Columbus, J. W. Thomas of Akron, Meade G. Thraves, Fremont, and B. W. Sebring, Canton, on this committee.

The committee on resolutions submitted the following:

RESOLUTIONS.

It is with feelings of profound regret that the Ohio Title Association is called upon to record the death of Mr. W. E. Crittenden. Mr. Crittenden was an outstanding figure in the title world, having been connected with the Guarantee Title and Trust Company of Cleveland, Ohio, during the whole of its corporate existence. He was an active member of the Ohio Title Association and of the American Title Association and was at different times an official of each association. Mr. Crittenden was a man of unimpeachable integrity, a man who commanded the respect of all persons with whom he came in contact. He was an ideal family man, a kind husband and a loving father. His loss will be keenly felt by his family, his business associates and the members of this association and of the American Title Association.

It is therefore resolved by the Ohio Title Association in convention assembled that we extend to Mr. Crittenden's family and business associates our most profound sympathy, and we direct the Secretary of this association to send a copy of this resolution to Mrs. Crittenden and to the Guarantee Title and Trust Company of Cleveland, Ohio.

RESOLUTION.

In the death of Mr. Geo. B. Effert, the Ohio Title Association has lost within the last year one of its valued members. Mr. Effert had built a substantial business in his home community at Canton, Ohio, and we regret that his death prevented the carrying out of plans for the betterment and enlargement of his business. To his family and business associates we extend our heartfelt sympathy and the Secretary is instructed to transmit a copy of this resolution to Mr. Eggert's family and business associates.

RESOLUTION.

The death of Mr. John H. Green has removed from the membership of this Association one of its ablest members. During the greater part of his business life, Mr. Green was connected with the Guarantee Title & Trust Company of Cleveland, Ohio, and at the time of his death was the manager of the Paynesville Branch of that Company. Through this company Mr. Green was a member of the Ohio Title Association and the American Title Association, and within the last few years he was active in organizing the Abstracter's Division of the American Title Association. Mr. Green was a conscientious abstracter and was well liked by his clients and associates. In his death this Association has suffered a loss, and we desire to extend to Mrs. Green and family our heartfelt sympathy. The Secretary is instructed to transmit a copy of this resolution to the family and business associates of Mr. Green.

RESOLUTION.

Mr. James L. Flynn, whose death occurred during the last year, was one of the oldest members of the Ohio Title Association and was a familiar figure at meetings of the American Title Association. Mr. Flynn's genial personality endeared him to all with whom he came in contact and his business ability and integrity built for him a substantial title business. This association notes with regret the passing of Mr. Flynn and extends to this family its heartfelt sympathy. The Secretary is instructed to send a copy of this resolution to Mr. Flynn's family.

As a further token of respect these resolutions were passed by a standing vote.

The committee then submitted the following resolutions:

RESOLUTION.

WHEREAS it has come to the attention of the Ohio Title Association that it may be necessary, in order to carry on the work of the American Title Association effectively, to increase the assessment made upon each member of a state association, NOW, THEREFORE,

BE IT RESOLVED that the Ohio Title Association will look with approval upon any necessary raise in dues of state members to an amount not exceeding $5 (Five Dollars).

RESOLUTION.

At the close of one of the most successful conventions in its history the Ohio Title Association desires to express its thanks to the officers who prepared the program, and to those who, by their presence and by their addresses, have contributed to the success of this meeting. We especially desire to thank Mr. Arras of the Columbus Real Estate Board, Mr. Trott of the State Mortgage Association, Mr. Kessler of Kessler-Patterson Company of Columbus and Mr. Rutgers of The Union Title Guaranty Company of Detroit for their interesting and instructive addresses. The cooperation of the Ohio Real Estate Board and the Mortgage Association of Ohio has been very much appreciated. We also desire to thank Mr. Blacker and his associates in the Guarantee Title & Trust Company of Columbus for their untiring efforts to make this convention a success.

RESOLVED that a copy of this resolution be sent to the Columbus Real Estate Board, the Ohio Real Estate Board, The Mortgage Association of Ohio, The Kessler-Patterson Company of Columbus, Ohio and the Guarantee Title and Trust Company of Columbus, Ohio, and The Union Title Guaranty Company of Detroit, Mich.

It was moved, seconded and carried that these resolutions be adopted.

The Nominating Committee made the

following report: President—B. W. Sebring; for Vice-President R. M. Lucas; Secretary-Treasurer George N. Coffey; for member of the Executive Committee for three years Carl H. Beckham. It was moved, seconded and carried that the report of the nominating committee be accepted and the Secretary cast a unanimous ballot for the nominees, which was done.

ARKANSAS ASSOCIATION HOLDS ITS BIGGEST AND BEST CONVENTION

To Hold Regional Meetings.

The 1927 Convention of the Arkansas Land Title Association, held in Little Rock on Oct. 14 and 15, was the best in the history of the organization. There was the largest crowd ever registered, and they came from all parts of the state. Many new faces were present, and all had a great deal of enthusiasm for the state organization and its work.

One of the features was an exhibit that had been attractively gotten together and arranged by Secretary Bruce Caulder. It showed various forms of advertising, abstracts and materials, not only from Arkansas but other states; samples of other state association proceedings and bulletins, supplies and equipment for abstract offices and many other things of interest. This attracted a great deal of attention and everyone studied it carefully.

The entire first morning was spent in registration, routine business and a general discussion after which the convention adjourned for a luncheon during which questions were presented and discussed. The following subjects were given: "Taxes for Road Improvements" by Senator Chas. A. Walls, of Lonoke and "Side Lines for the Abstracter" by W. E. Jones, Perryville.

During the afternoon W. P. Gulley of the Little Rock Building and Loan Association discussed "Abstract Service Expected by a Mortgagee." Mr. Gulley gave some good suggestions and showed that he is a staunch friend of the titleman and realizes his worth. H. B. McKenzie, of Prescott, talked on the subject of "What is Good Abstracting," M. K. Boutwell, of Stuttgart, on "Co-Operation Between Competitors" and A. J. Watts, of Camden, on "Abstract Prices." W. L. Parker, of Mena, on "Legislative Activities," Will Moorman, of Augusta, on "Just Rambling Around in Abstract Land" and F. E. Harrelson, Forrest City, on "Rebates, Commissions and Discounts."

All of these subjects were very interesting and made for a profitable program.

Richard B. Hall, executive secretary of the American Title Association, spoke on "Cooperation, and the Value of Regional Meetings." As a result of the things outlined and suggested, it was enthusiastically decided to hold regional meetings throughout the state and plans made to begin them at once.

There was a banquet on the first evening, after which the crowd attended the Arkansas State Fair and as is usually said of such occasions, a fine time was had by all.

This convention seemed to evidence a new spirit of progressiveness for the abstract business and a great interest of the abstracters in the affairs of the business. Elmer McClure, president of the association was also host and he had the very able assistance of other title men in the city who saw to it that everyone had a real time.

Will Moorman of the Augusta Title Co., Augusta, was elected President, and Bruce Caulder of Lonoke, very efficient and active Secretary, re-elected.

COLORADO TITLE AND REALTORS ASSOCIATIONS HAVE JOINT CONVENTION.

An interesting and profitable experiment was had this year in the joint conventions of the Colorado Title Association and the Colorado Association of Real Estate Boards. This event was held in Boulder, on Oct. 7 and 8.

The first day's session was one of general matters and consideration of things of interest to both. The addresses of welcome and responses were

by representatives of both groups, and H. C. Hickman of the Record Abstract Co., Boulder, and president of the Colorado Title Association, was one of the hosts. Another one of the local committee was Guy Adams, formerly an abstracter there, and now a Realtor.

Clarence C. Hieatt, president of the National Association of Real Estate Boards, spoke on the "Importance of Organization in Modern Business" and was followed by Richard B. Hall, executive secretary of the American Title Association on "Relation of Abstracter and Realtor."

Golding Fairfield, vice president and attorney of the Title Guaranty Trust Co., Denver, gave a very interesting address at this session, on the subject of "Title Insurance."

A joint banquet was held in the evening and it was a great affair. George A. Levy, Director of Exploitation, The Moffat Tunnel, told of the "Development of the Resources and Opportunities of Colorado." There was fine entertainment, and the awarding of the trophies in the Home Town Oratorical Contest and Abstract Contest.

On Saturday each association held its separate session. The title program consisted of a report on the national convention by Colorado's delegate, J. Emery Treat, of Trinidad. P. W. Allen, of Greeley, presented the much mooted subject of "Taxation of Abstract Plants" and a lively discussion followed. Guy A. Adams, a former president, talked on "Reminiscences" and Richard B. Hall, executive secretary of the national association, on "What is to Become of the Abstract Business."

The plan of regional meetings and other constructive activities for state associations were discussed, and it was definitely decided and planned that the state would be districted and a series of meetings undertaken immediately. Everyone was enthusiastic over the idea and possibilities, and the carrying-out of the scheme will make for a great improvement and advancement of the business in the state.

It was a very enthusiastic meeting —the best ever held by the Colorado Association. The attendance was good and it certainly seemed as though the Colorado abstracters are awake to the necessity of advancing the interests of their business.

The holding of the joint meeting will bring many favorable reactions. The abstracters and realtors mingled together, talked of each others' problems, and the realtors seemed to have acquired a much better understanding of the title business. They were eager to learn about title insurance and asked many questions.

The following officers were elected: President, Carl E. Wagner, Morgan County Abstract Co., Fort Morgan; Vice President, R. A. Edmondson, Washington County Abstract Co., Akron, and the present efficient Secretary-Treasurer Edgar Jenkins, of the Arapahoe County Abstract Co., Littleton, was re-elected.

MERITORIOUS TITLE ADVERTISEMENTS

(Examples of advertisements for the title business. A series of these will be selected and reproduced in "Title News," to show the methods and ideas of publicity used by various members of the Association.)

CHICAGO TITLE & TRUST COMPANY

OFFICE OF THE PRESIDENT

To my friends of the Chicago Bar:

Mr. T. A. Dorgan (perhaps better known as "Tad", writer of sports and drawer of cartoons) was recently interviewed. He was questioned as to this and that of his interesting life and was finally asked for his formula of success. That formula was, "Don't kid yourself."

This thought might be expressed in more common phrase to mean that one should give his supreme attention to his weaknesses. His strong points will care for themselves. There may be something in this.

The claim of infallibility of opinion, the boast of knowledge, and the brag of power are common not only in politics and newspapers, but not less in business and professional circles.

In the organization which has tolerated my views and services for many many years we have not tried to "kid" ourselves. We know a great deal about real estate titles and real estate law, acquired through eighty years, more or less, of rough sledding by our predecessors and ourselves, yet we pile up large reserves to protect our clients against losses occurring from what we don't know.

We know something of trust service and trust investments, acquired through forty years active experience, but we build a reserve of a couple of millions to furnish protection to our beneficiaries; for, as Mr. Dorgan might say in his happy phraseology, "Nobody knows everything about nothing." To claim otherwise is mere pretension.

Extending as usual my felicitations on your happy return from vacation-land to crowded dockets, wealthy clients and deferential judges,

I remain, as ever, desirous to assist,

Harrison B. Riley

SEPTEMBER 5TH, 1927 PRESIDENT

This letter was sent to the members of the Chicago Bar by Mr. Riley upon returning from his summer vacation.

It is reproduced this month as the meritorious ad because of the unique idea and character of expression. Read carefully, note the directness and force with which the thought is expressed and the intermingling appeal of the personal and friendly.

TEXAS PLANNING REGIONAL MEETINGS.

The Texas Abstracters Association, during its recent convention, gave considerable consideration to the subject of regional meetings within the state. The matter was presented to the meeting by Henry Baldwin, and plans were made to hold them throughout the state during the coming year.

It is expected that these regional gatherings will unify and stabilize the business of the state. They will also be of material assistance in the development of the state association. Texas is so large in area that it is some little undertaking to go from one part to another and these meetings will make it possible for groups to gather from time to time and discuss pertinent matters.

The state has accordingly been divided into seven districts, with a Governor and Assistant Secretary in each. A meeting will be held in each during the coming year.

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.

Must bondholders be parties to foreclosure suit?

Not where they are represented by the trustee. PORT v. EQUITABLE, 18 Fed. (2nd) 379, (Georgia).

Should deed recorded after grantor's death, be passed?

Not without proof of delivery before death; thus deeds found in grantor's pocket were held void. KRUG v. BREMER, 292 SW. 702 (Missouri).

Can a possibility of reverter after condition subsequent, be assigned?

Not to a stranger; it can only be released to the owner of the fee. MAGNESS v. KERR, 245 Pac. 1012 (Oregon).

Does wife have dower as against husband's purchase money mortgage?

No, but husband's deed to mortgagee in satisfaction of mortgage is subject to dower. HAMM v. BUTTER, 112 So. 141 (Alabama).

Does metes and bounds description along street carry title to center?

It does in most States. WARWICK v. CITY, 288 SW. 516 (Texas).

Must mortgagee pay for abstract that has lost?

Yes. HARDING v. YARBROUGH, 239 SW. 939 (Texas).

Who has right of possession during period of redemption from foreclosure?

The mortgagor; and he can lease and take rents. STARITS v. AVERY, 213 N. W. 769 (Iowa).

Is $125.00 a reasonable attorney's fee for foreclosing a $500.00 mortgage?

Yes, JARDINE v. HAWKES, 256 Pac. 97 (Idaho).

How can omission of part of owner from foreclosure suit be corrected?

By vacating the first proceedings and bringing a new suit. WILLIAMS v. WILLIAMS, 256 Pac. 356 (Arizona).

Can a judgment creditor of mortgagor redeem from foreclosure?

He can after he purchases at execution sale. ISAM v. NORWACK, 156 N. E. 882 (Mass.).

Is description bad if one course is "west" instead of "east"?

Held good; EASTERLING v. SIMMONS. 293 SW. 690 (Texas).

What is effect of grantor signing acknowledgment instead of deed?

The deed is good. GENTRY v. GENTRY, 293 SW. 1094 (Kentucky).

Is delivery to escrowee to deliver to grandson on grantee's death good?

Yes, if grantor does not reserve the right to recall the delivery. GOODMAN v. ANDREWS, 213 N. W. 605 (Iowa).

What is effect of deed to persons not husband and wife as "tenants by entirety and to the survivor"?

They are joint tenants and not tenants in common and survivor takes. MICHAEL v. LUCAS, 137 Atl. 287 (Maryland).

Is acceleration clause in mortgage (only) binding?

Not in New York, and whole debt does not become due. BESAS v. SLOBODOFF, 221 N. Y. S. 588.

Would you pass a conveyance to an unincorporated association?

No; it is void unless the conveyance is to trustees for the association. HAWK v. HAWK, 88 Pac. Sup. Ct. 581.

Is color of title necessary to establish title by actual possession?

No. THURSTON v. BATCHELLOR, 137 Atl. 199 (Vermont).

What is effect of initialling interlineations?

It makes the interlineations part of the deed, which can be used in evidence. ANDERSON v. STERLING, 256 Pac. 10 (Colorado).

Is deed conveying "all my possessions" good?

Held good and other evidence can be introduced to identify the property. BRUSSEAU v. HILL, 256 Pac. 419 (California).

Is omission of State and County from description, fatal?

No; it will be supplied by residence of grantor and place of acknowledging and recording. EASTERLING v. SIMMONS, 293 SW. 690 (Texas).

Is lot owner personally liable for special improvement assessment?

No, it can only be collected from the property. HARWAY v. PARTRIDGE, 222 N. Y. S. 176.

Is "Morse" idem sonans with "moss"?

It is in the South. MORSE v. STATE, 112 So. 806 (Ala.)

Is Niagara Falls navigable?

Yes; PEOPLE v. GILCHRIST, 221 N. Y. S. 613.

Who owns bed of navigable waters in Florida?

The State up to high water mark, subject to Federal regulation of navigation. FREED v. MIAMI, 112 So. 841.

Can personal judgment be rendered on service in another State?

No. HESS v. PAWLASKI, 47 U. S. Sup. Ct. 632 (Massachusetts).

Can a suit to partition tenancy by entireties be brought?

No, not during the marriage. BERNATIVICIUS v. BERNATIVICIUS, 156 N. E. 685 (Massachusetts).

Can land in possession of another be conveyed?

Not in Georgia, DRIGGERS v. MOORE, 137 S. E. 14.

What estate is conveyed by deed in fee with limitations over if grantee dies without issue?

A base or qualified fee, the limitation or shift being valid even though in a deed. KIDWELL v. ROGERS, 137 S. E. 5. (West Virginia).

Can contract, not signed by seller's wife, be specifically enforced?

Yes, subject to dower, for which deduction will be made from price. NAJARIAN v. BOYAJIAN, 136 Atl. 767 (Rhode Island).

Can holder of equitable title bring ejectment?

No, as where bank sues for property bought by cashier at foreclosure. FARMERS BANK v. COLVIN, 292 S. W. 30 (Missouri).

Can loss of profits of business be recovered as damages in condemnation?

No. FONTICELLO v. RICHMOND, 137 S. E. 458 (Virginia).

Is execution sale after return day good?

No. JEFFERYS v. HOCUTT, 137 S. E. 177 (North Carolina).

Is owner of homestead interest entitled to oil?

Not in Kentucky. BRANDENBURG v. PETROLEUM, 291 S. W. 757.

What is effect of omission of words "his wife" on tenancy by entirety?

None; entirety is created. ARMONDI v. DUNHAM, 220 N. Y. S. 487.

Can husband alone lease community lands?

He can in Arizona even though he cannot sell. HOOD v. FLETCHER, 254 Pac. 223.

Is acknowledgment of mortgage to mutual insurance company, taken before policyholder, good?

Yes, FIRST v. STATE, 137 S. E. 53 (Georgia).

Can life tenant sue remaindermen in partition?

No. REKOVSKY v. GLISCZINSKI, 212 N. W. 595 (Minnesota).

Is remainder to "bodily heirs" of life tenant vested or contingent?

Contingent, and hence defeated by remainderman's death before death of life tenant. WEBER v. SCHRAEDER, 291 S. W. 739 (Kentucky).

Does devise to wife "well knowing she will leave residue to children" vest any interest in children?

Yes, it is a precatory trust. In re DOE'S WILL, 212 N. W. 781 (Wisconsin).

Is a tenancy by entireties subject to Federal Estate Tax?

Held not subject by U. S. Board of Tax Appeals, Matter of Susie M. Root, Executrix, 5 B. T. A. 696.

Is purchase by foreign corporation of one lot considered "doing business"?

Not in Indiana, (but it is in some other states) REALTY CO. v. ABEL, 155 N. E. 46.

What is effect of error in wife's acknowledgment?

It usually makes the deed (not merely the acknowledgment) void; as in North Carolina when acknowledgment of deed from wife to husband omits to state that deed is "not unreasonable or injurious." CALDWELL v. BLOUNT, 137 S. E. 78.

Is a devise to trustees for a hospital to be established good?

Held void in Kansas as perpetuity. MALMQUIST v. DETAR, 255 Pac. 42.

Is a general devise an exercise of a power to appoint?

This differs in each State; it is not good as an exercise of the power in Illinois. EMERY v. EMERY, 156 N. E. 364.

Is devise to devisee "if living and if dead to his heirs," vested or contingent?

Contingent. In re Marson, 221 N. Y. S. 220.

Is a conveyance from mortgagor to mortgagee a satisfaction of the mortgage?

Yes, it merges, and title is merchantable. TENNENBERTER v. SOZIO, 136 Atl. 806 (New Jersey).

Does one who takes by quit claim deed take with notice of equities?

Yes, he is not an innocent purchaser. MARSH v. MARSH, 112 So. 189 (Alabama). BRADDY v. HALE, 112 So. 55 (Florida).

How good is statute making tax deed "conclusive evidence of regularity of proceedings"?

It does not cure defects in jurisdiction or service of process CROMMELIN v. FINN, 221 N. Y. S. 254.

What is the difference between a State's "sovereignty lands," and its "swamp lands"?

The bed of a navigable lake is sovereignty land owned by State under act of Admission and does not pass by deed from State conveying adjoining swamp land, owned under Swamp Land Act of Congress. MARTIN v. BUSCH, 112 So. 274 (Florida).

Is a lead pencil signature good?

Yes. FREDERICK v. BROWN, 137 Atl. 351 (Maryland).

What is wrong with a tax sale notice listing "property to be sold"?

It is void because it does not state that property will be sold. NUMITER v. KATZER, 256 Pac. 464 (California).

Can settler of trust reserve power of revocation?

Yes, unless prohibited by statute. RICHARDSON v. STEPHENSON, 213 N. W. 673 (Wisconsin).

Does restriction against sale of spirituous liquor render a title unmarketable?

It does in New York; ISAACS v. SCHMUCK, 156 N. E. 621.

Does non-lapse statute apply to devisee who died before will was executed?

Yes, it is not limited to those who die after will was made and before testator's death. WINSOR v. BROWN, 136 Atl. 434 (Rhode Island).

Does revocation of later will revive a prior will?

Not unless intention is very clear. St. JOHN v. PUTNAM, 220 N. Y. S. 146 (New York).

Some Comments on Uniform Certificates

The idea of a uniform certificate for abstracts, to be used within a state, is as old as the first organization activities of the state and national title associations. Likewise its progress and development has been under consideration and unfolding as long, and with practically no achievements. The idea is practical and sound, every abstracter within a state should be using the same certificate, they all know it, realize the advantages, and yet nothing is done and the subject continues to be only one for presentation and indefinite action year after year within the various state associations.

Why a uniform certificate? There are many reasons. First this is just naturally a day of simplification and uniformity. Every abstract must be certified, and every certificate within a state is intended for the same purposes, every abstracter does, or at least should certify to the same things, and the idea is therefore based upon logical grounds. Examiners for loan companies doing business all over the state would be materially aided in their work. As it now is, no two of the certificates they examine are the same. This applies not only to abstracts from the same state, but those from the same city and made by the different abstracters there. They have to just as carefully examine the certificate as they do an entry, set of court proceedings, or any other matter contained in the text matter proper of the abstract.

This makes work for the examiner, and the many certificates and the matters attempted to be outlined in them and the various ways of expressing the same things simply make a pot-pouri.

In addition a great many, in fact, it can be sadly stated, an altogether too large number of those certifying to abstracts make an indefinite, incomplete and meaningless certificate. Many certificates now in circulation seem to have been founded and composed only after a great deal of thought as to how they could be worded so as to avoid liability.

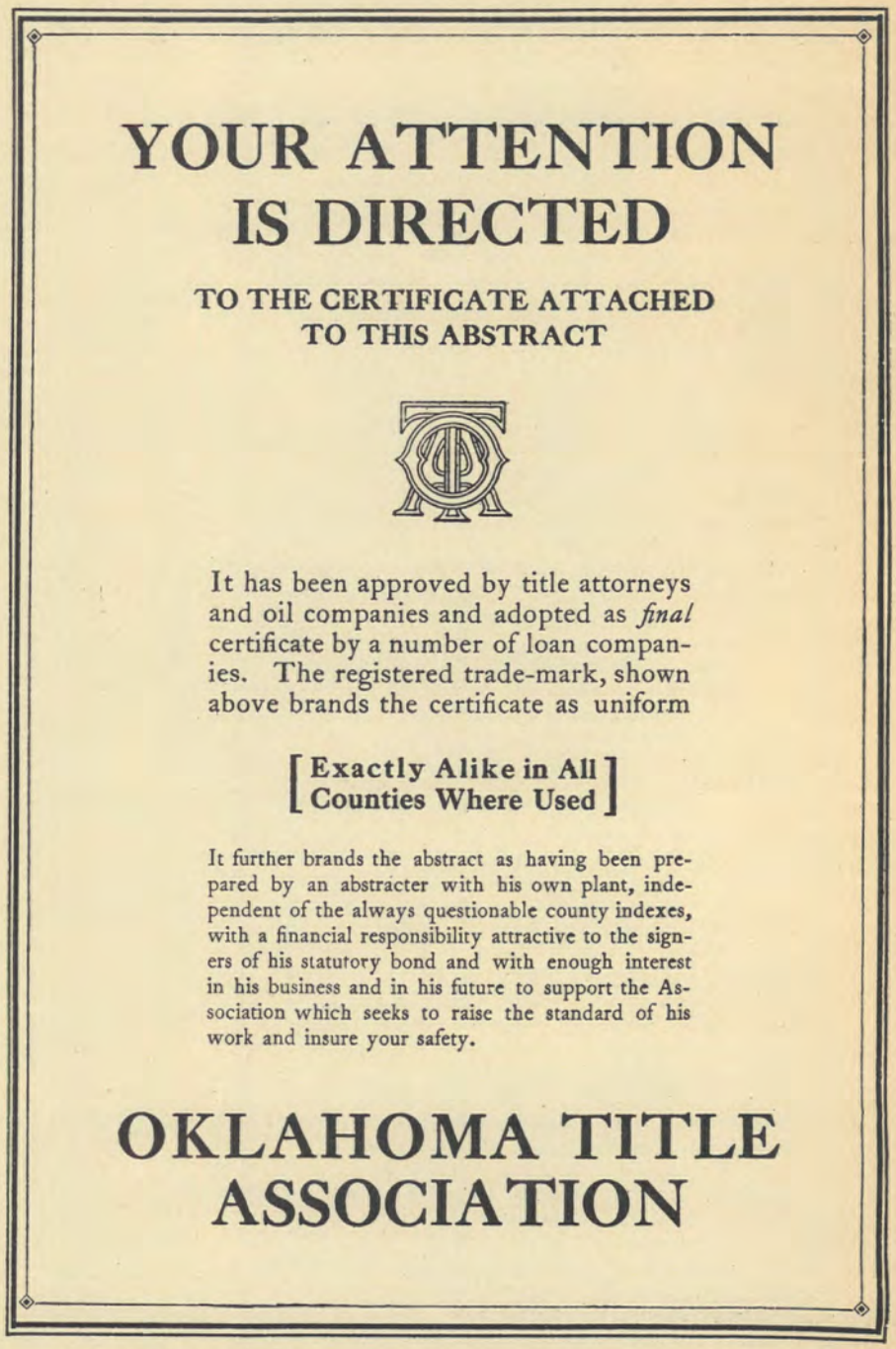
As a result of this condition, many of the life insurance companies, loan agencies, banks and others have their own special forms of abstracters certificates and require them to be filled-out and attached to all their abstracts. This is because they want to know what is being certified, that it be definitely stated and prescribed, meaning as well as liability, and that their examiners be relieved from diagnosing just as many different kinds of certificates as there are abstracts.

This condition should be remedied, can be, but must be done by the abstracters themselves through the medium of the state associations. Practically every state has been working on it for years but, so far, only two have accomplished anything. Another, Kansas, was the first to adopt a uniform certificate, and did so many years ago, but it was not advanced or advocated seriously enough to make it anything but a burst bubble. Oklahoma worked for four years, finally worked out a form that pleased, and it is now being energetically presented to the public. One wonders, however, why this progress is so slow and why the abstracters of the states are so reluctant or hesitant to universally adopt it.

Wisconsin holds the prize. This state organization undertook it at one convention, it was presented at the next following, enthusiastically adopted as drafted by the committee in chargend a immediately put into use.

There is only one way to get a uniform certificate adopted. That is for the state association to appoint a committee of the fewest possible number, that committee itself to work out a form, present it with its recommendations for adoption, the association to accept it, and then everyone fall into line and use it.

And why has not this been done and why cannot it be put over? There are but two reasons, stubbornness on the part of the abstracters themselves, and



The Oklahoma Title Association is energetically promoting the use of the uniform certificate as adopted by the organization and now used by nearly every member.

Attached to every abstract sent out by those using the form, is a leaflet as shown above. This is printed in black and red and calling attention to the certificate in this manner is a good piece of business.

trying to cater to the various examiners.

The first is a short-sighted policy and resolves itself into the simple fact that no one wants to change, thinks his form the only one, and would be willing to enter into the adoption of a uniform certificate providing his own is adopted. A study of the matter shows the ridiculousness of this point. A collection of the various certificates used in a number of states show that the fundamental and essential details are included and make up nearly every one and there is virtually no difference. They are simply arranged and paragraphed a little differently, are really similar in thought and matter expressed and contained, but are not worded just the same.

Why, then, could all this not be moulded into one style and everyone agree to and actually use a uniform certificate as would appear in the form finally drafted by those entrusted with the job?

Here is where the second source of trouble comes—namely, the work of the committee entrusted with the job, and its experience. One of the characteristics of the average and majority of abstracters, is to cater to the whims and fancies of every examiner, banker, real estate broker and user of his abstracts. He tries to make a different kind, style, size, shape and color of abstract to please all the different demands and ideas of these examiners, et al.

This is reflected by the attempts of some of the committees of various state associations when they have undertaken this work. The first thing they have done was to write to all the leading examiners, attorneys for loan companies, etc., asking for their ideas, what they wanted and how they could be pleased. This, of course, brings just as many ideas, suggestions and remarks as there were people consulted. Sometimes the committee becomes bewildered, thinks it hopeless and returns a report that it cannot be done.

In other instances they have collected this information, tried to digest it, put something into form, and then sent this tentative draft out to all the examiners, etc., asking for suggestions of this tentative draft. Again come just as many ideas, suggestions and objections as there were numbers consulted and the whole thing, being everybody's business and thereby nobody's, simmers down to a discouragement and failure.

The truth of the matter is, that these examiners would welcome a uniform certificate and would support and use one if the abstracters would get together, draft a sufficient one, and then make it universal in use. And why should they not be the ones to do it? The lawyers do not ask the abstracter's advice and suggestions when they undertake a thing, would not abide by their wishes anyway, so why should the abstracters depend upon the examiners for the details of the conduct of their business?

The only reason insurance companies and others now use their own form of certificate is because they want uniformity and, at the same time, something actual and specific.

If the various state associations will of their own accord and by their own efforts work out a real, concise, definite certificate that will state what is necessary to be covered, the abstracter assume his due liability and responsibility thereunder, and this certificate be presented as the uniform certificate of the state association, it will not only be accepted but enthusiastically received by everyone with the possible exception of a part of the abstracters themselves.

Not only that, but a study of the various certificates from the many state shows that even a national certificate could be drafted. All that need be done would be to change the names of the various county offices, courts, etc., as they are designated in respective localities. However, this is a matter to best best handled by the local state associations and a national certificate is not deemed advisable.

State wide certificates are possible and should be adopted by every state organization within the next year. There should be no stumbling block and there is ample precedent now to prove it can be done, because it has. There is always some contention between the "country" style and the city, but that is a trifle. There will have to be some little additions for the larger cities to include the additional tax matters and special courts found in some of them but the paragraphs necessary to take care of them can be added to the other.

One of the most ironical examples of the instances relative to such movements is found in Kansas. As mentioned above, some few years ago a uniform certificate was adopted and yet never put into circulation. Yet investigation shows that there is a form of certificate used by probably as high as fifty per cent of the abstracters in the state and they do not know it. In other words, by a circumstance, the abstracters have come to use a uniform certificate and do not know it.

A few years ago a traveling salesman of one of the stationery houses of the state decided upon an idea and scheme to sell sets of forms to the abstracters not only of Kansas but the surrounding territory. He got up a set of high grade forms of the best of paper, neat in appearance, and embossed or lithographed as the purchaser desired. This included a cover, caption sheet, index, "inside" sheet and a certificate. He got up this certificate himself by collecting a few forms, consulting with an abstracter friend and putting into it what he thought should be there, and by reason of what he had learned about the business from everyday knowledge and experience in selling forms to county offices, etc.

This set of blanks was sold in a bulk lot, the certificate going with the rest. Fortunately the certificate is a good one, and it is interesting to note that about half the abstracters of the state are using it to-day, and thereby a half-way universal practice is in vogue, not by the efforts of the abstracters themselves but because a prepared one was available

If this certificate had been presented to any state association there would probably have been many objections and it would have died in the bearing; and yet, by the force of circumstances and irony, it was accomplished.

This is ample proof that it should be done and could be by a proper broad-minded policy and expenditure of sincere energy in the undertaking.

AN INVALUABLE BOOK FOR TITLE WORKERS, EXAMINERS, LOAN INSPECTORS AND OTHERS.

"Land Areas," by W. E. Peters of Athens, Ohio, is a book that would be found of great value to everyone doing title work, especially abstracters, searchers, examiners, farm loan inspectors, real estate men, tax officials and other county officers.

It would likewise prove of great convenience and help to any civil engineer and anyone having occasion to figure the areas of tracts of land.

By using the methods described in the book, and which can easily be learned by anyone, the areas of all kinds, sizes and shapes of irregular tracts can be readily figured. The book should be in the hands of every titleman, certainly a copy available in every office.

The author is one of the pioneer titlemen of the country, and has been active in the affairs of the American Title and Ohio Title Associations since their organization.

He has written several other works, among them "The Legal History of the Ohio University," produced in 1910 and containing 336 pages; "Ohio Lands," written in 1918 and which book for the first time classified the land grants of Ohio, gave their history, cited the laws upon which they were based and which has been used by the courts of the state as well as the Department of the Interior, Washington, Department of Historical Research of Carnegie Institute and others.

"Land Areas" was written in 1922 and it has been sold not only throughout the United States, but also in Canada, Mexico, Cuba, Porto Rico, Australia and other countries.

The Miscellaneous Index

Items of Interest About Titlemen and the Title Business

Announcement is made of the change of name and reorganization of the Title Guaranty Trust Co., St. Louis, Mo., to the Title Insurance Corporation of St. Louis.

The new company has an authorized capital of $1,000,000.00 and is qualified under the new title insurance law of the state. It will conduct a general title, escrow and trust business, in the county and city of St. Louis, with offices in Clayton and St. Louis.

Mark M. Anderson and McCune Gill continue as President and Vice President respectively, of the new organization.

Announcement is made of the recent purchase, by the Provident Trust Co., of the stock of the Commonwealth Title Insurance & Trust Co., thereby bringing into close association two of Philadelphia's oldest business institutions.

Henry R. Robins, well known in Philadelphia Real Estate circles, is Vice President and in charge of the title department.

Charley White, Title Officer of the Land Title Abstract & Trust Co., Cleveland, and known to the entire title fraternity of the country, continues to contribute valuable information and assistance on title matters. His latest is a pamphlet on "Some Ohio Problems as to Future Interest in Land."

Needless to say, this has been eagerly received by the legal fraternity of the state and being used as an authority.

E. D. Schumacher, President of the Title Insurance Co. of Richmond, and of the Southern Bond & Mortgage Co., Richmond, Va., was re-elected President of the Mortgage Bankers Association of America at its recent convention held in Denver.

The Oklahoma Titlegram says one of the world's famous sayings is "I don't see why that abstract costs so much. My stenographer could type the whole thing in two or three hours."

Henry A. Cline, Jr., former manager of the National Search Division of the New York Title & Mortgage Co., has been elected vice president and title officer of the North American Title Guaranty Co. of New York.

Mr. Cline is a native of Texas, and before going to New York, was president of the Wharton County Abstract Co., and prosecuting attorney of Wharton County, Texas.

Julius E. Roehr, President of the Wisconsin Title Association, is greatly interested in the possibilities such organizations have for the accomplishment of things needed by the title business.

He is advancing the uniform certificate recently adopted and the following is a copy of an interesting memoranda sent to the state association members:

"One of the principal aims in recent years of legislators, realtors, and bankers has been to secure uniformity in laws and written instruments. Altho almost a new venture, the advantages of uniform laws and uniform forms have been so well demonstrated that further advancement in that field meets with enthusiastic support.

"It is not strange, then, that the attention of abstracters was directed to the need of uniformity in their certificates. Pioneer work was carried on diligently and unselfishly, and the necessity of action in that direction was generally recognized. The goal was reached at the recent Wausau Convention, and the outstanding achievement of that very successful and enjoyable meeting is the adoption of a uniform certificate for use by all abstracters in Wisconsin.

"Only one state preceded Wisconsin in the establishment and adoption of a uniform certificate, and it is perhaps surprising to note that this state is Oklahoma. The subject is now being considered by the American Title Association, and it does not take any large amount of imagination to vision a uniform certificate for use in all of the forty-eight states. Of course, considerable time will have to be devoted to the project before final consummation of a plan of such magnitude; but the consideration now being given to this subject must convince abstracters everywhere of the wisdom of uniformity, and must convince Wisconsin abstracters particularly that their State Association is to be commended for its forward step.

The certificate adopted at the Wausau Convention is the result of careful planning. Many conferences were had with realtors and representatives of insurance and other loaning companies, and the certificate recommended has the approval and endorsement of these representatives. It should be used to the exclusion of all other forms. Its use will establish confidence; it will show persons using such abstract that the abstracter is progressive, and able and willing to give service that is efficient and that can be relied on. Under the old system of each abstracter fof himself, the certificates in countless instances were wholly worthless and, consequently, unacceptable to purchasers and mortgagees. Insurance and investment companies refused absolutely to place any confidence in them, and insisted upon the abstracters using forms prepared by them. This resulted in delay, uncertainty, and general dissatisfaction.

"Now we have one certificate acceptable to all. It includes the items of search necessary to a complete abstract, and its use assures prospective purchasers and mortgagees that the abstract so endorsed and certified to has real worth.

"The Association urges you to place the mark of efficiency upon your work by using this certificate; it will stamp you as an abstracter of merit, who wants to do business RIGHT.

"The work of the Wisconsin Association in putting before its members this certificate is only a small part of its plan for members. Its sole purpose is to advance the interests of abstracters to the fullest possible extent, but this purpose is possible of achievement only to the degree that abstracters support the association. It is the old maxim of 'In Unity there is Strength.' Abstracters for their own benefit and to insure the most successful operation of their business should not only join the Association but attend the meetings. The value of active membership cannot be overestimated. As the situation is now, many abstracters in the state are not getting a fair return on their capital and labor. The charges now made by abstracters outside of the larger cities are entirely out of line; particularly when consideration is given to the fact that the work requires special training, and that sound business requires that he build up at least a moderate reserve fund with which to pay losses. People are willing to pay for service, but they must understand what they are receiving for their money. Only by association can the abstracter bring before the public the real value of his wares. Further, there is always the need of watching for possible harmful legislation. In the past, a few abstracters have borne this burden. Not only is it unfair to let this burden rest upon a few, but a well-organized and cohesive body has force and power that a handful of individuals, no matter what their zeal, can never hope to attain. So, abstracters, for your own interests, get together, join the Association, attend its meetings, and work with it for the more successful conduct of your business."

The American Title Association

Officers, 1927-1928

General Organization

President

Walter M. Daly, Portland, Ore., President, Title and Trust Company.

Vice President

Edward C. Wyckoff, Newark, N. J., Vice President, Fidelity Union Title and Mtg. Guaranty Co.

Treasurer

J. M. Whitsitt, Nashville, Tenn., President, Guaranty Title Trust Company.

Executive Secretary

Richard B. Hall, Kansas City, Mo., Title and Trust Building.

Executive Committee

(The President, Vice President, Treasurer, Retiring President, and Chairmen of the Sections, ex-officio, and the following elected members compose the Executive Committee. The Vice President of the Association is the Chairman of the Committee.)

Term Ending 1928.

J. W. Woodford, (the retiring president) Seattle, Wash., President, Lawyers and Realtors Title Insurance Co.

Fred P. Condit, New York City, Vice President, Title Guarantee and Trust Co.

M. P. Bouslog, Gulfport, Miss., President, Mississippi Abstract, Title and Guaranty Co.

Donzel Stoney, San Francisco, Cal., Executive Vice President, Title Insurance and Guaranty Co.

Term Ending 1929.

Henry P. Baldwin, Corpus Christi, Tex., President, Guaranty Title Co.

J. M. Dall, Chicago, Ill., Vice Pres., Chicago Title and Trust Co.

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Chairman, James S. Johns, Pendleton, Ore., President, Hartman Abstract Company.

Vice-Chairman, Alvin Moody, Houston, Tex., President, Texas Abstract Company.

Secretary, W. B. Clarke, Miles City, Mont., President, Custer Abstract Company.

Title Insurance Section

Chairman, Edwin H. Lindow, Detroit, Mich., Vice President, Union Title and Guaranty Co.

Vice-Chairman, Stuart O'Melveny, Los Angeles, Cal., Executive Vice President, Title Insurance and Trust Co.

Secretary, Kenneth E. Rice, Chicago, Ill., Vice President, Chicago Title and Trust Co.

Title Examiners Section

Chairman, John F. Scott, St. Paul, Minn., 814 Guardian Life Building.

Vice-Chairman, O. D. Roats, Springfield, Mass., c/o Federal Land Bank.

Secretary, Guy P. Long, Memphis, Tenn., Title Officer, Union and Planters Bank and Trust Co.

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Edwin H. Lindow, (Chairman, Title Insurance Section) Detroit, Mich.

James S. Johns, (Chairman, Abstracters Section) Pendleton, Ore.

John F. Scott, (Chairman, Title Examiners Section) St. Paul, Minn.

Richard B. Hall, (the Executive Secretary) Kansas City, Mo.

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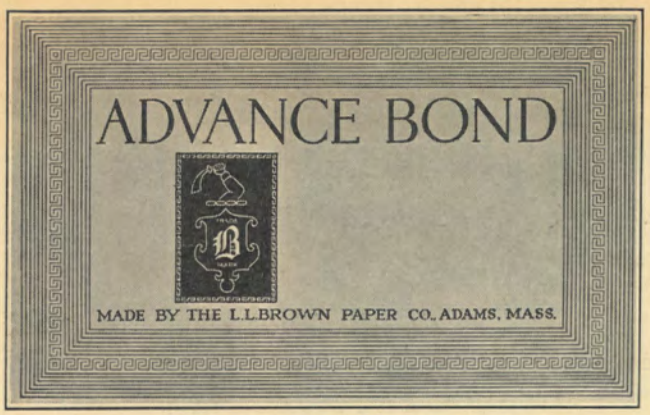

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Ledger, Linen and Bond Papers

[SUPREME IN QUALITY SINCE 1849]

BROWN'S LINEN LEDGER *White, buff, blue*	ADVANCE LINEN LEDGER *White, buff, blue*	GREYLOCK LINEN LEDGER *White, buff, blue*	GREYLOCK LINEN LEDGER *with Brown's Flexible Hinge for loose leaf Books*	BROWN'S FINE *White, buff, blue, pink*	BROWN'S LINEN *Cream, blue; wove, laid*
ADVANCE BOND *White, buff, blue, pink*	GREYLOCK BOND *White*	BROWN'S LINEN TYPEWRITER PAPERS	ADVANCE AND GREYLOCK TYPEWRITER PAPERS	BROWN'S MANUSCRIPT COVERS	

1849 1927