Title News

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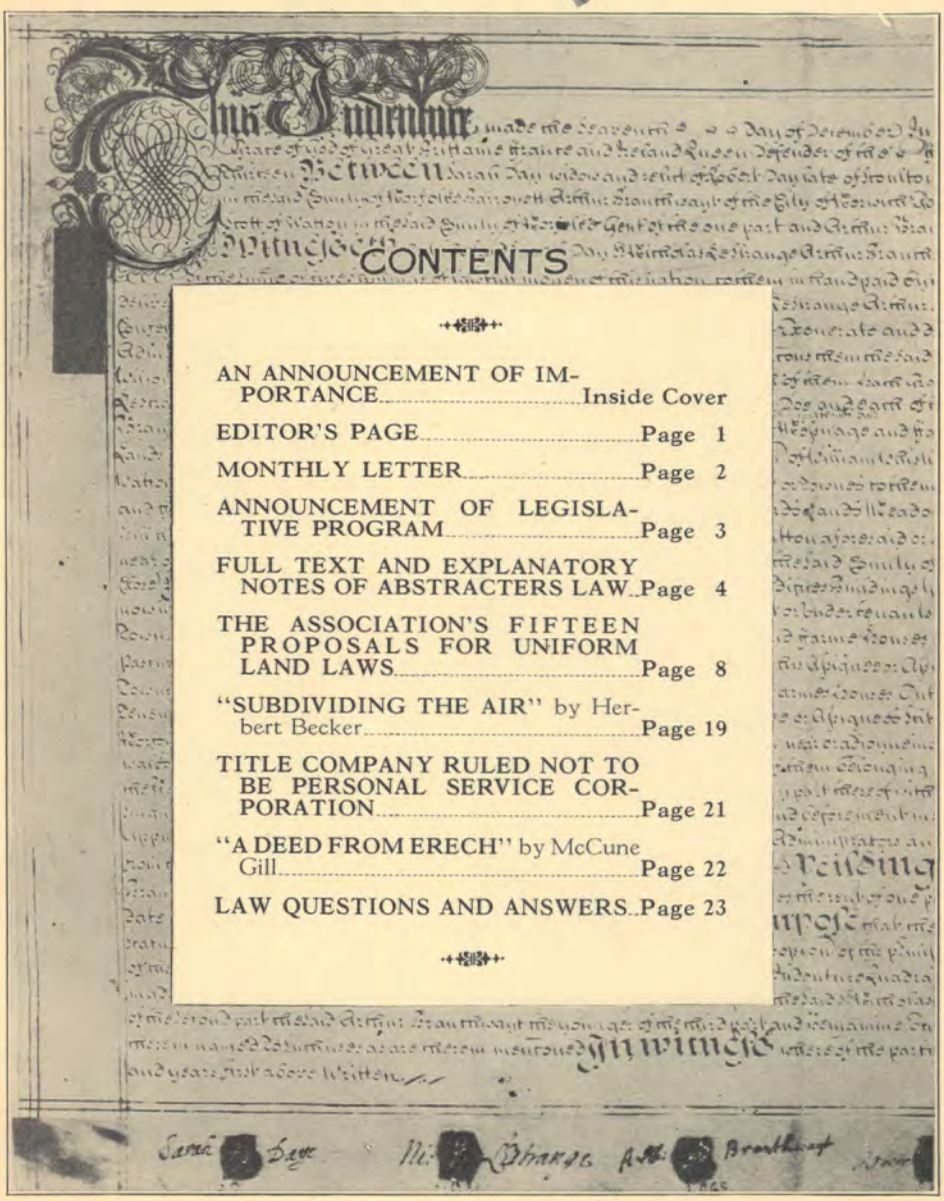

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The Annual Mid-Winter Business Meeting and Joint Conference

Of State and National Association Officials

Held by

The American Title Association

Will Convene in Chicago, Ill.

January 18-19, 1929

Headquarters - - Bismarck Hotel

The purposes of this meeting are to increase the efficiency and advance the welfare of the title business by considering its needs and problems, and to promote interest in and increase the power and practical endeavors of the state and national title associations. With these things done, a plan of procedure can be determined, the means provided and such an impetus given the work as will accomplish the necessary and desired results.

The subjects included in the tentative program indicate this will be a most interesting and practical meeting and the results from it will be most beneficial to the business and the service it renders.

Everyone interested in the problems, affairs and welfare of the abstract and title insurance business is asked to attend, and come prepared to take part.

Special consideration will be given to things that will make the state and national title associations of more value and use. Everyone interested in their existence, activities and possibilities is invited. State officials are particularly urged to make every possible effort to be present.

This is an important event. Such meetings influence and direct the advancement and destiny of the title industry—your business. You should have a voice and take a part in its undertakings.

Representatives of the title business from nearly every state in the country will be present.

YOUR PRESENCE IS DESIRED!

TITLE NEWS

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The American Title Association

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Editor's Page

WHO, of all people in the world, better know what is needed to improve our land laws and title system than those in the title business? There is a lot of complaint among the farmers, land owners in general, and particularly those who have occasion to deal in real estate and come into contact with realty matters. These complaints are because of the complications occurring in real estate deals, the technicalities and effort involved in making real estate transactions.

Those who make their living by selling real estate, in reality developments and the real estate mortgage business, fret at things and would like to see real estate made a more liquid and easily available asset, security, or article of barter. Strange as it may seem, these people generally do not blame the system with its antiquated laws, need of changes, modernization and uniformity in our ideas of descent and distribution, proper adjudication of property rights, limitation, and many others, nor do they place the blame on the over technical examiner, the mistakes made by the country or city banker, real estate man, public stenographer or other who drew the deeds, wills, contracts and made the mistakes in the title. Somehow they think that regardless of all things, the abstracter or title company should give them a good title when they place an order.

The Torrens Law, land courts, and make-shift evidences, means of arriving at ownership, and all these agitations for something different, are simply misdirected and misunderstood attempts at reform and something better. The Fifteen Proposals of the American Title Association present a sane, logical and practical plan of things needed and that would bring such improvements and changes as would overcome if not entirely eliminate the objections to the present order of things.

If this would come about, then the complaints and "crabbings" at the title business would disappear. What could be better for the title business than it should sponsor a real movement for the elimination of the things that cause ever recurrent troubles in title matters, and that the public would know the title business had done it?

We should take such steps and spend such energy as would see these laws enacted in every State. They have attracted the attention of and been given the endorsement of the National Association of Real Estate Boards, the Mortgage Bankers Association of America, and others. We will have plenty of assistance and cooperation in securing their enactment, but title people should raise their own child.

The Title Hound says:

GET WHAT YOU GO AFTER – IT BREEDS RESPECT.

Most abstracters don't realize the skill and qualifications required to do the work, or appreciate the value and importance of their product. They charge accordingly and abstract prices are actually ridiculous when you figure the service rendered and importance of the abstract in a deal. They don't get paid for the efforts expended, much less the over-head, responsibility, etc.

Not only that but too many of them wail because they can't collect for what they do charge-up. The personal and professional services that stick us the most, command our greatest respect. The guy who collects just amounts he has coming is also respected and respects himself. Maybe the abstracter would be better off if he was paid what he deserved, got just remuneration —and then actually got it.

THEN how about defining our business and making for some qualifications for entering it? At the present time in most states, anyone with a misguided ambition and a typewriter and misunderstanding about the wealth to be derived from the abstract business can go into it. Each year brings more attempts in the various state legislatures to regulate it, sometimes to actually put the private and individual abstracter out of business.

It appears that the time is here when we must write our legislative regulation or bow to that thrust upon us.

This is equally true of the title insurance branch. Many states have no special provisions for title insurance companies. Lately there has been an idea that the title insurance business was something that afforded an opportunity for promotation and wild-cat enterprise. Such companies are a menace to the standing and responsibility of the good name built by others. Should they fail in those states making no requirements for their establishment and conduct, and there is nothing back of the policies written, then what would the public think of title insurance.

Nowadays in many states, and in all of them very soon, one must have a license, pass an examination and be qualified to even sell real estate Verily, times have changed.

THIS issue presents the first article by a new contributor, Herbert Becker, vice president of the Chicago Title and Trust Co. He presents an interesting story of a new idea, subdividing the air and the problems of title thereto.

Mr. Becker is an authority on many legal subjects, particularly intricate title matters. He has written many articles and papers on various subjects, and is in constant demand as a speaker.

Future issues will contain other articles by him.

The American Title Association

OFFICE OF EXECUTIVE SECRETARY
MIDLAND BUILDING
KANSAS CITY, MO.

November 20, 1928

Fellow Titlemen:

In looking over the proceedings of a recent convention of the building and loan associations of a certain state, I find the following:

> "Here is another item I find in my inspections and supervision of associations and I think it is important to bring it up. In many instances we find the abstracts have not been brought to date and when I ask the attorney or secretary about it, he says, 'Why I have looked it up and it is all right', and the abstract is eight, ten or even more years back. Every abstract should be brought up to date showing the association loan on the property."

This condition was discovered by the state supervisor of these building and loan associations and, naturally, was surprising to him. The truth, however, is that it is only an example of the things done by financial institutions, individuals, and others who should know better, but who either through ignorance, false economy or just plain shortsightedness, think there are short-cuts when it comes to title work.

It is generally thought that the amount of title business available is limited. It begins to appear that this available amount could be greatly increased by a little initiative and energy on the part of those in the business. State title association officials could undoubtedly, do a profitable thing by calling to the attention of state superintendents of building and loan associations, life insurance companies, and others, the necessity of the securities of these institutions having responsible and adequate title evidence supporting them. If building and loan attorneys and secretaries pass up abstracts entirely or scan the records themselves, certain it is that others must be doing the same thing. A little business getting campaign and public relations work by the individuals in the title business, as well as from the state title associations, will bring in thousands of dollars more revenue.

Very truly yours,

Richard B. Hall

Executive Secretary

RBH:LK

Association Sponsors Pretentious Legislative Program

Includes Abstracters Law; Title Insurance Law and the Fifteen Proposals for Uniform Land Laws

The title business has at last assumed the offensive in legislative matters and intends to initiate measures for the enactment of constructive laws. These include proposals that will protect the business, put more responsibility back of it, raise the standards and standing of the vocation and the calling of those in it, increase the service rendered to the public and, going yet further, provide for remedying certain deficiencies and fulfilling very prevalent needs for the simplification and making uniform various land laws.

This is a rank departure from the attitude held for years. The former legislative thoughts and activities of those in the title business have been to rush frantically to the various state capitols and ward off adverse legislation and particularly put the "bogey man", Mr. Torrens, back into seclusion. In the meantime, all other businesses, trades, industries and professions have brought about protective and regulatory measures that have raised the efficiency of their work and protected those in it. The title business alone has been like the dog that stood by the side of the road and barked as the procession passed by.

The general opinion that prevailed for years was simply a timidity and fear. It was always believed and advocated that if you left the legislature alone, you would be left alone. Abstracters seemed to have had a dread of going before the law-making bodies because, if they did, they would just be put out of business or regulated to death. This has proven to be a rank misunderstanding, because, despite this fact, there have been many attempts made to regulate the abstracters to their disadvantage, to put in the Torrens law and these measures have been more successful than the efforts to head them off.

Nor has the title insurance business been an exception. An investigation of the various states shows that title insurance companies are operating under four different provisions and in some states a title insurance company can be incorporated and organized under two or three different ways. During recent sessions of legislatures in many states there have been many bills introduced or attempts made to regulate the title insurance business to a point that would prove disastrous. There has been no attempt yet with the exception of a few states where either the title insurance companies or abstracters have tried to forestall the inevitable by writing their own laws and trying to secure their enactment. Oklahoma and North Dakota are the only two states where the abstracters have even attempted, much less secured, the enactment of their proposals. California, Oregon and Washington have written some title insurance laws that were sponsored by the title companies.

During all this time the doctors, lawyers, dentists, chiropractors, real estate men, chiropodists, barbers, manicurists and others have made it so no one can marry a man, divorce him, bury him, shave him, polish his finger nails or doctor his dog, and in some states even sell his real estate unless qualified and licensed to do so. Very few businesses are now conducted without some self-imposed regulations and requirements. It now appears that the title people are cognizant of the fact that the day of requirements and regulation is here, and unless we study what is needed for our business and provide for it, those unfriendly to us will write it upon the statute books.

But self-protection cannot be the sole object of constructive legislation. The real theory back of protection is not alone to safeguard those who are in a vocation or enterprise in good faith, enhance the value of their investments and make their endeavors profitable, because when those things are done, more efficient, dependable and responsible service is rendered to the public, which is, after all, the patron of every business or industry. The measures advocated by the American Title Association go even further than that and rank with the things that have been proposed by the professions and callings of the highest standing and standards. The bar association for years has sponsored and been responsible for measures that would prevent calamities, technicalities and provide for the fullest protection and rights of everyone. The dental, medical and other associations are more interested in improving conditions and bringing about preventive measures than making a lot of money off the ill and ailing.

The whole idea and scope of constructive legislation is, therefore, covered in the three proposals advocated by the American Title Association. The one that will, undoubtedly, create the most interest because of its rather sudden appearance and bearing upon the greatest number is the abstracter's bill. This was presented at the Seattle meeting and is the result of the opinions and conclusions of years of investigation, work and best thought, was brought out by the abstracter's section and unanimously adopted with the recommendation that every effort be made to secure its enactment in the various states at the earliest possible time. Since then it has been presented to ten states. Its reception was not only unanimous but surprisingly enthusiastic, and aggressive campaigns are now in progress to secure its enactment at the coming session.

At the Seattle convention the need was also presented for an adequate title insurance law. This has been realized for years and circumstances in the past few have shown there cannot be much more delay. One of the most scathing editorials ever written about the title business appeared last year in a mid-western newspaper and its whole text was devoted to the need of putting something defined by law back of the title insurance policy. A committee was accordingly appointed at Seattle, which is now at work drafting a proposed uniform law. This committee will report at the mid-winter meeting and present something for adoption. There will then be time to introduce this law in any states that so desire it during the coming session of legislatures that will convene in January.

The third is probably the biggest and most constructive thing that the American Title Association has ever proposed and it has, as yet, done little in undertaking the matter. It is thought well that the program of the Fifteen Proposals for Uniform Land Laws be revived and once more presented to the titlemen of the various states. To present the abstracters and title insurance laws or either one of them and, at the same time, have to offer, a constructive program entirely apart from direct application to the business, such as is presented by the fifteen proposals, would make a combination difficult for the average legislature to ignore.

The Fifteen Proposals are not new. Their history is known to most members of the association, but for the purpose of informing those who are not acquainted with them and refreshing the minds of the others, the following brief history is given. At the Cedar Point Convention in 1913 the legislative committee composed of H. L. Burgoyne, chairman, Cincinnati, Ohio, J. W. Mason, Atlanta, Ga., Lee

C. Gates, Los Angeles, Calif., J. W. Cohen, Sioux Falls, S. D., and S. C. Woodhull of Minneapolis, Minn., presented a report which contained sixteen proposals for the simplification and making uniform the land laws of various states. There were formulated after a most careful study of things needed and came from men well versed in title matters, thoroughly competent to handle it, and who by reason of their work as examiners and specialists in real property law, stamped the thing with merit. The sixteenth proposal provided for the licensing, examination and other regulation of abstracters. Later it was decided to drop this sixteenth proposal because it really had nothing to do with land laws and appeared to raise some question in the consideration of the other matters when submitted to those whose help we desired. It, however, is now taken care of by the separate abstracters bill.

For various reasons, principally because of lack of understanding and sufficient organization to accomplish anything, these laws escaped consideration and "reposed in the pigeon hole" for several years. They were revived in 1924 and another great step taken. This time they were referred to the Judiciary Committee, of which Charley White was chairman, with the idea that it should be ascertained, if there were necessary, any amendments, eliminations or additions and that something definite should be recommended and put in definite shape so as to be available. After a great amount of work this was done. A preliminary and a final report were issued and the full text of them appears in this issue. Every state already has some of these proposals now on the statute books. Some have nearly all. One state, Colorado, recently secured the enactment of the remaining not already laws.

There is no greater work the various state title associations could do than to take active steps to see that these Fifteen Proposals are made laws in their respective states. If they would undertake this and the public knew that the title association was responsible for a movement that simplified the land laws, removed the ever-occurring technicalities, not only simplified but strengthened real property matters, the title business would occupy a place of a great deal more respect and standing than it now does. The full text of the abstracters' law with comments and a complete report on the fifteen proposals follows.

Explanatory Bulletin on Proposed Abstract Law

As a result of several years of careful consideration and some little time in preparation, the Abstracters' Section of the American Title Association presents a draft of a proposed law designed to regulate and stabilize the abstract business. It is not intended, herewith, to give the reasons which brought about the decision that such a thing was necessary for the business and to point out the advantages it would bring or arguments in favor of its enactment.

The draft consists of the customary title and enacting statement and sixteen sections. This bill, as presented, is not recommended nor is it intended that it should be accepted in its entirety or word for word. Different states present different problems and conditions. In some states every section of this bill is applicable and the intentions as expressed should be incorporated in any measure attempted to be enacted. In other states certain of the sections are not needed and should be eliminated. The idea in presenting this is to give the different states a foundation upon which to work. Thus the entire matter as presented simply intends to present and make available something to cover any and every situation as presented by conditions in all of the states.

The major intentions back of this bill are: to regulate the business so as to make for greater efficiency in the service that can be rendered by the abstracter; to put responsibility back of it; to raise the standards so that it will take its rightful place among the professions and vocations of higher calling and skill; to bring protection to those who are in the business.

Attention is called to the fact that it is not at all the intention or desire to work a hardship on any one now in the business or to make it impossible or any question at all about his being able to continue. Careful consideration has been given these matters and the various sections in the bill will simply establish the business as of the present; include everybody who is established in the business so that from the time of the enactment of this bill the future will safeguard the interests of those now engaged in the business; its standing and responsibility will be defined; and the efficiency of service rendered and the responsibility of it greatly increased.

Explanation is here made of the various sections and parts so that they can be altered or adjusted for each particular state.

The title of the act is in two sections—(a) and (b). In states where at the present time there are no laws of any kind regulating the abstract business or prescribing therefore, only part (a) need be in the title. In states where there are some laws at the present time pertaining to the business, part (b) should be included and same filled in naming those sections of existing statutes to be repealed. The enacting clause should be worded to conform with that used by the respective states.

Section 1 requires that those desiring to engage or continue in the business must have a set of indexes and comply with the other regulations. This first section primarily provides for a set of abstract books. This will probably cause much concern to those now in the business who are not equipped with such. To provide for such situations, a saving or grandfather clause is included, which is described in Section 12, and shall be further explained in numerical order below.

(a) An Act relating to abstracting of land titles, providing for licensing and bonding of such abstracters, and the examination and regulation thereof (b) and to repeal Sections.....of the Revised Statutes of.....for.....

Be It Enacted By The Legislature of the State of.....:

SECTION 1: ABSTRACT RECORDS REQUIRED. Any person, firm, or corporation desiring to engage in or continue the business of making and compiling abstracts of title to real estate within the State of ....., shall have for use in such business a set of abstract books or other system of indexes or records showing in a sufficiently comprehensive form all instruments of record or on file in the office of the Register of Deeds of each county wherein they abstract the titles of the lands, lots or tracts of land in said counties or county, and shall first obtain a

Certificate of Registration, and file and furnish the bond required, and comply with other requirements herein provided, save and except as may be hereinafter expressly excepted.

Section 2 provides that those who are to engage or continue in the business shall pass an examination and that to enforce such provision a board of examiners shall be created. Obviously, this board should consist of three abstracters qualified to act. They should come from those in the business for the same reason doctors compose the medical board, dentists and lawyers boards of their respective branches. We do not feel that any not engaged in our business should be on our board for the very reason that we find no practical abstracters on the boards of the bar or medical associations. Some concern might also be felt by those now in the business on the matter of taking an examination. Another saving or grandfather clause is provided in Section 6 and will be more fully explained in its numerical order.

SECTION 2: BOARD OF EXAMINERS. There is hereby created a Board of Examiners to be known as the Abstractors Board of Examiners, to carry out the purposes and enforce the provisions of this article; said Board shall consist of three members to be appointed by the Governor of the State of....., and who shall be abstractors who have been actively engaged in the business of making abstracts for five years prior to the date of their appointment and recommended by the.....Title Association, such recommendations to be made within ten days after this law takes effect; the first members of said Board shall be appointed, one for two years, one for four years and the other for six years and thereafter appointments shall be made for the terms of six years; each member of said Board shall qualify by taking the oath provided by law for public officers; vacancies of said Board caused by death, resignation or otherwise shall be filled by appointment by the Governor.

Section 3 provides for the organization of the board and is self-explanatory. The compensation is only designed to care for actual expenses and the provision that only expenses of its conduct shall be paid from money raised from its own source should eliminate the usual objections to the creation of additional boards of administration or possibilities of state funds being expended.

SECTION 3: ORGANIZATION OF BOARD. Said Board shall organize by the election of a Chairman and Secretary-Treasurer; the Secretary-Treasurer, may or may not be a member of said Board but shall be a practical abstracter engaged in that business; the Board shall have a Seal, and the Chairman and Secretary-Treasurer shall have power to administer oaths; said Board shall make such rules and regulations as shall be necessary to carry out the purposes of this act; each member of said Board shall receive a compensation of five dollars per day for actual services and 10 cents per mile for each mile actually traveled in attending the meetings of said Board and the sum of five dollars per day for expenses while absent from home upon business connected with the Board, which amount shall be paid upon verified vouchers, after allowance by said Board, from the State Treasury but only out of any moneys in said fund as may be raised and on hand from the provisions of this act, provided that no part thereof shall in any event be paid out of the State Treasury, except as herein allowed.

Section 4 provides for the keeping of reports of the board and is only a matter of detail and is self-explanatory.

SECTION 4: REPORTS OF BOARD. Said Board shall make a biennial report to the Governor, which report shall contain a full statement of its receipts and disbursements for the preceding biennial term; also a full statement of its doings and proceedings and such recommendations as to it may seem proper for the better carrying out of the intents and purposes of this act, which said report shall not be printed except at the expense of the fund herein provided for. Any moneys in the hands of the Treasurer at the time of making such report shall be kept in the State Treasury for the future maintenance and operation of the Board to be disbursed on warrants signed by the chairman and the secretary of the Board.

Section 5 provides for the certificate of registration. The fee is nominal but can be altered according to local opinion, but should provide sufficient funds for administration. This section also prescribes the manner of the examination in case of a firm or corporation. The examination would be taken by some individual designated by the firm or corporation but the authority would issue to, and once granted, continue with the firm or corporation regardless of charges in personnel, ownership or management.

SECTION 5: CERTIFICATE OF REGISTRATION. Any person, firm or corporation desiring to obtain a certificate of registration under this article shall make application to the said Board therefor and shall pay to the Treasurer of said Board, an application fee of $25.00; such application shall be upon a form to be prepared by said Board and to contain such information as may be desired by it; thereupon said Board shall fix a date and place for the examination of such applicant, of which notice shall be given to the applicant by mail, who shall present himself at such meeting; whereupon said Board shall proceed to examine such applicant or applicants under such rules and regulations as may be by said Board prescribed; if the application is made by a firm or corporation, one of the members or managing officials thereof shall take such examination, and certificate shall issue and be authority to such firm or corporation to operate under the provisions of this act.

Section 6 is the saving or grandfather clause designed to make unnecessary the taking of an examination by those who are now or whose predecessors have been in the business for a period of two years prior to the passage of this act. As stated above, it is not the intention to embarrass or handicap any one now established in the business and it is thought that a two-year period is sufficient, and those who have been in business that length of time and longer are relieved. This clause can be left out if desired, and everyone made to take an examination at the outset.

SECTION 6: WHERE EXAMINATION NOT REQUIRED. Every person, firm or corporation who is upon the date this law goes into effect, engaged in the occupation of an abstracter of title and established in the business of abstracting land titles and who shall, within thirty days after this law takes effect, file with the Secretary of said Board, affidavits of five householders of this State, setting forth, the name, place of business and length of time during which and the place where such abstracter or his predecessor has practiced such and that such abstracter or his predecessor has been openly, notoriously and publicly engaged in the business, occupation or profession of making abstracts as an individual owner, member of firm or corporation for a period of at least two consecutive years immediately prior to the date of the taking effect of this act, and shall pay the application fee hereinafter provided, then such Board shall make an order that, upon compliance with the other provisions of this law, a certificate of registration shall be issued to such applicant without further examination, and no examination fee shall be required.

Section 7 is a matter of detail providing for records of the board activities and which provides for an annual payment fee of $5.00 for the issuance of the certificate.

SECTION 7: RECORDS OF BOARD. Said Board shall keep a register wherein it shall enter the name of all applicants for registration with their place of residence and such other information as may be deemed appropriate including the action taken by said Board thereon, and the date upon which the certificate of registration shall be issued upon payment of $5.00 fee and shall be valid for one year from the date thereof and shall be renewed by said Board upon application within thirty days prior to the expiration thereof upon a payment of $5.00 to the Treasurer of said Board, which application shall be accompanied by an affidavit and any other evidence deemed necessary showing that applicant has complied with the provisions of this act.

Section 8 requires that the abstracter shall furnish a bond. No attempt is going to be made here to deal with the pros and cons of a bond requirement. The inclusion of this clause is the crystalization of years of thought and judgment on the matter. Attention is called to the fact that the bond is on a graduated basis which is determined by population. This is simply suggestive and can be made one amount regardless of population or altered in any other way as deemed advisable by local conditions. It will also be noted that it is required that the bond be written and furnished by some surety company. This is strongly recommended, it being obvious that corporate bonds are more desirable than those of personal sureties. This section is designed to place responsibility back of the business, but is not entirely one-sided, as will be seen from the benefits it brings to the abstracter, as described in the next section.

SECTION 8: BOND REQUIRED. Before a certificate of registration shall be issued, the applicant shall file with the Board a bond to be approved by it running to the State of ..... in the penal sum of Five Thousand Dollars for counties with a population of twenty-five thousand or less; Ten Thousand Dollars for counties over twenty-five thousand not exceeding fifty thousand population; and Fifteen Thousand Dollars for counties having a population of over fifty thousand as shown by the official Federal census last taken prior to the filing of such bond; such bond shall be conditioned for the payment by such abstracter of any and all damages that may be sustained by or accrue to any person by reason or on account of any error, deficiency or mistake in any abstract or continuation thereof made and issued by such person, firm, or corporation; provided that said bond shall be written by some surety or other company issuing such bond and licensed and authorized to do business in this state which bond shall be issued for a period of one or more years and renewed for one or more years at date of expiration as principal continues in business.

Section 9 provides for the issuance of a certificate which will show that the abstracter has complied with the provisions of this act and by reason thereof he shall have access to the various public offices for the purpose of conducting his business, building or maintaining his title plant.

SECTION 9: CERTIFICATE OF AUTHORITY. A certificate issued by said Board under the provisions hereof, shall among other things, recite that such bond has been duly filed and approved, and such certificate shall authorize the person, firm or corporation named in it, to engage in and carry on the business of an abstracter of real estate titles in the County or Counties of ..... in the State of .....in which said person, firm or corporation has his place of business, and for that purpose to have access to any of the offices of any of said counties or of the State, and to make such memoranda or notation from the records thereof as may be necessary for the purpose of making such abstracts, and the compiling, posting, copying and keeping up of their abstract books, indexes or records, such access to be during the ordinary office hours.

Section 10 is a matter of expediency and provides for the usual regulation and appeal.

SECTION 10: REGULATION AND APPEAL. The Board may at any time, require any person, firm or corporation, holding a certificate under the provisions hereof, upon thirty days' notice, to furnish such additional bonds as to the Board seems proper and to show cause why any bonds should not be held and declared insufficient and invalid or such

certificate should not be recalled and annulled, provided, however, that no certificate shall be recalled or annulled save for a violation of the provisions of this Act or upon conviction of the holder of such certificate of crime under the laws of the State of ..... or unless the Board shall find such holder to be guilty of habitual carelessness or inattention to business or intoxicated or the use of drugs to such an extent as to incapacitate him for business or of fraudulent practices; if the certificate be held by a firm or corporation, then the provision hereof shall be applicable to the managing members, or officers thereof; upon the cancellation of any certificate the holder thereof may have an appeal to the ..... Court from the decision of Board. Such appeal to be taken within thirty days by the service of a Notice of Appeal with a bond in the sum of $250.00 upon the Secretary of the Board, such appeal to come on for hearing before the ..... Court of the County in which such certificate holder shall have his place of business at the next regular term of said Court.

Section 11 provides that a proper seal shall be maintained and used. It also provides that the names of those authorized to sign certificates shall be filed. This covers the question that when a firm or corporation or individual's office has qualified with the other provisions of this act, some method can be provided so that other persons in the office who have not taken the examination, etc., can do this detail in an authorized manner on behalf of the one qualified.

SECTION 11: SEAL. Any person, firm, or corporation furnishing abstracts of title to real property under the provisions hereof shall first provide a seal, which seal shall have stamped thereon the name and location of such firm, person or corporation, and shall deposit with the Secretary of said Board an impression of such seal and names of persons authorized to sign certificates to abstracts before the certificate and after the signature thereof, of every abstract and continuation of an abstract issued by such person, firm or corporation.

Section 12 is the saving or grandfather clause designed to cause no embarrassment or handicap to those who are now and have been established in the business and who are not equipped with the abstract books, as required in Section 1. This clause is only applicable and recommended to be included in a few states and they are the ones which have county numerical indexes or other facilities, making it possible for those who do not have a set of books to establish themselves under the act. In the majority of states, however, there are no public indexes and it is not possible for one to engage in the business unless he builds or is provided with a set of private abstract books. In such states this clause should be entirely stricken out and not mentioned. It is not at all recommended except where circumstances make it desirable.

SECTION 12: NO ABSTRACT BOOKS OR INDEXES REQUIRED. Any person, firm or coporation not having the abstract books or indexes to the records of the Register of Deeds office as provided in Section One hereof, and who can show by affidavits of five householders of this state that such person, firm or corporation, or his or its predecessors has been openly, notoriously and continuously engaged in the business of making abstracts for a period of at least two consecutive years immediately prior to the date of taking effect of this act, and who can comply with the other requirements hereof providing for an examination, bond and other provisions save and except as provided in Section Six hereof, shall be issued a license and certificate to do business under the provisions hereof.

Section 13 is another clause which is only intended to apply and provide for a few cases. In some of the Western states where there has yet been little development and in states having whole counties of abandoned mineral or timber lands, which are lying stagnant, it is obvious that there cannot and probably will not be enough business to warrant the building and maintenance of a set of private indexes or books. If this clause were not included, no one could go into the business unless complying with these provisions. Consideration only need be given this section in states where circumstances warrant such as just mentioned, or where there are counties where abstracters depend entirely upon county numericals.

SECTION 13: WHERE THERE IS NO LICENSED ABSTRACTER. Any person, firm or corporation desiring to engage in the business of making abstracts of titles of lands in any county where there shall not then be any person, firm or corporation licensed and authorized to do business therein under the terms of this act and does not at the time of making such application be provided with such abstract books or indexes to the records of the Register of Deeeds office as provided in Section One hereof, and who can comply with the other requirements hereof providing for an examination, bond and other provisions shall be issued a license and certificate to do business under the provisions hereof.

Section 14 provides for the penalty.

SECTION 14: PENALTY. Any person, firm or corporation, making, compiling or certifying to abstracts of title to real property in this state, without having complied with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding One Hundred Dollars nor less than Twenty-five Dollars for such offiense.

Section 15 is the repealing clause and need only be considered in those states which now have laws pertaining to the abstract business. Where there are none, then this clause should be eliminated entirely.

SECTION 15: REPEAL. All laws and parts of laws in conflict herewith and particularly Sections .... of the Revised Statutes of..... for ..... are hereby repealed.

Section 16 declares for an emergency and should be included in the draft of the bill in every state.

SECTION 16: EMERGENCY. An emergency exists in this, that the present law does not properly cover the making of abstracts of titles to real property, therefor an emergency is hereby declared, and this law shall be in effect from and after the first day of..... or at publication in the official state paper.

Preliminary Report on Associations Fifteen Proposals for Uniform Land Laws, Submitted by Charles C. White, Chairman, Judiciary Committee

PROPOSAL No. 1—"In all states where the limitation on actions to recover lands is longer than ten years, reduce it to that period, and abolish the saving clauses for persons under disability; or in the alternative, provide a longer limitation, say fifteen years, which will render titles absolute, regardless of disabilities."

There is an unfounded idea that there is some sort of constitutional inhibition of the right of a state to make statutes of limitation without saving clauses in favor of persons under disability. As a matter of fact the saving clauses are merely matters of tradition which have come down from the earliest English Statutes of Limitations.

So far as our investigation goes no state has one definite statute of limitations making a definite period of adverse possession without excepting the rights of persons under disability. Several states, however, provide a shorter period of adverse possession excepting the rights of persons under disability, and another statute provided an ultimate period beyond which no action can be brought, notwithstanding the existence of disabilities. This is in accordance with the English statute which provides a twelve-year limitation, with six-year saving clauses as to persons under disability, and an ultimate period of thirty years beyond which all claims are barred.

For those states deeming it advisable to have one section covering the whole subject we recommend the following:

"An action for the recovery of the title to, or possession of, real property shall be brought within fifteen years after the right to institute it shall have first accrued to the plaintiff or to the person through whom he claims. And it is further provided that at the termination of the period herein limited to any person for bringing the action, the right and title of such person to said real property shall be extinguished."

The last sentence above is adapted from the English statute and is inserted for the purpose of obviating the quibbles over the question as to whether or not the statute is a matter of right or remedy.

For those states which may hesitate to go the whole length of the above suggestion, we suggest the following law, adapted from the Kentucky statutes:

Sec. 1: "An action for the recovery of the title to, or possession of, real property shall be brought within fifteen years after the right to institute it shall have first accrued to the plaintiff, or to the person through whom he claims."

Sec. 2: "If, at the time the right of any person to bring an action for the recovery of the title to, or possession of, real property shall have first accrued, such person was an infant, or of unsound mind (here insert any other disabilities), then such person, or the person claiming through him, may, though the period of fifteen years has expired, bring the action within three years after the time such disability is removed."

Sec. 3: "The period within which an action for the recovery of the title to, or possession of, real property may be brought shall not in any case be extended beyond thirty years from the time at which the right to bring the action shal lhave first accrued to the pdaintiff, or the person through whom he claims, by reason of any death, or the existence or continuance of any disability whatsoever."

Sec. 4: "At the termination of the period, or periods, herein limited to any person for the bringing of an action, the right and title of such person to said real property shall be extinguished."

For those states desiring a shorter limitation in cases where there is "color of title," or title deducible from the records, we recommend the Washington Statute (or an adaptation thereof) as follows:

"All actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual, open and notorious possession for seven successive years, having a connected title in law or equity deducible of record from this state or the United States, or from any public officer, or other person authorized by the laws of this state to sell such land for the nonpayment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid, but when the possessor shall acquire title after taking such possession, the limitation shall begin to run from the time of acquiring title."

PROPOSAL No. 2—"A 'Lis Pendens' law in those states which have no such law, providing generally that no suit in any court shall affect the title to land unless a notice of lis pendens is filed in the office of the recorder or register of deeds."

Proposal No. 2 happens to be one which the chairman does not favor in his own state, for the reason that all judgments affecting land (except in the few instances where Municipal Courts are situated in cities other than the county seat) are found in the same building in which the recorder's office is located, and since the title examiners have to search the court records as well as the records in the county recorder's office, it would be a needless duplication of records to require the filing of "Lis Pendens" in the recorder's office.

The statutes of Ohio are as follows:

"When the summons has been served or the publication made, the action is pending so as to charge third persons with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title."

"When a part of real property is subject matter of an action, is situated in a county or counties other than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the recorder's office of such other county or counties before it shall operate therein as a notice so as to charge third persons, as provided in the next preceding section. It shall operate as such notice, without record, in the county where it is rendered. This section shall not apply to actions or proceedings under any statute which does not require such record."

The first section above quoted would be law aside from statute under the general doctrine of "Lis Pendens," and the second section provides for the only cases where examiners of title might be misled.

However, most of the states have "Lis Pendens" statutes, and will require no action under Proposal No. 2.

For those states having no such statute, and feeling the need of one, we recommend the following, adapted from the Minnesota and Washington statutes:

"In all actions in which the title to or any interest in or lien upon real property is involved or affected or is brought in question by either party, any party thereto at the time of filing the complaint or any time thereafter during the pendency of such action may file for record with the register of deeds of each county in which any part of the premises lies, notice of the pendency of the action containing the names of the parties, the object of the action and a description of the real property in such county involved, affected or brought in question thereby. From the time of the filing of such notice and from such time only, the pendency of the action shall be notice to purchasers and encumbrancers of the rights and equities of the party filing the same to the premises. When any pleading is amended in such action so as to alter the description of, or to extend the claim against the premises affected, a new notice may be filed with like effect. Such notice shall be

recorded in the same book and in the same manner in which mortgages are recorded and may be discharged by an entry to that effect, in the margin of the record by the party filing the same or his attorney in the presence of the register, or by writing executed and acknowledged in the manner of a conveyance whereupon the register shall enter a minute thereof on the margin of such record. Provided, however, that such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court, in which the said action was commenced, may in its discretion at any time after the action shall be settled, discontinued or abated on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be cancelled of record in whole or in part by the registrar of deeds of any county, in whose office the same may have been filed or recorded, and such cancellation shall be made by an endorsement to that effect on the margin of the record."

PROPOSAL No. 3—"A statute validating defective acknowledgment that has been of record for one year, so worded as to cover future cases as well as past."

The "Curative Statutes" in the various states are legion and there is no uniformity whatever as to their provisions. No state has gone as far as the above proposal, and because of the diverse requirements as to execution and acknowledgment of deeds, and the effect of noncompliance with the various statutes, it is extremely difficult to frame a law applicable to all states.

As a suggestion we recommend for your consideration the Kansas statute as follows:

"When any instrument of writing shall have been on record in the office of the registrar of deeds in the proper county for the period of ten years, and there is a defect in such instrument because it has not been signed by the proper officer of any corporation, or because the corporate seal of the corporation has not been impressed on such instrument, or because the record does not show such seal, or because such instrument is not acknowledged, or because of any defect in the execution, acknowledgment, recording or certificate of recording the same, such instrument shall, from and after the expiration of ten years from the filing thereof for record, be valid as though such instrument had, in the first instance, been in all respects duly executed, acknowledged and certified, and such instrument shall, after the expiration of ten years from the filing of the same for record, impart to all subsequent purchasers, encumbrancers, and all other persons whomsoever, notice of such instrument of writing so far as and to the same extent that the same may then be recorded, copied or noted in such books of record, notwithstanding such defect. Such instrument or the record thereof, or a duly authenticated copy thereof, shall be competent evidence without requiring the original to be produced or accounted for to the same extent that written instruments, duly executed and acknowledged, or the record thereof are competent: PROVIDED, That nothing herein contained shall be construed to affect any rights acquired by grantees, assignees, or encumbrancers subsequent to the filing of such instrument of record."

A committee of the Cleveland Bar Association of which your chairman is a member has prepared for submission to the Ohio legislature the following:

"When any deed heretofore or hereafter executed and recorded, conveying real estate, shall have been or shall be of record in the office of the recorder of the county within this state in which such real estate is situated, for more than twenty-one years, and the record thereof shows that there is a defect in such deed for any one or more of the following reasons: Because the husband did not join with the wife or the wife with the husband in all the clauses of the deed conveying such real estate, but did join with each other in one of them, in the execution and acknowledgment of such deed; or because such deed was not properly witnessed; or because the officer taking the acknowledgment of such deed having an official seal did not affix the same to the certificate of acknowledgment; or because the certificate of acknowledgment is not on the same sheet of paper as the deed; or because the executor, administrator, guardian, assignee or trustee making such deed signed or acknowledged the same individually instead of in his representative or official capacity; or because the corporate seal of the corporation making such deed was not affixed thereto; or because such deed was executed and delivered by a corporation which had been dissolved or whose charter had expired or whose corporate franchise had been cancelled, withdrawn or forfeited, such deed and the record thereof shall be cured of such defects and be effective in all respects as if such deed had been legally made, executed and acknowledged, provided, however, that any person claiming adverse title thereto, if not already barred by limitation or otherwise, shall have the right at any time within twenty-one years after the time of recording such deed, or in the case of deeds of record for more than twenty-one years prior to the effective date of this act, then within one year after the effective date of this act, to bring proceedings to contest the effect of such deed; and provided further that nothing herein contained shall be construed to operate on any suit or action now pending or which may have been heretofore determined in any court of this state, in which the validity of the making, execution or acknowledgment of any such deed has been or may hereafter be drawn in question."

In those states where the ten and twenty-one year period seems too long, any shorter period than provided in the two examples above given may be substituted and the proposals so changed as to suit the local requirements.

PROPOSAL No. 4 (as introduced)—"A statute permitting married persons to convey their lands without their consorts joining, excepting in the case of homestead, and permit no claim of homestead to be asserted unless a homestead is designated of record by either husband or wife."

PROPOSAL No. 4 (as amended)—"A statute permitting married women to convey their lands without their husbands joining, excepting in the case of homestead, and permit no claim of homestead to be asserted unless a homestead is designated of record by either husband or wife."

As indicated above Proposal No. 4 was amended at the 1913 convention and was adopted in the form indicated at paragraph 2. Your chairman has never been able to see the reason for the amendment, but his opinion is not material.

In our recommendations we must necessarily divide the proposal into its two components.

1. The necessity of joinder in consort's deed.
2. The matter of recording homestead.

As to the first question we must distinguish the question of joinder of wife or husband in order to convey his or her separate interest, from the question of necessity for joinder to release curtesy initiate (in those states where curtesy still exists), or inchoate dower or inchoate statutory interest (in those states where surviving consort has *an interest in land owned at any time during coverture).* The latter question is intimately connected with Proposal No. 5, below.

So far as we have been able to determine, the husband must join in the wife's deed for *purposes other than to release his inchoate interest* in Alabama, Connecticut, Delaware, Florida, Illinois, Indiana, Kentucky, Missouri, New Jersey, North Carolina, Pennsylvania, Tennessee, and Vermont. If we are wrong in our statistics the state committee to whom this is addressed is asked to correct us.

For those states still requiring the joinder of husband and wife in consort's deed for *purpose other than to release inchoate rights,* we suggest the following adapted from the statutes of Arizona:

Section 1: "Married women of the age of 18 years or upwards may convey and transfer land or any estate or interest therein, except the homestead, vested in or held by

them in their own right, without being joined by the husband in such conveyance, as fully and perfectly as they might do if unmarried."

Section 2: "Married men of the age of 21 years or upwards may convey and transfer lands or any estate or interest therein, except the homestead, vested in or held by them in their own right, without being joined in such conveyance by the wife, as fully and perfectly as they might do if unmarried."

As to the "homestead" part of Proposal No. 4, your chairman labors under the disability of living in a non-homestead state and therefore feels some diffidence as to his recommendations. So far as he has been able to determine about one-third of the states provide some form of recording homesteads. We recommend for your consideration the Arizona statute which seems simple and which seems to be adequate. It is as follows:

Sec. 1: "Every person who is head of a family, and whose family resides within this state, may hold as a homestead, exempt from attachment, execution, and forced sale, real property to be selected by him or her, which homestead shall be in one compact body, not to exceed in volume the sum of $, and shall consist of the dwelling house in which the claimant resides and the land on which the same is situated, or of land the claimant shall designate, provided the same be in one compact body."

Sec. 2: "Any person wishing to avail himself or herself of the provisions of the foregoing section shall make out under oath, his or her claim in writing, showing that he or she is the head of a family, and also particularly describing the land claimed and stating the value thereof; and shall file the same for record in the office of the recorder in the county where the land lies."

PROPOSAL No. 5—"Abolish inchoate dower in states where it still exists, or better still, abolish dower altogether and give a wife an interest in fee simple in lands of which her husband dies seized."

When we come to discuss Proposal No. 5, your chairman is reminded of the warning in the old-time almanacs "About this time look for storms." Bold indeed is he who attacks this ancient institution, hallowed as it is by tradition and encrusted with the prejudices of centuries. It happens that your chairman has long believed that dower has outlived its usefulness and in this position he seems to be in quite respectable company, for the revolutionary Property Act of 1922 in England has abolished curtesy and dower entirely. It has also been abolished in quite a number of the states of the Union, but *unfortunately many states in which it has been abolished have substituted either a larger life interest or a fee simple in all lands owned during coverture.* Which, of course, results in substituting a larger *inchoate interest* than theretofore existed, and *it is the inchoate interest that we as title men are interested in abolishing.*

Eight stats have the system of "Community Property" and are therefore not interested in the question of dower; three states have substituted for dower a life interest in property owned at death; seven states have substituted for dower a fee simple interest in land owned at death.

Nineteen states retain common law dower and therefore have inchoate dower; eleven states have substituted for dower either a life estate, or fee simple interest in all lands owned during coverture and therefore have an inchoate statutory interest to deal with.

It follows from the above that there are thirty states that require joinder of husband in wife's deed either to release dower, or to release the statutory interest that has been substituted therefor.

For those states wishing to abolish inchoate dower only, we suggest either the Tennessee law which is as follows:

"If any person die intestate leaving a widow she shall be entitled to dower in one-third part of all the lands of which her husband died seized or possessed, or of which he was the equitable owner."

There might be added to the above "or of which at decease he held the fee simple in reversion or remainder."

Or as an alternative suggestion the following adaptation of the Connecticut statute:

"On the death of a husband or wife, the survivor shall be entitled to the use for life of one-third in value of all the property, real and personal, legally or equitably owned by the other at the time of his or her death."

For those states which desire the entire abolition of dower ("a consummation devoutly to be wished" in the opinion of your chairman) we suggest the following:

"The estates of curtesy and dower are abolished and neither husband nor wife shall have any interest in the property of the consort other than as provided in the statutes of descent and distribution."

Then provide in the statutes of descent and distribution that the surviving consort shall take a certain share in fee simple (be it one-third, one-half, or other portion) of the property, of which the deceased died seized and possessed.

PROPOSAL No. 6—"An absolute bar to the foreclosure of mortgages ten years after their maturity (or perhaps a shorter period) unless they are renewed of record."

Several states have a law substantially conforming to the above proposal. We recommend either the Mississippi statute which is as follows:

"Where the remedy to enforce any mortgage, deed of trust, or other lien on real or personal property which is recorded, appears on the face of the record to be barred by the statute of limitations, the lien shall cease and have no effect as to creditors and subsequent purchasers for a valuable consideration without notice, unless within six months after such remedy is so barred, the fact that such mortgage, deed of trust, or lien, has been renewed or extended be entered on the margin of the record thereof, by the creditor, debtor, or trustee, attested by the clerk, or a new mortgage, deed of trust, or lien, noting the fact of renewal or extension, be duly filed for record within such time."

Or it might be well to consider Section 7 of The Uniform Mortgage Act adopted by The National Conference of Commissioners on Uniform State Laws adopted for submission to the several states as follows:

"(Limitation of Time to Foreclose.) No suit or proceedings shall be begun or maintained to foreclose a mortgage or trust deed mortgage, unless begun within (fifteen) years from the maturity of the whole of the debt or obligation secured by said mortgage or trust deed mortgage as stated therein or in an extension thereof duly executed and recorded as below provided, and if no definite time for such maturity be stated therein, then within (fifteen) years from the date of the mortgage or trust deed mortgage or such extension thereof."

"This period of limitation shall not be extended by non-residence, disability, partial payment, agreement or other act, unless an extension of the mortgage or trust deed mortgage be made in writing by the record owner of the mortgage or trustee of record, duly executed and recorded before the period of limitation expires."

"At the expiration of such period of limitation, if no suit or proceedings to foreclose have been begun, the lien of said mortgage shall terminate and be of no further force or effect."

If the uniform mortgage section be used there should be added a proviso somewhat as follows:

"Provided, however, that the period of limitation as to any mortgages now on record shall in no event be deemed to have expired prior to two years from the effective date of this act."

The committee of The Cleveland Bar Association mentioned above has prepared the following bill with reference to Proposal No. 6, to submit to the Ohio Legislature:

"The record of any mortgage which remains unsatisfied or unreleased of record for more than fifteen years after the last due date of the principal sum or any part thereof, secured thereby, as shown in the record of such mortgage, shall not be deemed to give notice to or to put on inquiry any person dealing with the land described in such mortgage that such mortgage debt remains unpaid or has been extended or renewed; and as to subsequent bona fide purchasers and mortgages for value, the lien of such mortgage shall be deemed to have expired; the mortgage credi-

tor, however, shall have the right at any time to refile in the recorder's office the mortgage or a sworn copy thereof for record, together with an affidavit stating the amount remaining due thereon and the due date thereof, as extended, if it be extended, and thereupon, subject to the rights of bona fide purchasers and mortgagees for value theretofore acquired or then vested, such refiling shall be deemed to be constructive notice of such mortgage only for a period of fifteen years after such refiling, or for fifteen years after the stated maturity of the debt, which ever be the longer period; provided, however, that as to such mortgages of record at the time of the effective date of this act, the constructive notice of their recording shall not be deemed to have expired in any event prior to two years after the effective date of this act."

PROPOSAL No. 7—"Short statutory forms of deeds and mortgages. Providing that the form shall imply all the usual covenants."

Statutory short form deeds are provided by statute in most states, although there seems to be in many states a disinclination on the part of conveyancers to use them.

We recommend the following forms, taken from the Washington statutes. They seem to meet the situation, although there are many other states whose forms are entirely satisfactory:

(A) WARRANTY DEED.

Warranty deeds for the conveyance of land may be substantially in the following form: The grantor (name) for and in consideration of (consideration) in hand paid conveys and warrants to (name) the following described real estate (description) situated in the county of.....State of.....

Dated this.....day of.....19.....

(Signed).....

Every deed in substance in the above form when otherwise duly executed shall be deemed and held a conveyance in fee simple to the grantee his heirs and assigns with covenants on the part of the grantor:

1. That at the time of the making and delivery of such deed he is lawfully seized of an indefeasible estate in fee simple in and to the premises therein described, and has good right and full power to convey the same;

2. That the same were then free from all encumbrances; and

3. That he warrants to the grantee, his heirs and assigns the quiet and peaceable possession of such premises and will defend the title thereto against all persons, who may lawfully claim the same; and such covenants shall be obligatory upon any grantor, his heirs and personal representatives as fully and with like effect as if written at full length in such deed.

(B) QUIT CLAIM DEED.

Quit Claim Deeds may be in substance in the following form:

The grantor (name) for the consideration (consideration) conveys and quit-claims to (name) all interest in the following described real estate (description) situated in the County of.....State of....., dated this .....day of.....19.....

(Signed).....

(C) MORTGAGE.

Mortgages of land may be in the following form substantially:

The mortgagor (name) mortgages to (name) to secure the payment of (here recite the nature and amount of indebtedness showing when due, rate of interest and whether secured by note or not) the following described real estate (description) situated in the county of..... State of....., dated this.....day of .....19.....

(Signed).....

Every such mortgage when otherwise properly executed shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition.

PROPOSAL No. 8 (as introduced)—"Barring claims against unadministered estate, say in seven years after the death. Possibly five years would be better."

PROPOSAL No. 8 (as amended)—"Barring claims against unadministered estates after three years from the date of death unless letters of administration have been taken out within that period."

About one-fourth of the states have a law barring claims against unadministered estates, the period of limitations varying from six months to ten years.

The Washington statute is as follows:

"No real estate of a deceased person shall be liable for his debts unless letters testamentary or of administration be granted within the six years from the date of the death of such decedent."

The Kentucky statute is as follows:

"When the heir or devisee shall alien before suit brought, the estate descended or devised, he shall be liable for the value thereof, with legal interest from the time of alienation, to the creditors of the decedent or testator; but the estate so alienated shall not be liable to the creditors in the hands of a bona fide purchaser for valuable consideration, unless action is instituted, within six months after the estate is devised or descended, to subject the same."

We recommend either the Washington or Kentucky statute with the substitution of three years as the period of limitation, or whatever period may be deemed advisable in the different states.

PROPOSAL No. 9—"Simplifying certificates of acknowledgment and abolishing separate examination of wife in states where it is still required."

Since The National Conference of Commissioners on Uniform Laws as early as 1892, recommended a Uniform Acknowledgment Law which has been adopted in some of the states, it would seem advisable for The American Title Association to recommend the same forms. Their recommendation is as follows:

"Be it enacted, etc.

Section 1. Either the forms of acknowledgment now in use in this state, or the following, may be used in the case of conveyances or other written instruments, whenever such acknowledgment is required or authorized by law for any purpose:

(Begin in all cases by a caption specifying the state and place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right: "On this.....day of....., 19....., before me personally appeared A B (or A B and C D), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed."

2. In the case of natural persons acting by attorney: "On this.....day of....., 19....., before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D."

3. In the case of corporations or joint-stock associations: "On this.....day of....., 19....., before me appeared A B, to me personally known, who, being by me duly sworn (or affirmed) did say that he is the president (or other officer or agent of the corporation or association) or (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association) and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees) and said A B acknowledged said instrument to be the free act and deed of said corporation (or association)."

(In case the corporation or association has no corporate seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that," and add, at the end of the affidavit clause, the words, "and that said corporation (or association) has no corporate seal.")

(In all cases add signature and title of the officer taking the acknowledgment.)

Sec. 2. The acknowledgment of a married woman when required by law may be taken in the same form as if she were sole and without any examination separate and apart from her husband.

Sec. 3. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to enable the same to be recorded or read in evidence, when made by any person without this state and within any other state, territory or district of the United States, may be made before any officer of such state, territory or district, authorized by the laws thereof to take the proof and acknowledgment of deeds, and when so taken and certified as herein provided, shall be entitled to be recorded in this state, and may be read in evidence in the same manner and with like effect as proofs and acknowledgments, taken before any of the officers now authorized by law to take such proofs and acknowledgments, and whose authority so to do is not intended to be hereby affected.

Sec. 4. To entitle any conveyance or written instrument, acknowledged or proved under the preceding section, to be read in evidence or recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate of the Secretary of State of the state or territory in which such officer resides; under the seal of such state, territory, or a certificate of the clerk of a court of record of such state, territory or district in the county in which said officer resides or in which he took such proof or acknowledgment under the seal of such court, stating that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take acknowledgments and proof of deeds of lands in said state, territory or district, and that said Secretary of State, or clerk of court is well acquainted with the handwriting of such officer, and that he verily believes that the signature affixed to such certificate of proof or acknowledgment is genuine.

Sec. 5. The following form of authentication of the proof of acknowledgment of a deed or other written instrument when taken without this state and within any other state, territory or district of the United States, or any form substantially in compliance with the foregoing provisions of this act, may be used.

Begin with a caption specifying the state, territory or district and county or place where the authentication is made.

"I,....., clerk of the.....in and for said county, which court is a court of record, having a seal (or, I....., the Secretary of State of such state, or territory) do hereby certify that.....by and before whom the foregoing acknowledgment (or proof) was taken, was, at the time of taking the same, a notary public (or other officer) residing (or authorized to act) in said county, and was duly authorized by the laws of said state (territory or district) to take and certify acknowledgments or proofs of deeds of land in said state (territory or district), and further that I am well acquainted with the handwriting of said.....and that I verily believe that the signature to said certificate of acknowledgment (or proof) is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or state) this..... day of....., 19....."

The National Conference of Commissioners on Uniform Laws also recommends the following form as to acknowledgments taken outside the United States:

"Be it enacted, etc.

"Section 1. All deeds or other instruments requiring acknowledgment, if acknowledged without the United States, shall be acknowledged before an ambassador, minister, envoy or charge d'affaires of the United States, in the country to which he is accredited, or before one of the following officers commissioned or accredited to act at the place where the acknowledgment is taken, and having an official seal, viz: any consular officer of the United States, a notary public; or a commission or other agent of this state having power to take acknowledgments to deeds.

Sec. 2. Every certificate of acknowledgment made without the United States, shall contain the name or names of the person or persons making the acknowledgment, the date when and place where made, a statement of the fact that the person or persons making the acknowledgment knew the contents of the instrument, and acknowledged the same to be his, her or their act; the certificate shall also contain the name of the person before whom made, his official title, and be sealed with his official seal and may be substantially in the following form:

.....(name of country).
.....(name of city, province or other political subdivision.

Before the undersigned.....(naming the officer and designating his official title) duly commissioned (or appointed) and qualified, this day personally appeared at the place above named..... (naming the person or persons acknowledging) who declared that he (she or they) knew the contents of the foregoing instrument, and acknowledged the same to be his (her or their) act. Witness my hand and official seal this.....day of....., 19.....

(seal) .....(name of officer)
.....(official title)

When the seal affixed shall contain the name or the official style of the officer, any error in stating, or failure to state otherwise the name or the official style of the officer, shall not render the certificate defective.

Sec. 3. A certificate of acknowledgment of a deed or other instrument acknowledged without the United States before any officer mentioned in Section 1, shall also be valid if in the same form as now is or hereafter may be required by law, for an acknowledgment within this state."

PROPOSAL No. 10—"Abolishing private seals and witnesses in deeds and mortgages in states where they are still required."

"*Mirabile dictu*," as they say in the classics, there are some states which still require private seals. For those benighted jurisdictions we recommend the following (again taken from the Washington statutes):

"Sec. 1: The use of private seals upon all deeds, mortgages, leases, bonds and other instruments and contracts in writing, is hereby abolished and the addition of the private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect."

"Sec. 2: All deeds, mortgages, or other instruments in writing or the conveyance or encumbrance of real estate, or of any interest therein, which have heretofore been executed without the use of a private seal are notwithstanding hereby declared to be legal and valid in all courts of law or equity in this state."

PROPOSAL No. 11—"Dispensing with the necessity for words of inheritance to convey a fee simple, and providing that unless otherwise specifically expressed, a deed shall convey all the estate that the grantor had."

There are a few states (not many) which still retain the necessity of the word "heirs" or other word of perpetuity to convey a fee simple. For those states which need a law on this subject, we recommend the following taken from the Statutes of Missouri:

"The term 'heirs' or other words of inheritance shall not be necessary to create or convey an estate in fee simple and every conveyance of real estate shall pass all the estate of the grantor therein unless the intent to pass a less estate shall expressly appear or be necessarily implied in the terms of the grant."

PROPOSAL No. 12—"A statute abolishing the blanket lien of judgments and requiring a specific description of record of the property sought to be held."

Although the blanket lien of judgments is anathema to title men, only a few states have been enlightened enough to provide that judgments shall be a lien from levy only.

A shining instance of these enlightened states is Michigan, and your chairman can do no better than to recommend the Michigan law which is as follows:

"Whenever judgment shall have been or may hereafter be rendered in any court of record, execution to collect the same may be issued to the sheriff, or other proper officer of any county of this state; and successive or alias executions may be issued one after another, upon the return of any execution unsatisfied in whole or in part, for the amount remaining unpaid upon any such judgment. Such executions shall be made returnable not less than twenty nor more than ninety days from the date thereof."

"Whenever an execution shall be issued against the property of any person, his goods and chattels, lands and tenements, levied upon by such execution, shall be bound from the time of such levy."

"Each and every levy by execution on real estate heretofore or hereafter made shall cease to be a lien on such real estate, and shall become and be void at and after the expiration of five years from the making of such levy, unless such real estate be sooner sold thereon."

As a matter of fact this is the one law which the title men would like to see adopted everywhere, and it's probably the one law of the whole list of proposals which it will take years of agitation to enact.

As to the second part of the above proposal "Requiring specific description of record of the property sought to be held," your chairman does not believe in its advisability, for the reason that it would be tantamount to an attachment of the defendant's property for an unadjudicated and unliquidated claim of the plaintiff. In the state of Ohio, whose ridiculous law has been copied by Kansas, Nebraska, and Wyoming, by allowing judgment in money cases to date back to the first day of the term, the plaintiff in a money case practically has an attachment on all the land owned by the defendant. The latter part of Proposal No. 12 would not be quite so bad as this since it would be practically an attachment of specifically described property, but in the opinion of your chairman, this recommendation is too bad to justify his spending time in formulating a law in which he does not believe.

PROPOSAL No. 13—"Provide that when a conveyance is made to a trustee and the powers of the trustee and the nature of the trust are not disclosed of record, the trustee's deed shall pass the full title."

Several states, among them Arkansas, California, Colorado, Florida and Oregon have passed laws substantially conforming to Proposal No. 13, and in several states the same result has been reached by judicial decision.

There is submitted for your approval the law that has been drafted by The Cleveland Bar Association Committee for submission to the Ohio State Legislature. It is amplified from the Arkansas statute and has been so framed as to cover the cases where mortgages, as well as deeds, are made to undisclosed trustees: It is as follows:

"The use or appearance of the words, 'trustee,' or 'as trustee,' or 'agent,' or words of similar import, following the name of the grantee in any deed of conveyance or mortgage of land heretofore or hereafter executed and recorded, without other language showing a trust, or for whose benefit the same is made, or other recorded instrument showing the same and the terms and provisions thereof, shall not be deemed to give notice to or put upon inquiry any person dealing with said land that a trust or agency exists, or that there are beneficiaries of said conveyance or mortgage other than the grantee and such as are disclosed by the record, or that there are any limitations on the power of the grantee to convey or mortgage said land, or to assign or release any mortgage held by such grantee; and as to all subsequent *bona fide* purchasers, mortgagees, and assigns for value, a conveyance or mortgage or assignment of mortgage by such grantee, whether his name be followed by the words 'trustee' or 'as trustee,' or 'agent' or words of similar import, or not, shall convey or shall be deemed to have conveyed or assigned a title or lien, as the case may be, free from the claims of any undisclosed beneficiaries, and free from any obligation on the part of the purchaser, mortagee or assignee to see to the application of any purchase money; provided only, that this act shall not apply to suits now pending or heretofore determined in any court of this state; nor to suits brought prior to the expiration of two years from the effective date of this act in which any such deeds of conveyance or mortgages heretofore recorded are called in question, or in which the rights of any beneficiaries in the lands described therein are involved."

PROPOSAL No. 14—"Make it mandatory upon a court in granting a decree of divorce, to adjust and determine all property rights of both parties, and in the case of real estate, require a record of the decree in the office of the register of deeds."

The only statutory provision that your chairman has been able to find which seems to meet all the requirements of the above proposal in Paragraph 3862, Chapter IX, Title 32, Arizona Statutes 1913, Civil Code, as amended March 17, 1919, Arizona Session Laws, 1919, page 98, as follows:

"Before pronouncing a decree of divorce from the bonds of matrimony, the court shall require evidence of the property and estate of the parties, and shall order such division of said property and estate as to the court shall seem just and right having due regard for the rights of each party and their children, if any. Nothing herein contained shall be construed to compel either party to divest himself or herself of the title to separate property. The court may, however, fix a lien upon the separate property of either of the parties to secure the payment of any interest or equity that the other party may have in or to such separate property, or any equity that may arise in favor of either party out of property matters during the existence of the marriage relation, or to secure the payment of an allowance for the support and maintenance of the wife and minor children of the parties. The decree of divorce shall specifically describe the real estate of the parties affected by the decree, situated in this state, and any such decree affecting the title to real estate shall be recorded in the county in which such real estate is situated. Any separate property of either of the parties of which no disposition is made in the decree shall remain the separate property of such party, free of all claims of the other party, and any community property concerning which no provision is made in the decree be from the date of such decree, owned and held by the parties as tenants in common, each owning and holding an undivided one-half interest therein."

PROPOSAL No. 15—"Limit the time during which a testator can suspend the alienation of land—say twenty years."

Your chairman has to confess that he has never been able to figure out just what the proposers meant by Proposal No. 15. It seems to involve the intricate questions of "The Rule against Perpetuities" and the question of "Suspension of Alienation," concerning both of which volumes have been written.

In most of the states the common law rule against perpetuities is in force, some of the states having followed the New York statute as to suspension of alienation, and some of the states have mixed statute about which your chairman has an even less definite idea than he has about the two sources from which the statutes have been derived.

Mindful of the old saying about "fools rushing in where angels fear to tread," we quote the only statute which we can find which places a definite limitation by way of a term of years, which we find in the statutes of any state. We refer to the California statute which is as follows:

Sec. 715, Calif. Code: "Except in the single case mentioned in Sec. 772, the absolute power of alienation can not be suspended, by any alienation or condition whatever, for a longer period than as follows:

1. During the continuance of the lives of persons in being at the creation of the limitation or condition; or
2. For a period not to exceed twenty-five years from the time of the creation of the suspension."

Sec. 772 Calif. Code: "A contingent remainder in fee may be created on a prior remainder in fee, to take ef-

fect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon other contingency by which the estate of such persons may be determined before they attain majority."

Just what the California statute means would require a more thorough examination of the California decisions than your chairman has time to give.

In this connection there is submitted for your consideration a sugestion for a statute on this subject, proposed for those states which have substantially copied the New York idea of "suspension of alienation", made by Prof. E. C. Goddard, University of Michigan, in Michigan Law Review, Volume 22, No. 2, Page 106, as follows:

"The absolute power of alienation shall not be suspended by any limitation or condition whatever, for a longer period than during the lives in being at the creation of the estate of persons taking under the provisions subject to such limitation or condition."

"The absolute ownership of personal property shall not be suspended for a longer period than the absolute power of alienation of real estate."

You may not agree as to the advisability of some of the proposals but the question for the committee is not so much the question of advisability, as the question as to whether or not the suggested form of laws as to the various proposals will accomplish the intended purpose. The policy of The American Title Association with reference to the proposals has been decided at the 1913 and 1923 conventions and the duty of the committee is to formulate laws to carry out the proposals.

Final Report on Association's Fifteen Proposals for Uniform Land Laws, Together with the Recommendations

I submit herein my Final Report as Chairman of the Special Judiciary Committee of The American Title Association to which was delegated the duty of formulating laws to carry out the Association's Fifteen Proposals for Uniform Simplified Title Laws.

Acting upon the suggestions of members of the committee, and others to whom the Preliminary Report of March 15th, 1924, was sent, I have endeavored to make one definite recommendation as to each proposal and to eliminate the tentative suggestions contained in the Preliminary Report.

My recommendations are as follows:

PROPOSAL No. 1—"In all states where the limitation on actions to recover lands is longer than ten years, reduce it to that period, and abolish the saving clauses for persons under disability; or in the alternative, provide a longer limitation, say fifteen years, which will render titles absolute, regardless of disabilities."

RECOMMENDATION: Be it enacted, etc. "An action for the recovery of recovery of the title, to or possession of, real property shall be brought with (15) years after the right to institute it shall have first accrued to the plaintiff or to the person through whom he claims. And it is further provided that (15) years actual advise possession by any person claiming to be the owner for that time of any land, uninterruptedly continued for (15) years, by occupancy, descent, conveyance, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title."

PROPOSAL No. 2—"A 'Lis Pendens' law in those states which have no such law, providing generally that no suit in any court shall affect the title to land unless a notice of lis pendens is filed in the office of the recorder or register of deeds."

RECOMMENDATION: Be it enacted, etc. "On all actions in which the title to or any interest in or lien upon real property is involved or affected or is brought in question by either party, any party thereto at the time of filing the complaint or any time thereafter during the pendency of such action may file for record with the register of deeds of each county in which any part of the premises lies, notice of the pendency of the action containing the names of the parties, the object of the action and a description of the real property in such county involved, affected or brought in question thereby. From the time of the filing of such notice and from such time only, the pendency of the action shall be notice to purchasers and encumbrances of the rights and equities of the party filing the same to the premises. When any pleading is amended in such action so as to alter the description of, or to extend the claim against the premises affected, a new notice may be filed with like effect. Such notice shall be recorded in the same book and in the same manner in which mortgages are recorded and may be discharged by an entry to that effect in the margin of the record by the party filing the same or his attorney in the presence of the register, or by writing executed and acknowledged in the manner of a conveyance whereupon the register shall enter a minute thereof on the margin of such record. Provided, however, that such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court, in which the said action was commenced, may in its discretion at any time after the action shall be settled, discontinued or abated on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be cancelled of record in whole or in part by the register of deeds of any country, in whose office the same may have been filed or recorded, and such cancellation shall be made by an endorsement to that effect on the margin of the record."

PROPOSAL No. 3—"A statute validating defective acknowledgments that have been of record for one year, so worded as to cover future cases as well as past."

RECOMMENDATION: Be it enacted, etc. "When any deed heretofore or hereafter executed and recorded, conveying real estate, shall have been or shall be of record in the office of the recorder of the county within this state in which such real estate is situated, for more than twenty-one years, and the record thereof shows that there is a defect in such deed for any one or more of the following reasons: (here insert such defects as are desired to be cured) such deed and the record thereof shall be cured of such defects and be effective in all respects as if such deed had been legally made, executed and acknowledged, provided, however, that any person claiming adverse title thereto, if not already barred by limitation or otherwise, shall have the right at any time within twenty-one years after the time of recording such deed, or in the case of deeds of record for more than twenty-one years prior to the effective date of this act, then within one year after the effective date of this act, to bring proceedings to contest the effect of such deed; and provided further that nothing herein contained shall be construed to operate on any suit or action now pending or which may have been heretofore determined in any court of this state, in which the validity of the making execution or acknowledgment of any such deed has been or may hereafter be drawn in question.

This law must necessarily differ in different jurisdictions. As a sample we must submit the law which has been recommended by The Cleveland Bar Association for passage by the Ohio Legislature as follows:

Be it enacted, etc. "When any deed heretofore or hereafter executed and recorded, conveying real estate, shall have been or shall be of record in the office of the recorder of the county within this state in which such real estate is situated, for more than twenty-one years, and the record thereof shows that there is a defect in such deed for any one or more of the following reasons: Because the husband did not join with the wife or the wife with the husband in all the clauses of the deed conveying such real estate, but did join with each other in one of them, in the execution and acknowledgment of such deed; or because such deed was not properly witnessed; or because the officer taking the acknowledgment of such deed having an official seal did not affix the same to the certificate of acknowledgment; or because the certificate of acknowledgment is not on the same sheet of paper as the deed; or because the executor, administrator, guardian, assignee or trustee making such deed signed or acknowledged the same individually instead of in his representative or official capacity; or because the corporate seal of the corporation making such deed was not affixed thereto; or because such deed was executed and delivered by a corporation which had been dissolved or whose charter had expired or whose corporate franchise had been cancelled, withdrawn or forfeited, such deed and the record thereof shall be cured of such defects and be effective in all respects as if such deed had been legally made, executed and acknowledged, provided, however, that any person claiming adverse title thereto, if not already barred by limitation or otherwise, shall have the right at any time within twenty-one years after the time of recording such deed, or in the case of deeds of record for more than twenty-one years prior to the effective date of this act, then within one year after the effective date of this act, to bring proceedings to contest the effect of such deed; and provided further that nothing herein contained shall be construed to operate on any suit or action now pending or which may have been heretofore determined in any court of this state, in which the validity of the making, execution or acknowledgment of any such deed has been or may hereafter be drawn in question."

Any other period than (21) years may be substituted.

PROPOSAL No. 4 (as introduced)—"A statute permitting married persons to convey their lands without their consorts joining, excepting in the case of homestead, and permit no claim of homestead to be asserted unless a homestead is designated of record by either husband or wife."

PROPOSAL No. 4 (as amended)—"A statute permitting married women to convey their lands without their husbands joining, excepting in the case of homestead, and permit no claim of homestead to be asserted unless a homestead is designated of record by either husband or wife."

RECOMMENDATION AS TO JOINDER OF CONSORT:

Section 1: "Married women of the age of (18) years or upwards may convey and transfer land or any estate or interest therein, except the homestead, vested in or held by them in their own right, without being joined by the husband in such conveyance, as fully and perfectly as they might do if unmarried."

Section 2: "Married men of the age of (21) years or upwards may convey and transfer lands or any estate or interest therein, except the homestead, vested in or held by them in their own right, without being joined in such conveyance by the wife, as fully and perfectly as they might do if unmarried."

It will be noted that the above recommendation is based upon Proposal No. 4 as originally introduced and not as amended.

RECOMMENDATION AS TO HOMESTEAD:

Section 1: "Every person who is head of a family and whose family resides within this state, may hold as a homestead, exempt from attachment, execution, and forced sale, the property to be selected by him or her, which homestead shall be in one compact body, not to exceed in volume the sum of $———— and shall consist of the dwelling house in which the claimant resides and the land on which the same is situated, or of land the claimant shall designate, provided the same be in one compact body."

Section 2: "Any person wishing to avail himself or herself of the provisions of the foregoing section shall make out under oath, his or her claim in writing, showing that he or she is the head of a family, and also particularly describing the land claimed and stating the value thereof; and shall file the same for record in the office of the recorder in the county where the land lies."

The value of the homestead may be fixed in accordance with local requirements.

PROPOSAL No. 5—"Abolish inchoate dower in states where it still exists, or better still, abolish dower altogether and give a wife an interest in fee simple in lands of which her husband dies seized."

RECOMMENDATION OF LAW TO ABOLISH INCHOATED DOWER ONLY: Be it enacted, etc. "If any person die intestate leaving a widow she shall be entitled to dower in one-third part of all the lands of which her husband died seized or possessed, or of which he was the equitable owner, or of which at decease he held the fee simple in reversion or remainder, but dower shall not be assigned to a widow in real property of which the deceased husband, at decease, held the fee simple in reversion or remainder, until the termination of the prior estate."

RECOMMENDATION OF LAW TO ABOLISH DOWER ENTIRELY: Be it enacted, etc. "The estates of courtesy and dower are abolished and neither husband nor wife shall have any interest in the property of the consort other than as provided in the statutes of descent and distribution."

PROPOSAL No. 6—"An absolute bar to the foreclosure of mortgages ten years after their maturity (or perhaps a shorter period) unless they are renewed of record."

RECOMMENDATION: We recommend the following form of law which has been recommended by The Cleveland Bar Association, with such period, other than 21 years, as seems advisable in the local jurisdiction. The Uniform Mortgage Act proposed by The National Conference on Uniform Laws provides a ten year limitation."

Be it enacted, etc. "The record of any mortgage which remains unsatisfied or unreleased of record for more than twenty-one years after the last due date of the principal sum or any part thereof, secured thereby as shown in the record of such mortgage, shall not be deemed to give notice to or to put on inquiry any person dealing with the land described in such mortgage that such mortgage debt remains unpaid or has been extended or renewed; and as to subsequent bona fide purchasers and mortgagees for value, the lien of such mortgage shall be deemed to have expired; the mortgage creditor, however, shall have the right at any time to refile in the recorder's office the mortgage or a sworn copy thereof for record, together with an affidavit stating the amount remaining due thereon and the due date thereof, as extended, if it be extended, and thereupon, subject to the rights of bona fide purchasers and mortgagees for value theretofore acquired or then vested, such refiling shall be deemed to be constructive notice of such mortgage only for a period of twenty-one years after such refiling, or for twenty-one years after the stated maturity of the debt, whichever be the longer period; provided, however, that as to such mortgages of record at the time of the effective date of this Act, the constructive notice of their recording shall not be deemed to have expired in any event prior to two years from and after the effective date of this Act."

PROPOSAL No. 7—"Short statutory forms of deeds and mortgages. Providing that the form shall imply all the usual covenants."

RECOMMENDATION.

(A) Warranty Deed

Warranty deeds for the conveyance of land may be substantially in the following form: The grantor (name) for and in consideration of (consideration) in hand paid conveys and warrants to (name) the following described real estate (description) situated in the county of.....

State of.....

Dated this.....day of.....19.....

(Signed).....

Every deed in substance in the above form when otherwise duly executed shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns with covenants on the part of the grantor.

That at the time of the making and delivery of such deed he is lawfully seized of an indefeasible estate in fee simple in and to the premises therein described, and has good right and full power to convey the same;

2. That the same were then free from all encumbrances; and

3. That he warrants to the grantee, his heirs and assigns the quiet and peaceable possession of such premises and will defend the title thereto against all persons, who may lawfully claim the same; and such covenants shall be obligatory upon any grantor, his heirs and personal representatives as fully and with like effect as if written at full length in such deed.

(B) Quit Claim Deed

Quit Claim Deeds may be in substance in the following form:

The grantor (name) for the consideration (consideration) conveys and quit-claims to (name) all interest in the following described real estate (description) situated in the County of.....State of .....dated this.....day of.....19.....

(Signed).....

As to short form mortgage we recommend the following which is a copy of Section 34 of The Uniform Mortgage Act proposed by The National Conference on Uniform Laws:

(1) The use of the following short form of mortgage of real property is lawful, but the use of other forms is not forbidden or invalidated:

SHORT FORM MORTGAGE

This statutory mortgage, made this.....day of....., between (give name and address), mortgagor, and (give name and address), mortgagee,

Witnesseth, that to secure the payment of (give description of indebtedness and instruments evidencing the same), the mortgagor hereby mortgages to the mortgagee (give description of premises with any encumbrances thereon).

And————, (one of) the mortgagor covenants with the mortgagee the following statutory covenants:

1. To warrant the title to the premises.
2. To pay the indebtedness as herein provided.
3. To pay all taxes.
4. To keep the buildings insured against fire for..... .....dollars and against (give other hazards insured against and amount of such other insurance), for the benefit of the mortgagee.
5. That the premises shall be kept in repair and no waste shall be committed.
6. That the whole of the principal sum shall become due after default, in the payment of any installment of principal or interest, or of any tax, or in the performance of any other covenant,.....days after notice.

If default be made in any payment or covenant herein, the mortgagee shall have the statutory power of sale, and on foreclosure may retain statutory costs and attorney's fees.

In witness whereof the mortgagor has duly executed this mortgage.

(2) Any of the covenants or the power of sale in the short form mortgage may be omitted. Additional clauses, conditions, covenants, and provisions may be added, but shall be designated as not statutory.

The language of the short form mortgage shall have the following meaning and effect.

CONSTRUCTION OF COVENANTS IN SHORT FORM MORTGAGE.

(3) The expression contained in the short form mortgage "the mortgagor hereby mortgages to the mortgagee (description of premises with any incumbrances thereon)," shall be construed as equivalent to the following:

The mortgagor also in consideration of one dollar, paid by the mortgagee, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, release and convey unto the mortgagee, his heirs, successors, and assigns forever (premises with any incumbrances thereon as described in the mortgage), together with the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, rights and interests of the mortgagor, including all homestead and dower rights and all inchoate and contingent rights, in and to said premises; to have and to hold the above granted premises unto the mortgagee, his heirs, successors, and assigns forever; Provided, that if the mortgagor, his heirs, executors, or administrators, shall pay unto the mortgagee, his executors, administrators or assigns, the said sum of money mentioned in said (instrument evidencing indebtedness), and the interest thereon, at the time and in the manner aforesaid, and shall keep and perform each and every covenant herein contained on the part of the mortgagor to be kept and performed, that then this mortgage, and the estate hereby granted, shall cease, determine and be void."

(4) The respective statutory covenants, contained in said mortgage shall be construed as follows:

I. Covenant 1 is equivalent to: "That the mortgagor is lawfully seized of the premises; that he has good right to mortgage the same; that the same are free from all encumbrances except as above stated; and that the mortgagor will warrant and defend the title to the same against all lawful claims."

II. Covenant 2 is equivalent to: "That the mortgagor will pay to the mortgagee the principal sum of money secured by this mortgage, and also the interest thereon as herein provided, and also, in case the mortgage is foreclosed in court, the costs and expenses of the foreclosure, including reasonable attorney's fees, which shall be allowed out of the proceeds of the sale."

III. Covenant 3 is equivalent to: "That until the indebtedness hereby secured is fully paid, the mortgagor will pay all taxes, assessments, and other governmental levies which may be assessed or become liens on said premises, before any penalty, interest or other charge accrues, and in default thereof the mortgagee may pay the same, and the mortgagor will repay the same with interest at the mortgage rate, and the same shall become a part of the debt secured by the mortgage."

IV. Covenant 4 is equivalent to: "That the mortgagor will, during all the time until the indebtedness secured by the mortgage is fully paid, keep the buildings on the premises insured against loss or damage by fire, to the amount of (the sum specified in mortgage) dollars and against loss or damage by (any other hazards specified) to the amount of (sums specified therefor) dollars and in a company to be approved by the mortgagee, and will assign and deliver the policies of such insurance to the mortgagee, so and in such manner and form that he shall at all times, until the full payment of said indebtedness, have and hold the said policies as a collateral and further security for the payment of said indebtedness, or at the option of the mortgagee will make such policies payable in case of loss to the mortgagee, as his interest may appear and will deposit them with the mortgagee, and in default of so doing, that the mortgagee may make such insurance from year to year, or for one or more years at a time, and pay the premiums therefor, and that the mortgagor will forthwith repay to the mortgagee the same, with interest at the mortgage rate, and that the same shall become a part of the debt secured by the mortgage in like manner as the principal sum. The mortgagee may retain any moneys received by him on the policies, and the same shall apply in part payment of the mortgage."

V. Covenant 5 is equivalent to: "That the mortgagor will at all times keep the premises in good repair and suffer and commit no waste thereon, and that no buildings shall be removed or demolished without the consent of the mortgagee."

VI. Covenant 6 is equivalent to: "That should any default be made in the payment of any installments of principal or any part thereof, or in the payment of any interest or any part thereof, on any day whereon the same is made payable, or in the payment of any tax, assessment, or other government levy, as herein provided, or should any other

default be made in any of the covenants of this mortgage, and should the said principal, interest, tax, assessment or levy, or repayment thereof, to the mortgagee, remain unpaid and in arrear, or should such other default in any covenant continue and the covenant remain unperformed, for the space of (time specified in the mortgage) days, after written notice by the mortgagee of the default or breach of covenant and that the whole sum will become due unless payment or performance is made within such time, delivered or mailed to the mortgagor or to one who has assumed the mortgage at his last known address according to the mortgagee's best information, then the whole sum including accrued interest, secured by the mortgage, shall, at the option of the mortgagee, become and be due and payable immediately thereafter."

(5) The statutory power of sale clause contained in said mortgage immediately following covenant 6, shall be construed as equivalent to the following:

"If default be made in the payment of the principal or interest or any part thereof, or of taxes, assessments, insurance premiums, or any other sum, when the same becomes due as herein provided, the mortgagor hereby authorizes and empowers the mortgagee to foreclose this mortgage at once, and to sell the mortgaged premises at public auction according to the statute in such case provided, and to apply the proceeds of the sale to pay all amounts then due on the mortgage, including principal, interest, and the amount of any taxes, assessments, and insurance premiums and any other sum which may then be due to the mortgagee, and also to pay all costs and expenses of such foreclosure sale, including statutory attorney's fees, which costs, expenses and fees the mortgagor agrees to pay."

(6) All the obligations of the mortgagor as set forth in this section shall be construed as applying to his heirs, executors and administrators or successors; and all the rights and powers of the mortgagee shall inure for the benefit of and may be exercised by his executors, administrators, successors or assigns.

PROPOSAL No. 8 (as introduced)—"Barring claims against unadministered estate, say in seven years after the death. Possibly five years would be better."

PROPOSAL No. 8 (as amended)—"Barring claims against unadministered estates after three years from the date of death unless letters of administration have been taken out within that period."

RECOMMENDATION: Be it enacted, etc. "No real estate of a deceased person shall be liable for his debts unless letters testamentary or of administration be granted within (6) years from the date of the death of such decedent. Provided, that in the case of persons who died prior to the effective date of this act, suits to subject such real estate to the payment of the debts of such deceased person, if not already barred, shall not be barred hereby prior to the expiration of one year from the effective date of this act."

PROPOSAL No. 9—"Simplifying certificates of acknowledgment and abolishing separate examination of wife in states where it is still required."

RECOMMENDATION.

Since The National Conference of Commissioners on Uniform Laws as early as 1892, recommended a Uniform Acknowledgment Law which has been adopted in some of the states, it would seem advisable for The American Title Association to recommend the same forms. Their recommendation is as follows:

"Be it enacted, etc.

Section 1. Either the forms of acknowledgment now in use in this state, or the following, may be used in the case of conveyances of other written instruments, whenever such acknowledgment is required or authorized by law for any purpose:

(Begin in all cases by a caption specifying the state and place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right. "On this.....day of.....19....., before me personally appeared A B (or A B and C. D), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed."

2. In the case of natural persons acting by attorney: "On this.....day of.....19....., before me personally appeared A B, to me known to be the person who executed the foregoing instrument in behalf of C D, and acknowledged that he executed the same as the free act and deed of said C D."

3. In the case of corporations or joint-stock associations: "On this.....day of.....19....., before me appeared A B, to me personally known, who, being by me duly sworn (or affirmed) did say that he is the president (or other officer or agent of the corporation or association) or (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association) and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees) and said A B acknowledged said instrument to be the free act and deed of said corporation (or association)."

(In case the corporation or association has no corporate seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation [or association], the words, "and that said corporation [or association] has no corporate seal.")

(In all cases add signature and title of the officer taking the acknowledgment.)

Section 2. The acknowledgment of a married woman when required by law may be taken in the same form as if she were sole and without any examination separate and apart from her husband.

Section 3. The proof or acknowledgment of any deed or other written instrument required to be moved or acknowledged in order to enable the same to be recorded or read in evidence, when made by any person without this state and within any other state, territory or district of the United States, may be made before any officer of such state, territory or district, authorized by the laws thereof to take the proof and acknowledgment of deeds, and when so taken and certified as herein provided, shall be entitled to be recorded in this state, and may be read in evidence in the same manner and with like effect as proofs and acknowledgments, taken before any of the officers now authorized by law to take such proofs and acknowledgments and whose authority so to do is not intended to be hereby affected.

Section 4. To entitle any conveyance or written instrument, acknowledged or proved under the preceding section, to be read in evidence or recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate of the Secretary of State of the state or territory in which such officer resides, under the seal of such state, territory, or a certificate of the clerk of a court of record of such state, territory or district in the county in which said officer resides or in which he took such proof or acknowledgment under the seal of such court, stating that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take acknowledgments and proof of deeds of lands in said state, territory or district, and that said Secretary of State, or clerk of court, is well acquainted with the handwriting of such officer, and that he verily believes that the signature affixed to such certificate of proof or acknowledgment is genuine.

Section 5. The following form of authentication of the proof of acknowledgment of a deed or other written instrument when taken without this state and within any other state, territory or district of the United States, or any form substantially in compliance with the foregoing provisions of this act, may be used.

Begin with a caption specifying the state, territory or district and county or place where the authentication is made.

"I,....., clerk of the..... in and for said county, which court is a court of record, having a

seal (or, I....., the Secretary of State of such state, or territory) do hereby certify that..... by and before whom the foregoing acknowledgment (or proof) was taken, was, at the time of taking the same, a notary public, (or other officer) residing (or authorized to act) in said county, and was duly authorized by the laws of said state (territory or district) to take and certify acknowledgments or proofs of deeds of land in said state (territory or district), and further that I am well acquainted with the handwriting of said....., and that I verily believe that the signature to said certificate of acknowledgment (or proof) is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court (or state) this..... day of....., 19....."

PROPOSAL No. 10—"Abolishing private seals and witnesses in deeds and mortgages in states where they are still required."

RECOMMENDATION.

Be it enacted, etc.

"Section 1: The use of private seals upon all deeds, mortgages, leases, bonds and other instruments and contracts in writing, is hereby abolished and the addition of the private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect, or its nature as a legal instrument.

"Section 2: All deeds, mortgages, or other instruments in writing for the conveyance or encumbrance of real estate, or of any interest therein, which have heretofore been executed without the use of a private seal are notwithstanding hereby declared to be legal and valid and of the same effect in all respects as they would have had heretofore if sealed in all courts of law or equity in this state."

We have made no recommendation as to that part of Proposal No. 10 concerning witnesses for various reasons. First, not more than one-third of the states require witness to deeds. Second, in those states which require witnesses there seems to be a feeling that the requirement of witnesses ought not be abolished. Third, the abolition of witnesses would in each case necessitate an examination of the present statute and a change in phraseology of existing statutes which can best be taken care of by some one acquainted with the local statutes.

PROPOSAL No. 11—"Dispensing with the necessity for words of inheritance to convey a fee simple, and providing that unless otherwise specifically expressed, a deed shall convey all the estate that the grantor had."

RECOMMENDATION: Be it enacted, etc.

"The term 'heirs' or other words of inheritance to convey a fee simple, and providing that unless otherwise specifically expressed, a deed shall convey all the estate that the grantor had."

PROPOSAL No. 12—"A statute abolishing the blanket lien of judgments and requiring a specific description of record of the property sought to be held."

RECOMMENDATION: Be it enacted, etc.

"Whenever judgment shall have been or may hereafter be rendered in any court of record, execution to collect the same may be issued to the sheriff, or other proper officer of any county of this state; and successive or alias executions may be issued one after another, upon the return of any execution unsatisfied in whole or on part, for the amount remaining unpaid upon any such judgment. Such executions shall be made returnable not less than twenty nor more than ninety days from the date thereof."

"Whenever an execution shall be issued against the property of any person, his goods and chattels, lands and tenements, levied upon by such execution, shall be bound from the time of such levy."

"Each and every levy by execution on real estate heretofore or hereafter made shall cease to be a lien on such real estate, and shall become and be void at and after the expiration of five years from the making of such levy, unless such real estate be sooner sold thereon.'

The above is the Michigan statute and from the title man's standpoint is all that could be desired.

PROPOSAL No. 13—"Provides that when a conveyance is made to a trustee and the powers of the trustee and the nature of the trust are not disclosed of record, the trustee's deed shall pass the full title."

RECOMMENDATION: Be it enacted, etc.

"The use or appearance of the words, 'trustee,' or 'as trustee,' or 'agent,' or words of similar import, following the name of the grantee in any deed of conveyance or mortgage of land heretofore or hereafter executed and recorded, without other language showing a trust or expressly limiting the grantee's or mortgagee's powers, or for whose benefit the same is made, or other recorded instruments showing the same and the terms and provisions thereof, shall not be deemed to give notice to or put upon inquiry any person dealing with said land that a trust or agency exists, or that there are beneficiaries of said conveyance or mortgage other than the grantee and such as are disclosed by the record, or that there are any limitations on the power of the grantee to convey or mortgage said land, or to assign or release any mortgage held by such grantee, and as to all subsequent *bona fide* purchasers, mortgagees, and assignees for value, a conveyance or mortgage or assignment or release of mortgage by such grantee, whether his name be followed by the words 'trustee,' or 'as trustee,' or 'agent' or words of similar import, or not, shall convey or shall be deemed to have conveyed or assigned a title or lien, as the case may be, free from the claims of any undisclosed beneficiaries, and free from any obligation on the part of any purchaser, mortgagee or assignee to see to the application of any purchase money; provided only, that this act shall not apply to suits now pending or heretofore determined in any court of this state, nor to suits brought prior to the expiration of two years from the effective date of this act in which any such deeds of conveyance or mortgages heretofore recorded are called in question, or in which the rights of any beneficiaries in the lands described therein are involved; and nothing herein contained shall deprive the original grantor, or trustor or undisclosed beneficiary, or any one claiming under them from bringing suits other than suits affecting the land the subject of such conveyance or mortgage."

PROPOSAL No. 14—"Make it mandatory upon a court in granting a decree of divorce, to adjust and determine all property rights of both parties, and in the case of real estate, require a record of the decree in the office of the registrar of deeds."

RECOMMENDATION: Be it enacted, etc.

"Before pronouncing a decree of divorce from the bonds of matrimony, the court shall require evidence of the property and estate of the parties, and shall order such division of said property and estate as to the court shall seem just and right having due regard for the rights of each party and their children, if any. The decree of divorce shall specifically describe the real estate of the parties affected by the decree, situated in this state, and any such decree affecting the title to real estate shall be recorded in the county in which such real estate is situated."

Since property and divorce laws differ so radically in the different jurisdictions, it is almost impossible to make any more definite recommendation than the above, although it does not seem very satisfactory.

PROPOSAL No. 15—"Limit the time during which a testator can suspend the alienation of land—say twenty years."

The experience of those states which have attempted to substitute a "suspension of alienation" statute for the common law "rule against perpetuities" has not, in the opinion of those best qualified to judge, been satisfactory. As was stated in the preliminary report your chairman does not feel qualified to recommend a statute with reference to this proposal and his correspondence with the members of the committee and others to whom the preliminary report was submitted has not caused him to change his opinion. We therefore make no recommendation as to Proposal No. 15.

It will be noted that this Final Report differs in no

essential from the Preliminary Report, other than that there is made herein one definite recommendation for each proposal instead of alternative recommendations.

The replies received by the Chairman from those to whom the Preliminary Report was sent indicate that the recommendations as a whole were satisfactory and the chief objections and criticisms had to do with the questions of policy and advisability, rather than with the form of the proposed laws. The advisability of the proposals was not for the committee to decide as that matter has been passed upon by the 1913 and 1923 conventions of the association.

Very truly yours,

CHAS. C. WHITE, Chairman,
Special Judiciary Committee,
The American Title Association.

Subdividing the Air

By Herbert Becker, Chicago, Ill.

Now that the dirt is about to fly for the foundations of two of Chicago's greatest buildings over the railroad tracks bordering on the Chicago River in the very center of the City, every citizen may stop and ponder on the vast new field which has just been opened for real estate and commercial development. Only in the last few days have the first air right deals in Chicago been finally consummated, so that it will be but a matter of a few months when we may see on the North side of the River the world's largest warehouse building which will be erected under a new method of acquiring a building site, namely, the subdivision and sale of air rights. The Daily News, under similar arrangements, has acquired a site over the tracks of the Pennsylvania, Baltimore and Ohio, and the Chicago Milwaukee and St. Paul Railroad Companies leading into the Union Station on the West bank of the River between Washington and Madison Streets.

Even those who are responsible for the development of this scheme of subdividing and selling air rights can hardly appreciate what a great future has been unlocked by the consummation of these first air right deals. It must be a source of immense joy to every citizen, whatever may be his walk in life, to reflect upon the great benefits which will flow from the fact that the vast air rights which are available in this great metropolis can be fully developed. Those who have invested in Chicago, be it in real estate or in business enterprises, will undoubtedly better appreciate the immensity of this new field of real estate activity. When one considers how many, many years the space which is now to be used for the Marshall Field warehouse and the Daily News building has been unused, it can justly be claimed by a Chicagoan that a mighty thing has been achieved.

Vast Air Rights Areas Available.

Let us glance at a map of Chicago and observe the extent of the air rights available over railroad tracks. There are the tracks of the North Western Railroad which lie on the North side of the River and extend practically from the Lake front West along the River out beyond the Westerly boundaries of the City; the Illinois Central's enormous space of tracks just South of the River, East of Michigan Ave., and North of Randolph Street, which constitutes its freight yards, and the Illinois Central's long stretch of tracks from Randolph St. South along the Lake front. Then there is the network of tracks which lines the River on the West and which belongs to various railroad companies. It is almost beyond comprehension to what extent the air rights above these tracks will be developed. When it is considered that the two projects now under way will exceed the expenditure of $25,000,000 and will cover only the air rights over tracks within the boundaries of two square blocks, no estimate in dollars of the development of the usable air space can be too wild. Indeed, some estimates have been made in newspapers which give the figures between $300,000,000 and $400,000,000, but, of course, there can be no way of making such estimates with any degree of accuracy. It would take only about twenty-five such projects as the Marshall Field warehouse alone to equal or exceed such estimates, and it is certain that there is far more space available than would be required for twenty-five such structures. But it is not necessary to attempt to reduce this thing to so many dollars—it is sufficient to say that the future of air right development is stupendous.

Herbert Becker

Chicago's First Air Rights Deal.

What is important to us in Chicago is to appreciate that these are the first air right deals ever made here, that they are brand new to us, and that after so many years we have come to the point where such enormous valuable spaces have become marketable and usable. What we must understand is that a new feat has been accomplished, namely, the development of air rights in Chicago under a new scheme never before employed anywhere in the world as far as has been ascertainable. In other words, for the first time in all history a subdivision has been made not only of the land, but also of the air.

It is true that the utilization of air rights for building purposes is not new in this country. Investigation showed that the spaces over railroad tracks have been put to use for such purposes in various Eastern cities. Park Avenue in New York with the network of tracks of the New York Central under it, is a familiar example. In the Eastern cities, however, through differences either in the methods by which the railroad companies acquire their land, or because of differences in laws, the air rights have been used under leases and easements and have not generally been acquired by purchase. What has been accomplished here in Chicago is to work out a scheme whereby the foundation and air rights necessary for a building could be acquired by an absolute purchase in the form of subdivision lots shown upon a recorded plat. To make that easily identifiable, which was to be sold by the railroad company and which was to be retained by the railroad company, a subdivision was made of both land and air into lots just as in the case of any subdivision,

Of course, as will be seen as we progress, some of the lots are holes in the ground, some of the lots are in the air, and some are of the ordinary garden variety—just plain lots.

A Scheme Without Precedent.

Before explaining this novel subdivision, I wish to emphasize that the men who were to be identified with the intensely interesting task of creating this subdivision were unable to find any precedent whatever for the scheme. A new trail was blazed and they were pioneering. It required the combined efforts of lawyers, engineers, surveyors and architects to coin the descriptions which were used to convey to the mind the idea of what was being subdivided and sold. I am confident that despite the complexity of the subject, a brief outline will prove both understandable and interesting.

It has been the law long before George III (recently so well advertised) reigned in England that the owner of land owns the title from the center of the earth to the top of the sky. From this it follows that it is recognized as law that land may be owned in horizontal strata. We may think of land as a layer cake, a different owner may own different layers. So law writers say that one man may own the structure on the soil, another the surface of the soil, and still another the minerals beneath the soil. Does it not follow that another man may own the space or air above the structure? There is no doubt that there are not many legal precedents which clearly recognize ownership of land space above and below the surface and that it is not possible to formulate a definite and clear rule which places any limit on the space above and below the surface capable of actual ownership as distinguished from the ownership of a technical title. But there is no reason why the courts would not establish a workable principle of law recognizing ownership in superjacent air as well as subjacent soil to whatever limits can be considered employable economically—in other words, a rule of reasonableness.

With such theories and no precedents the subdivision was made. The North Western Railroad Company owns a square block of land between Wells St., Franklin-Orleans Viaduct, the River and Kinzie St. Over this entire area Marshall Field and Company will erect its warehouse. To build a warehouse of such proportions, it is, of course, necessary to sink steel caissons and upon these caissons to place steel columns to support the building. The railroad company maintains tracks upon this land, which it must continue to do, and the building is to be so erected as not to interfere with the operations of the railroad on the surface of the ground.

A Horizontal Subdivision.

For this project, then, Marshall Field and Company wanted title to the spaces upon which the caissons were to be sunk, wanted the title to the spaces upon which, or in which, the steel columns were to be constructed to support the building upon the caissons, and wanted the title to the space above tracks for the building itself. This involved, therefore, a subdivision of land and air, both horizontally and vertically. The horizontal or surface subdivision, of course, is easily pictured by the plat itself, but the vertical features of the plat could not be shown on the plat in the ordinary way, but had to be accomplished by legends. In other words, to merely look at the plat you would not know that the land and air was subdivided into horizontal strata. This can be gathered only from reading the notes or legends on the margin of the plat. There were approximately 600 caisson lots created on the plat. The caisson lots were located as required by the architects for the support of the building. The title to these caisson lots, most of which are perfect circles (some being fractions of a circle), begin at O-O Datum (that is about 5 feet below the soil) and extended downward to the center of the earth. The description on the plat and in the deed for these caisson lots is as follows:

"All the land, property and space at and below horizontal plane zero Chicago City Datum in 600 complete cylinders formed by projecting vertically downward from said plane, the circles forming the boundaries of said lots as represented on the plat."

On top of each of these caissons the purchaser obtains a title to rectangular spaces of soil and air beginning where the caissons stop, namely, at O-O Datum and extending upward to 23 feet above datum or about 18 feet above the surface of the soil. These spaces of soil and air were called prism lots. They are vertical rectangular columns of soil and air having definite boundaries shown on the plat and it is within the boundaries of these columns of air in which the steel columns will be erected to rest upon the caissons and to support the building. The plat gives each of these caisson lots and prism lots lot numbers just as lots are numbered in any ordinary subdivision and they are capable of absolute location by measurements referred to well defined monuments. The description of these prism lots is very short and is also found on the plat in a legend, which reads as follows:

"All the land, property and space in 600 quadrangular prisms of the horizontal dimensions shown on the plat, extending vertically between horizontal planes respectively at zero and twenty-three feet above Chicago City Datum."

All the air space above a plane at 23 feet above O-O Datum will be occupied by the building. The plat and deed designate this as "Air Lot" and the purchaser takes an absolute title to the air lot also. The description of this air lot is very simple and is as follows:

"All the land, property and space at and above a horizontal plane twenty-three feet above Chicago City Datum bounded on the East by Wells St., on the North by Kinzie St., on the West by the Franklin-Orleans Viaduct, and on the South by the Chicago River."

A Monument of Painstaking Labor.

It will be seen, therefore, that the subdivision clearly separates and identifies the property to be sold by the railroad company to Marshall Field and Company for its building and it will be observed from this that Marshall Field and Company obtains under this scheme a clear and absolute title to so much land and air as it needs for its building, namely, for the caissons, the steel columns, and the building itself. What is not necessary for Marshall Field and Company to have for its building is not sold to it and is retained by the railroad company for its purposes. In other words, the railroad company retains all the air and space below the building (that is below a plane 23 feet above datum) lying between the steel columns and the caissons. On the soil of this space thus retained by the railroad company it will operate its trains as it always has.

This, in brief, is the new scheme of subdividing and selling air rights and foundation rights for buildings over railroad tracks. I cannot do more within the confines of this sketch than to say that there were many exceedingly difficult details to work out on the plat itself. While the underlying principle involved in the scheme may seem very simple, the detail is very elaborate. It will give the reader some idea of the magnitude of the task to know that the plat which was recorded is the largest plat ever put on record here. The plat is 8 feet long and 3 feet wide. The legends or notes on the plat explaining the vertical delineation are 30 in number. The detail on the plat is a veritable labyrinth.

The creators of this plat may rest assured that it will remain for all time not only a monument of superlative and painstaking labor; of deep thought and extensive research; of pioneering in new fields, and of a practical solution of the problem of ownership of land in horizontal strata, but will serve as a model for all similar projects of which unquestionably there are destined to be many.

Status of Personal Service Corporation Denied to Title Abstracting Enterprise

Court Finds Records Assembled at Great Cost and Employes Outnumber Stockholders

Cuyaga Abstract Title and Trust Company, a Corporation, v. Commissioner of Internal Revenue. No. 4677. Court of Appeals of the District of Columbia.

The Court of Appeals of the District of Columbia affirmed in this case the finding of the Board of Tax Appeals that the appellant was not entitled to classification as a personal service corporation for tax purposes.

It was shown that the appellant maintained a large "abstract plant" which it had accumulated over several years and at considerable expense; that it could not have carried on a successful business without the land records constituting its "abstract plant"; that it maintained a large force of clerks whose salaries aggregated from three to five times the salaries of the principal stockholders, and that it would have been impossible for the stockholders to have done all the work required to keep the business current.

These facts, the court held, placed the corporation outside of the category of personal service corporations.

Appeal from the Board of Tax Appeals. David J. Shorb, Ben Jenkins, E. W. Wallick, for the taxpayer; LeRoy L. Hight, C. M. Charest, V. J. Heffernan, Mabel Walker Willebrandt and H. R. Gamble, for the Commissioner. Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices.

The full text of the opinion of the court, delivered by Chief Justice Martin, follows:

This is an appeal from a decision of the Board of Tax Appeals, reported in 7 B. T. A. 95, approving and affirming a determination of the Commissioner of Internal Revenue, finding the appellant liable for certain deficiencies in income and profits taxes for the years 1918, 1919 and 1920.

Tax Exemption Claimed Under Law.

The controlling issue in the case is whether during those years the appellant was entitled to classification as a "personal service corporation" under the Revenue Act of 1918, 40 Stat. 1057-1152.

The appellant claimed assessment under that classification, but the claim was denied by the Commissioner of Internal Revenue, and appellant was taxed at the rates applicable to ordinary business corporations. The action of the Commissioner was sustained by the Board of Tax Appeals; hence the present appeal.

Under the provisions of Titles II and III of the Revenue Act of 1918, so-called "personal service corporations" were exempted from the taxes which were imposed upon ordinary business corporations, and the individual stockholders thereof were taxed in the same manner as members of partnerships.

The term "personal service corporation" was defined by Section 200 of the act as follows, to wit:

"The term 'personal service corporation' means a corporation whose income is to be ascribed primarily to the activities of the principal owners or stockholders who are themselves regularly engaged in the active conduct of the affairs of the corporation and in which capital (whether invested or borrowed) is not a material income-producing factor."

The decisive question therefore is whether the present corporation responded to the foregoing description in the years 1918, 1919 and 1920.

During the years in question the corporation was engaged for profit in the business of preparing and issuing abstracts and certificates of titles for real estate situate in Cuyahoga County, Ohio. For this purpose the corporation owned and used a so-called "abstract plant," consisting of records maintained in its office containing entries of all transactions affecting real estate titles appearing upon the official records of the county.

Decision Affirmed On Appeal of Case.

In order to keep these records up to date numerous assistants were kept constantly employed at the Court House to "take off the papers," and these were then copied upon the records at the office. Other employes also served in completing the abstracts and certificates, classified according to the duties performed by them, as examiners, indexing and filing clerks, draftsmen, secretaries, typists and comparers, bookkeepers, and general clerks.

During the year 1918 thirty-three persons were thus employed, at an aggregate cost of $37,232; during 1919 forty-one persons were so employed, at a cost of $57,148; and during 1920 there were seventy-five such employes, at a cost of $113,620. The complete abstract records were very expensive, the cost of building up and developing the business prior to the year 1918 was between $200,000 and $300,000.

The authorized capital stock of the company was $200,000, most of which represented the value of the plant. The stock was held by three or four principal stockholders, who were regularly engaged in the active conduct of the affairs of the corporation, and an equal number of minor stockholders.

The abstract plant which was maintained at the office of the corporation was indispensable in the operation of its business. In the making of an abstract the data relative to a title would be obtained from the corporation's records by competent employes, and the abstract when completed would be passed upon by one of the principal stockholders of the company, or under his inspection.

In our opinion it follows from these facts that during 1918, 1919, and 1920 the appellant corporation was not one whose income was to be ascribed primarily to the activities of the principal owners or stockholders, although these were regularly engaged in the conduct of the affairs of the corporation. The income was rather to be ascribed to the operation of an extensive business enterprise in which principal stockholders acted chiefly as managers.

The other persons employed in producing the output of the plant greatly outnumbered the principal stockholders and were paid annually an aggregate sum three to five times as much as the principal stockholders. Moreover these employes were as indispensable to the operation of the plant as were the principal stockholders themselves. See Metropolitan Business College v. Blair, 24 Fed. (2d) 176.

We think it equally certain that the corporation was not one in which invested capital was not a material income-producing factor. The plant above described constituted a productive investment capital without which the corporation's business could not be operated.

It is clear that the business was expected to produce a return upon this investment, in addition to the compensation paid to the principal stockholders for their services. See Cotton Hotel Company v. Bass, 7 Fed. (2d) 900; Hubbard-Ragsdale Company v. Dean, 15 Fed. (2d) 410, affirmed 15 Fed. (2d) 1013.

The decision now upon appeal is affirmed.

Noc. 5, 1928.

(Re-printed from United States Daily, issue of Nov. 9, 1928.)

A Deed From Erech

By McCune Gill, St. Louis, Mo.

Mr. J. Pierpont Morgan was a man of many activities. One, of which the general public knew little, was the collecting of ancient business documents. Among these are many deeds, leases, receipts and other clay tablet instruments from Erech, a city on the Euphrates (or Fruitful) River between Babylon and Ur. Let us read one of these venerable relics, a warranty deed written in 234 B. C. This resembles our modern deeds in many ways although it is quaintly different in other respects. The names of the parties, as given, seem to be a weird combination of such syllables as Anu, Bel, and Ishtar. But as these were the principal deities of the place, these names are really no stranger than our God-frey or Christ-opher. The conveyance was made by the grantor voluntarily, or as the figurative speech of the Near East has it, "in the joy of his heart."

The land is said to be the property of Anu, although it is conveyed by an individual: this means that the church owned the fee and the grantor held merely a leasehold.

The boundaries are given as with us, but not in the north, east, south, west, order; the Babylonians invariably said, "North, South, West, East." They used our familiar expression "more or less," but reversed it, saying "less or more." The parcels or "meshat," (measures) are carefully described.

You, no doubt, will have little trouble in making a plat of the land. Will you send me your plat?

The grantee is "marat" or a married woman—evidently they had a married woman's separate property act in those days.

Notice the receipt for the consideration, as well as the "statutory short form" word of conveyance.

The grantee evidently was not satisfied with the warranty of the grantor, as we find that the grantor's brother guaranteed the title,—(and our Philadelphia friends claim that they invented those things in 1871!). It was quite a guaranty too, the measure of damages being twelve times the loss. As this deed was impressed on a thick tablet of clay, the names and seals of parties and witnesses were sunk into the edges of the tablet.

But let us set forth the deed verbatim, as translated by the Assyreologist, Albert P. Clay, (a good name for a clay tablet translator!).

"Anu-bel-zer, son of Anu-ab-usur, son of Anu-bel-zer, son of Shadi, in the joy of his heart, has sold a cultivated estate, his pasture land, the property of Anu, in the district of the Ishtar gate which is in Erech.

"Twenty ammatu is the north side adjoining the pasture land of Anu-ab-iddanu, son of Anu-rabika-ishtar, and adjoining the second measure (parcel); 20 ammatu is the south side adjoining the third parcel, 10-1/2 ammatu is the west end adjoining the land of Anu-uballit; son of Nana-iddin; 10-1/2 ammatu is the end on the east adjoining the property of Anu-, the pasture land of Labashi, son of Anu-apal-iddanu.

"The second parcel of said land; 10-1/2 ammatu is the north side adjoining the pasture land of Anu-ab-iddanu, son of Anu-rabika-ishtar; 10-1/2 ammatu is the south side adjoining the first parcel; 4-⅓ ammatu is the west end adjoining the land of Anu-uballit son of Nana-iddin; 4-1/3 ammatu is the east end adjoining the pasture of Anu-ab-iddanu, son of Anu-rabika-ishtar.

"The third parcel of said land; 9 ammatu is the north side adjoining the first parcel; 9 ammatu is the south side adjoining the land of Anu-ab-usur son of Anu-bel-zer; 4-5/6 ammatu is the west end adjoining the land of Anu-uballit, son of Nana-iddin; 4-5/6 ammatu is the east end adjoining the land of Anu-ab-usur, son of Anu-bel-zer.

"The total of the three parcels, less or more, all of it, for six shekels silver in coined staters of Seleuchis, the full price, has been paid.

"To Ia, daughter of Nana-iddin, wife of Rihat Anu, son of Libashi the builder, for all future time.

"If a claim is established against said land, Anu-bel-zer, the seller, and Anu-apal-iddanu, his brother, sons of Anu-ab-usur, shall make good twelvefold to Ia. They bear responsibility for one another for the guaranty of said land."

The policeman entered the restaurant and with great dignity announced to the man at the table next to ours: "Your car awaits without."

"Without what?" retorted the rather loud-mouthed gentleman.

"Without lights," said the cop. "Here's your ticket."

LAW QUESTIONS AND THE COURTS' ANSWERS

Compiled from Recent Court Decisions by

McCUNE GILL,

Vice-President and Attorney

Title Insurance Corporation of St. Louis, St. Louis, Mo.

Does line between counties change when dividing river changes?

If river is navigable and change is gradual, the line changes; otherwise not. Jacobs v. Stoner, 7 S. W. 2nd 698 (Missouri).

Can a deed void for vagueness of description, act as color of title?

No. But it can if the invalidity is due to any other defect. Jamison v. Wells, 7 S. W. 2nd 347 (Missouri).

Where conveyance is to a person as "Trustee," can deed be accepted from him without joinder of "undisclosed" beneficiary?

Held in Texas that the American Title Association Act does not protect the purchaser if he actually knew who the beneficiary was, even though not disclosed of record. Woodall v. Adams, 7 S. W. 2nd 922.

What happens when mortgagor in cut out second mortgage afterward repurchases the land?

The second mortgage, that had been cut out by foreclosure of a first mortgage, revives and becomes a first lien, because of the warranty clause therein. Stone v. Morris, 7 S. W. 2nd 796 (Arkansas).

Is probate sale of homestead property for debts, good?

No, it is void, even though records did not show it to be homestead, and purchaser did not know it, and sale can be set aside in collateral action. Cline v. Niblo, 8 S. W. 2nd 633, Johnson v. Hampton, 8 S. W. 2nd 640, Ward v. Hinkle, 8 S. W. 2nd 641 (Texas).

Can notary's seal be used to show for what county he is commissioned?

Held not in a state that requires acknowledgment or signature to show that he is a notary of a certain county. In re Meakins, 25 Fed. 2nd 305 (Iowa).

Is trust for 20 years (without life estates) good?

It is in a state that adheres to the common law rule against perpetuities. Liberty v. New, 25 Fed. 2nd 493 (Massachusetts).

Are old unworked oil leases a cloud on the title?

Held not after 15 years in Oklahoma even though the leases did not compel development. Crain v. Oil Co., 25 Fed. 2nd 824.

Is instrument dated on Sunday good?

It is if the parties act thereunder on a week day; thus marriage on week day ratifies Sunday ante nuptial contract. Oliphant v. Oliphant, 7 S. W. 2nd 784 (Arkansas).

Can owner of surface sue owner of minerals if surface sinks?

Yes; the owner of the minerals must leave adequate supports. Jones v. Mays, 8 S. W. 2nd 626 (Kentucky).

Is right to reform deed barred by limitation?

Yes; thus suit to reform or correct cannot be brought after ten years from date of deed in Tennessee, Barnes v. Barnes, 8 S. W. 2nd 481.

Should subordination of mortgage by corporation be authorized by resolution of directors?

Yes; and by stockholders also if possible. Miles v. Dodson, 8 S. W. 2nd 516 (Texas).

Can fire insurance policy in favor of wrong party be enforced?

Usually not; but can sometimes be collected by obtaining decree reforming the contract for mutual mistake of the parties. Great v. Johnson, 25 Fed. 2nd 847 (West Virginia).

Does statute changing rights in community property apply to land acquired prior to passage of statute?

No. Stewart v. Stewart, 269 Pac. 439 (California).

Can a joint will be revoked by the survivor?

It usually can (as to the survivor's share). Rolls v. Allen, 269 Pac. 450 (California).

Does homestead entryman get the houses, ditches and water rights on the land?

He gets the houses, but not the ditches nor water rights. First v. McNew, 269 Pac. 56 (New Mexico).

Does conveyance of land, subject to lease, convey the right to collect future rents?

Yes; no assignment of lessor's rights under lease is necessary; and lessee cannot set up as a counterclaim a debt owing to him by the original lessor. Hensley v. Hill, 269 Pac. 277 (Oklahoma).

Are mortgages on water rights, for purchase price, subject to annual maintenance charges?

The mortgages are superior to charges accrued at time of foreclosure. Portneuf v. Brown, 47 U. S. Sup. Ct., 692 (Idaho).

Is building line zoning ordinance constitutional?

Yes; and courts cannot review unless clearly arbitrary. Gorieb v. Fox, 47 U. S. Sup. Ct. 675 (Virginia).

Is service on president of unlicensed foreign corporation good?

No; even though he is in the state to attend to company's business. James v. Harry, 47 U. S. Sup. Ct. 308 (Illinois).

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