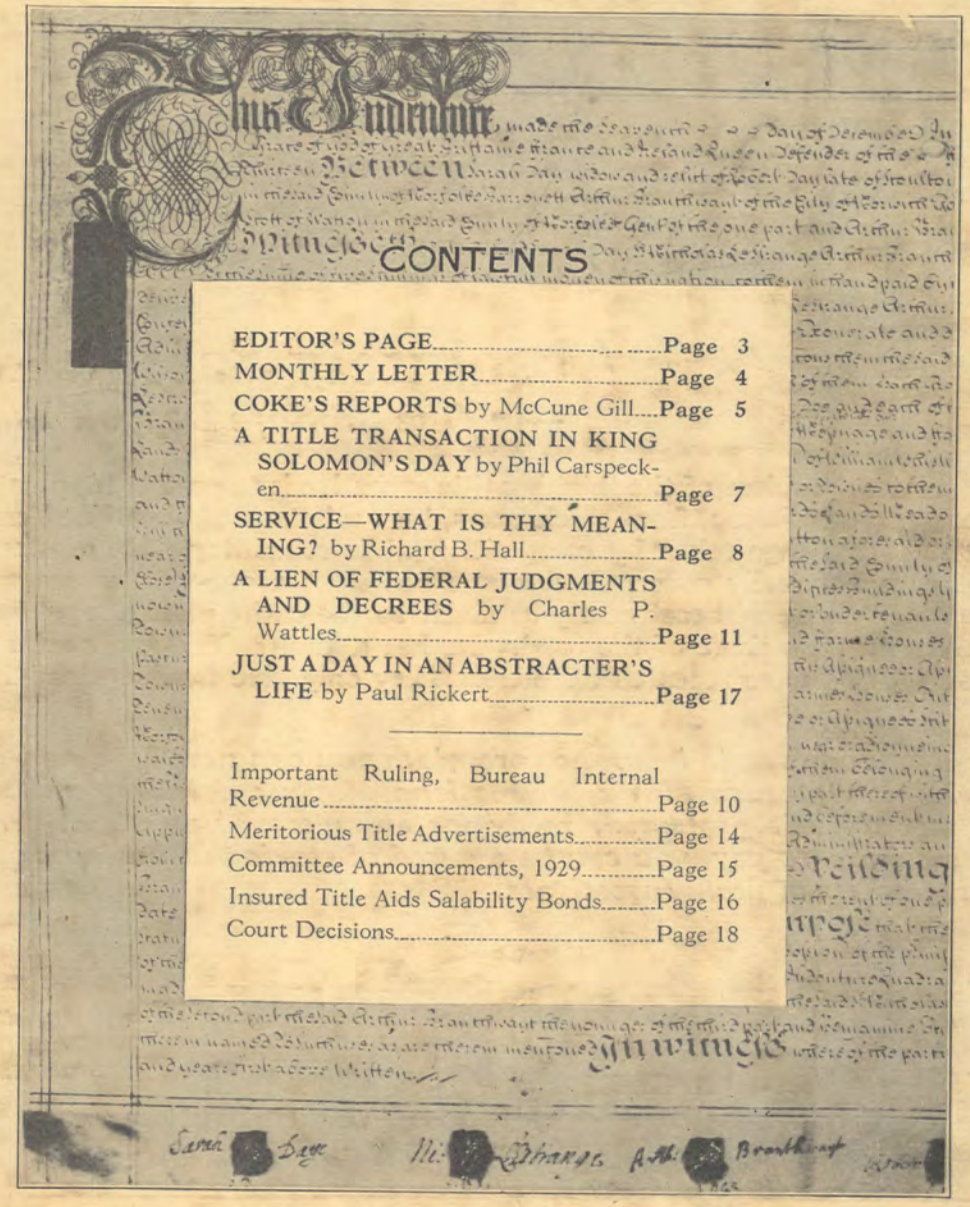
# Title News

*Vol. 8* *JANUARY, 1929* *No. 1*



## CONTENTS

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# TITLE NEWS

Issued Monthly by and as the Official Publication of
The American Title Association

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Vol. 8 JANUARY, 1929 No. 1


## *Editor's Page*

IT WON'T be long now until we will know what fate the abstracters' law suffered in the various states. It is in the legislative hoppers of the following states: South Dakota, Kansas, Nebraska, Colorado, Missouri, Oregon, and Montana. Real efforts are being made to get the law enacted in each of them. There are good prospects of its passing in some.

It would be a real victory and great step of advancement if it would be enacted in even one.

There is a certain irony so far in the history of this year's legislative work by the abstracters—not a single word has been said or intimation made in any of the legislatures to fix fees. The old bogey man and stock argument used for years—that any attempt on the part of abstracters to secure constructive legislation would result in some slap-back measures, particular fees—has therefore been dispelled. Instead there is a most friendly feeling on the part of the various legislatures towards the abstracters, and respectful consideration shown for their desires to stabilize and improve their business.

The only state where a fee bill was presented was in a state where the abstracters' bill was not introduced.

THERE have been some other freak bills attempted. This bears out the contention that we are going to have adverse legislation whether we do anything on our own account or not, and we better initiate our own regulations. A complete history of the activities of the various legislative measures as affecting our business will appear later.

Some have been vicious, others amusing in their ridiculousness. In one of the states that has always opposed drafting a bond law of their own that would be just, one was introduced by an outsider that would have made liability perpetual and unlimited, and virtually put the abstracters out of business. It took a lot of work to kill it.

THIS issue contains another of McCune Gill's most interesting articles. It deals with those famous and familiar cases that play such a part in our land and title laws and will give you some enlightening data on familiar things.

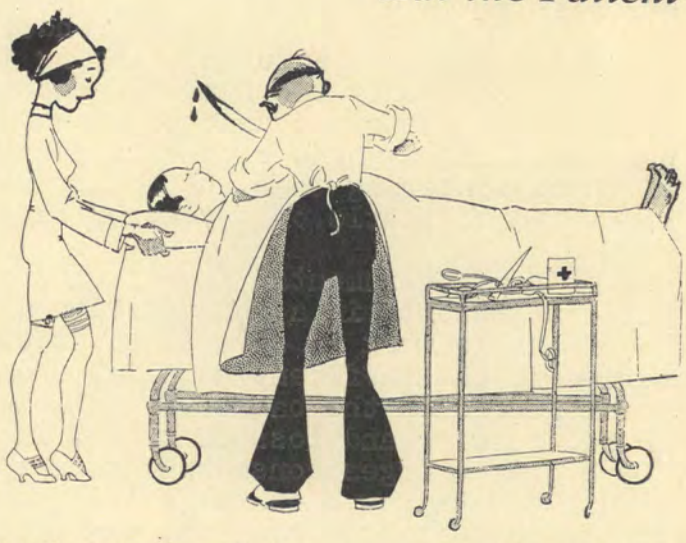
If you want to have a good laugh and some real entertainment, read Phil Carspecken's article, "A Title Transaction in King Solomon's Day." It's hot—whoopee in fact.

Another article on pertinent and everyday subjects appears by the Executive Secretary. It's just another of the series now running.

More about federal liens—and it seems we can never get enough. This is by Charles P. Wattles, attorney of South Bend, Ind., and a member of the Northern Indiana Abstract Co.

Poems are now a part of every issue. Paul Rickert has been hit by the muse and the result is a knock-out. It's so true as to be pathetic.

## The Operation Was a Great Success— *But the Patient Died!*



A great state convention—good program, lots of things decided upon, committees appointed, generally acceded that the time was ripe to do things, officers elected, a good time was had by all and the meeting adjourns. Everyone goes home, drops into the same old rut of title-itus; members forget the association and the spirit of the convention; officers lapse into a coma.

National convention—you attend, learn a lot of things, find new ways of making money and improving business, but you just can't get yourself to line them out, put into operation, and hear the cash register ring.

Regional meetings—boy howdy! They sure give the right dope and show the real things. Everybody hot. but some go home, get weakness of the backbone, that "I can't" stuff comes in, and once more the real estate man, lawyer, and all the others run the abstracter and his business.

***Yes, most operations as operations are great successes—but sometimes the patient dies.***

# The American Title Association



OFFICE OF EXECUTIVE SECRETARY
MIDLAND BUILDING
KANSAS CITY, MO.



January 20th, 1929.

Fellow Titlemen:

The lack of acquaintance, mutual understanding and common-sense stability of practice is costing the title business thousands of dollars every day. We simply must establish certain standards in methods and conduct. Recently some flagrant examples of the nonsense of lack of unity and knowledge came to light.

There was a merger of a group and considerable real estate in seven counties was involved. There was much title work needed and strange to say, the amount was about the same in each county. Very similiar conditions existed in each of them, and the counties all happened to be in a group and contiguous. Despite these circumstances, the bills rendered the company were decidedly different in amounts, ranging from five hundred and some dollars, to twenty-two hundred. Each account represented about the same volume and character of work. Needless to say the company withheld payment of the larger accounts, called a conference of those rendering them, by comparison ridiculed the situation and tried to settle on a compromise. It caused a bad mess.

Recently a governmental agency ordered a considerable amount of title statements in a condemnation matter. This likewise involved considerable work in several counties. Charges for each statement varied in the different counties from $3.50 to $15.00. Payment was tendered on the basis of the lowest item charge and resulted in bad feeling and loss of money. In each instance those making the higher charges considered them reasonable and worthy. The excuse of the low ones was either that they didn't know just how to base it or worse yet, that they were afraid they couldn't charge any more.

Needless to say, Regional Meetings have never been held in these communities. We have a lot of work to do within our own business family. The state and national associations only can do it. Every member must take a keen interest and become active. The title business need not lose money everyday in many ways that it does.

Sincerely yours,

Richard B Hall

Executive Secretary.

# COKE'S REPORTS

By McCune Gill, St. Louis, Mo.

Who is the most famous property lawyer in the history of Anglo-American jurisprudence?

Many claimants appear in response to this query—Williams, Washburn, St. Leonards, Gray, Cruise, Birkenhead, Fearne. All are great names.

But the name and fame of Edward Coke surpasses them all. And, strangely enough, although he was a man of great force and originality, an attorney-general and a chief justice, he is best known by his comments on the work of another writer, *(Coke on Littleton)*, and by his reports of the decisions of other judges. *(Coke's Reports)*. "My Lord Coke," was not a lord at all, but he got up at four o'clock every morning while the family was still asleep, and wrote law reports like they were never written before,—nor, perhaps, since.

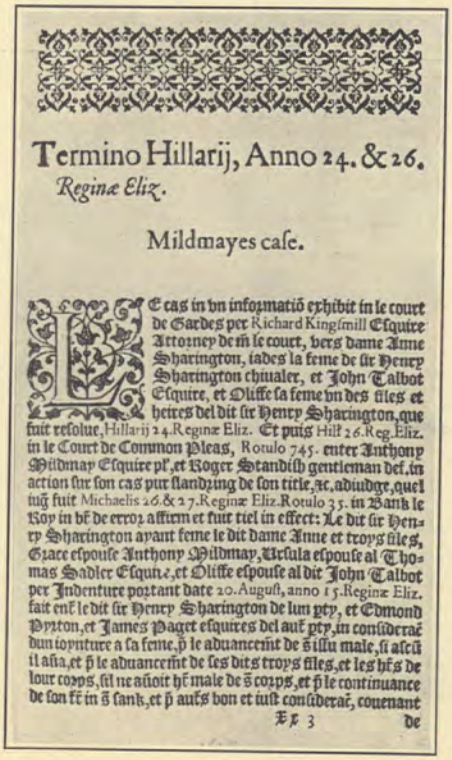
It is with these reports that we are now concerned. For some of the decisions there set forth are the very foundation stones of our present day real property law. Indeed, so important were they considered at Westminister Hall, that for a long time they were not referred to as "Coke's" reports, but as "the" reports. Certain other peculiarities readily distinguished them from most other law reports. For example, Coke did not employ the usual method of styling a case as Plaintiff v. Defendant, but always referred to it by the name of the principal actor, as So-and-So's Case. Also, the pages are cited as A or B because only every other page was numbered.

With this brief introduction let us consider a few of the decisions in these reports by Sir Edward Coke.

**SHELLEY'S CASE.** (Wolfe v. Shelley, 1 Rep. 94A). This suit was a little family fight between Richard Shelley (through his lessee Wolfe), and his nephew, Henry Shelley, Jr., posthumous child of Henry Shelley, Sr. It seems that the father of Richard and Henry Sr. held a life estate with remainder to the heirs male of his body. Coke, who was Henry's counsel, set forth in his brief what was even then an ancient rule, that such a remainder was void and the so-called life tenant took a fee tail. And thus Henry Jr., who, being posthumous, could not take as remainderman, as the law then stood, succeeded in taking by descent, all because of this argument of Coke's that has since come to be known as the "rule" in Shelley's case. As this rule has been abolished only in recent years in some of our states, and still exists, in whole or in part in perhaps fifteen of them, it is very living title law to-day.

**WILD'S CASE.** This case (which we would call Richardson v. Yardly) arose under a devise to "Rowland Wild and his wife and after their decease to their children," Rowland then having issue a son and daughter. The question arose as to whether Rowland and wife had an estate tail or a joint estate with their children. And, as Coke says, "this difference was resolved for good law," that if one devises his lands to another "and to his children or issue," and he has not any issue at the time of the devise, that the same is an estate tail, but if he then have issue, the devisee and his children shall have but a joint estate (or at the present time, an estate in common). But if the devise is to a person "and after his decease to his children or issue," the first taker has only a life estate, whether or not he then had issue. And this rule in Wild's case is still "resolved for good law" (either consciously or unconsciously) by most of our American Courts.

**BINGHAM'S CASE.** Robert Bingham, Sr., conveyed to his son, Robert Bingham, Jr., for life, remainder to the right heirs of the grantor, Robert Bingham, Sr. Is the remainder to such right heirs good? The Court answers, "No, it is void and the grantor, Robert Bingham, Sr., has the fee by way of reversion." This rule, which might be called "the rule in Bingham's Case," is a sort of corollary to the rule in Shelley's Case. At any rate, it seems still to be good law and not to be affected by the abolishing of Shelley's Rule.



Termino Hillarij, Anno 24. & 26.
*Reginæ Eliz.*

Mildmayes caſe.

THE caſe in vn informatiõ exhibit in le court de Gardes per Richard Kingſmill Eſquire Attorney de m le court, vers dame Anne Sharington, iades la feme de ſir Henry Sharington chiualer, et John Talbot Eſquire, et Oliffe ſa feme vn des files et heires del dit ſir Henry Sharington, que fuit reſolue, Hillarij 24. Reginæ Eliz. Et puis Hill 26. Reg. Eliz. in le Court de Common Pleas, Rotulo 745. enter Anthony Mildmay Eſquire pl', et Roger Standiſh gentleman def, in action ſur ſon cas pur ſlandring de ſon title, &c, adiudge, quel iug fuit Michaelis 26. & 27. Reginæ Eliz. Rotulo 35. in Bank le Roy in dc erroz affirm et fuit tiel in effect: Le dit ſir Henry Sharington ayant feme le dit dame Anne et troys files, Grace eſpouſe Anthony Mildmay, Vrſula eſpouſe al Thomas Sadler Eſquir, et Oliffe eſpouſe al dit John Talbot per Indenture portant date 20. Auguſt, anno 15. Reginæ Eliz. fait enl le dit ſir Henry Sharington de lun pty, et Edmond Pyton, et James Paget eſquires del auł pty, in conſideraĉ dun joynture a ſa feme, p le aduancemt de ſ iſſu male, ſi aſcũ il aña, et p le aduancemt de ſes dits troys files, et les hęs de lour corps, ſil ne añoit hł male de ſ corps, et p le continuance de ſon fł in ſ ſank, et p aułs bon et iuſt conſideraĉ, couenant

Ff 3 de

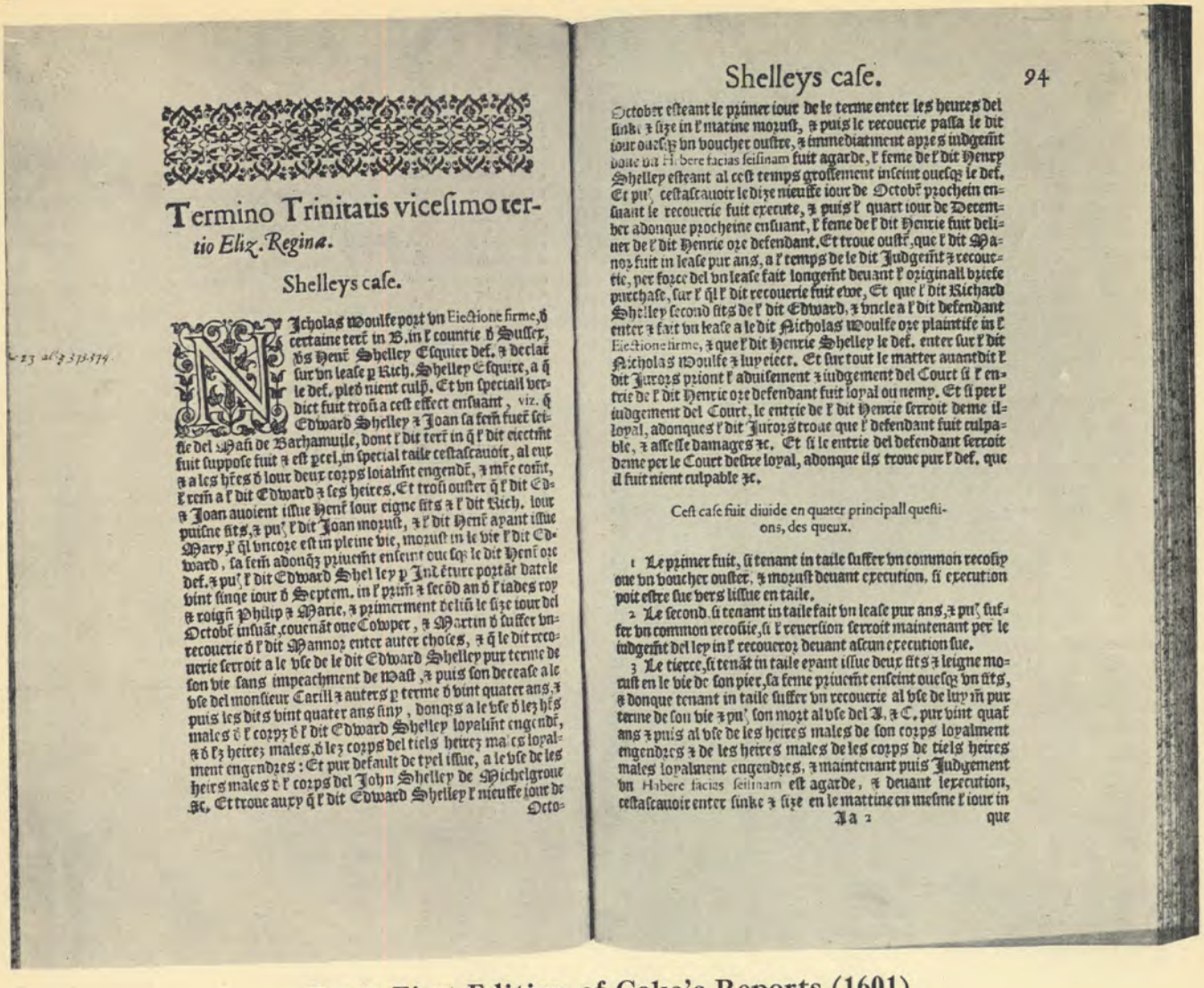
**A page from Coke's Reports First Edition (1601)**

**BORASTON'S CASE.** This case involves a state of facts which we, in this age of remainders, frequently encounter. The testator set up a trust "until such time as Hugh Boraston (his grandson) shall accomplish his full age of 21 years, and when said Hugh shall come to such age," then over. Hugh died at age 9 (without the slightest intention of becoming famous in real property law). The question was as to whether the remainders were contingent upon his "coming of age," or whether they were vested and accelerated into possession at his earlier demise. The latter view was held (and is still usually held) to be the correct one. *"Quod fuit concessum per totam curiam,"* as Coke observes, in his quaintly pedantic way.

**LEWIS BOWLES' CASE.** Here, it seems, one Anne Bowles owned a life estate, "without impeachment of waste," remainder to Lewis Bowles. Thereupon a barn (a plain, ordinary barn) on 20 Feb. ann. Reg. Jac. reg. 9. (this is the date) blew down, *"per vim ventorum,"* and was thereby speedily changed into thirty cartloads of timber. Who owned the timber, Anne or Lewis? The court said Anne; which should lead those of us who rashly create life estates to add this magic phrase, "without impeachment of waste."

**SIR EDWARD CLERE'S CASE.** Parker sued Clere, "and the case in effect was such." One Clement Harwood had power to devise certain land. He devised it but did not refer to the power. Was this absolute devise an exercise of the power? This question was decided in this instance in the negative, and has been the subject of diverse opinion ever since and is still a matter of great doubt and hence dangerous to those who pass on titles. Some states have settled the question by statutes declaring that any devise shall be construed to be an exercise of all powers; and this legislation should speedily be adopted in all the States.

**SPENCER'S CASE.** Spencer leased a house and certain land to a tenant for 21 years. The lease contained a covenant by the tenant "his executors and administrators" to build a brick wall on part of the land. The tenant assigned the lease to one Clark, but the now famous wall was never built. Spencer, the landlord, sued Clark, the assignee of the lease, because the covenant to build the wall has not been carried out. It was held that the landlord could not prevail as the covenant did not run with the land because not made specifically to include "assigns." Which hair-splitting distinction, still followed by our courts, should cause us to sprinkle the words "assigns," as well as "heirs," and



Termino Trinitatis viceſimo ter-
tio Eliz. Reginæ.

Shelleys caſe.

Nicholas Woulfe port vn Electione firme, ō certaine terr in B. in l' countie ō Suſſex, vs Henr Shelley Eſquier def. & declar ſur vn leaſe p Rich. Shelley Eſquire, a q̄ le def. pleād nient culp̄. Et vn ſpeciall ver- dict fuit troū a ceſt effect enſuant, viz. q̄ Edward Shelley & Joan ſa femme fuer ſeiſie del Mañ de Barhamutle, dont l' dit terr in q̄ l' dit electiōn fuit ſuppoſe fuit & eſt parcel, in ſpecial taile ceſtaſcauoir, al eux & a les hēs ō lour deux corps loialm̄t engendr̄, & mſe conjt, l' deins a l' dit Edward & ſes heires. Et troū ouſter q̄ l' dit Ed- & Joan auoient iſſue Henr lour eigne fits & l' dit Rich. lour puiſne fits, & pu' l' dit Joan mozuſt, & l' dit Henr apant iſſue Mary, l' q̄l vncore eſt in pleine vie, mozuſt in le vie l' dit Ed- ward, ſa femme adonq̄z p̄mierm̄t enſeint ouſq̄ le dit Henr ore def. & pu' l' dit Edward Shelley p Indenture poꝛtāt date le vint ſinque iour ō Septem. in l' p̄miſ & ſecōd an ō l' tiadel roy & roign Philip & Marie, & p̄mierment deliū le ſize iour del Octobr̄ enſuāt, couenāt oue Cowper, & Martin ō ſuffer vn recouerie ō l' dit Mannoꝛ enter auter choſes, & q̄ le dit reco- uerie ſerroit a le vſe de le dit Edward Shelley pur terme de ſon vie ſans impeachment de Waſt, & puis ſon deceaſe a le vſe del monſieur Carill & auters p terme ō vint quater ans, & puis les dits vint quater ans finy, donqꝛs a le vſe ō les hēs males ō l' corpz ō l' dit Edward Shelley loialm̄t engendr̄, & ō les heirez males ō les corps del tiels heirez ma les loyal- ment engendrez: Et pur default de tyel iſſue, a le vſe de les heirs males d' l' corps del John Shelley de Michelgroue &c. Et troue auxy q̄ l' dit Edward Shelley l' nieuſſe iour de Octo-

Shelleys caſe. 94

October eſteant le p̄mier iour de le terme enter les heures del ſunke & ſize in l' matine mozuſt, & puis le recouerie paſſa le dit iour ouſq̄z vn boucher ouſtre, & immediatment apres iudgemt̄ done pur Habere facias ſeiſinam fuit agarde, l' feme de l' dit Henry Shelley eſteant al ceſt temps groſſement inſeint ouesq̄z le def. Et pu' ceſtaſcauoir le dixe nieuſſe iour de Octobr̄ prochein en- ſuant le recouerie fuit executé, & puis l' quart iour de Decem- ber adonque prochein enſuant, l' feme de l' dit Henrie fuit deli- uer de l' dit Henrie ore defendant. Et troue ouſtr̄, que l' dit Ma- noꝛ fuit in leaſe pur ans, a l' temps de le dit Judgemt̄ & recouc- tie, per force del vn leaſe fait longemt̄ deuant l' originall briefe purchaſe, ſur l' q̄l l' dit recouerie fuit ewe, Et que l' dit Richard Shelley ſecond fits de l' dit Edward, & vncle a l' dit defendant enter & fait vn leaſe a le dit Nicholas Woulfe ore plaintife in l' Electione firme, & que l' dit Henrie Shelley le def. enter ſur l' dit Nicholas Woulfe & luy eiect. Et ſur tout le matter auantdit l' dit Juroꝛs priont l' aduiſement & iudgement del Court ſi l' en- trie de l' dit Henrie ore defendant fuit loyal ou nemp. Et ſi per l' iudgement del Court, le entrie de l' dit Henrie ſerroit deme il- loyal, adonques l' dit Juroꝛs troue que l' defendant fuit culpa- ble, & aſſeſſe damages &c. Et ſi le entrie del defendant ſerroit deme per le Court deſtre loyal, adonque ils troue pur l' def. que il fuit nient culpable &c.

Ceſt caſe fuit diuide en quater principall queſti- ons, des queux.

1 Le p̄mier fuit, ſi tenant in taile ſuffer vn common recoſip oue vn boucher ouſter, & mozuſt deuant execution, ſi execution poit eſtre ſue vers iſſue en taile.

2 Le ſecond, ſi tenant in taile fait vn leaſe pur ans, & pu' ſuf- fer vn common recoſiie, ſi l' reuerſion ſerroit maintenant per le iudgemt̄ del ley in l' recouerꝛ deuant aſcun execution ſue.

3 Le tierce, ſi tenāt in taile eyant iſſue deux fits & leigne mo- ruſt en le vie de ſon pier, ſa feme p̄miſſt enſeint ouesq̄z vn fits, & donque tenant in taile ſuffer vn recouerie al vſe de luy in pur terme de ſon vie & pu' ſon mozt al vſe del A. & C. pur vint quat ans & puis al vſe de les heires males de ſon corps loyalment engendrez & de les heires males de les corps de tiels heires males loyalment engendrez, & maintenant puis Judgement vn Habere facias ſeiſinam eſt agarde, & deuant lexecution, ceſtaſcauoir enter ſunke & ſize en le mattine en meſme l' iour in

Aa 2 que

## From First Edition of Coke's Reports (1601)

"successors," all over leases, ease- ments, restrictions, contracts of sale, deeds and other instruments contain- ing covenants that are meant to run with the land.

**SIR ANTHONY MILDMAY'S CASE.** The deed in this case con- tained a clause forbidding or re- straining the alienation of an estate, entailed to three daughters *"et les heires de lour corps."* There seems to be a deep psychological something running through us humans that causes ancestors to want to tie up their property; and as fast as they create new ways to do this their heirs invent new ways to untie it. And then other ancestors forbid such untying. But the courts usually side with the living (and voting) heirs rather than with the dead ancestor, and hold such "subtle inventions" as restraints to be repugnant and void. And so it did in the present case of Coke's; as it did likewise in an American case decided within the past few months, where a testator tried to forbid a sale of re- mainders for reinvestment under the statute.

**ARCHER'S CASE.** One Francis Archer by his will devised land to "Robert Archer for his life and after- wards to the next heir male of said Robert." Is the remainder vested or contingent? It was held to be con- tingent and hence a conveyance by Robert was held to bar the remainder- men. But those happy days (when conveyances barred contingent re- mainders) are gone forever and a con- tingency now makes the property un- salable instead of salable. It might occur to you that the Rule in Shelley's Case should give Robert a fee tail, but this is not so, because the word used is "heir" (singular) and not "heirs."

**SAUNDER'S CASE.** Saunders brought an action of waste against Marwood, a life tenant, for digging "sea-coals." (The word "sea coals" was then used to distinguish ordinary coal from "char coals.") After much deliberation it was held that a life tenant can work a mine that was open when his tenancy commenced but can- not open a new vein "within the bowels of the earth" unless particular per- mission is given him so to do in the instrument creating the life estate. The facts of this old case seem far removed from our great modern oil fields, but we find the principle here announced still applied even in situa- tions where natural justice would seem to dictate that the contrary should be the rule. Thus it has been held that a life tenant cannot drill for oil even though such oil would otherwise be lost by drainage to adjoining wells.

**GODDARD'S CASE.** This was a suit on a note or bond bearing date "4 April, 24 Eliz." The defence was that the note was void because the date was an impossible one, the de- fendant being dead on the date given. The jury found, however, that the bond was delivered on "30 July, 23 Eliz.," on which date defendant was still living. And it was adjudged by the court that it was his bond or deed, "because the date of a deed is not of the substance of it, for if it hath no date, or an impossible date (such as the 30th of February) yet it is good;" that is, a deed takes effect from the day of its delivery, not from the day of its nominal date.

**HENRY PIGOT'S CASE.** This was a suit by Benedict Winchcombe, against Henry Pigot, on a bond or

note to Benedict Winchcombe, Sheriff of Oxford County, in the sum of sixty pounds. The words "Sheriff of Oxford County" were not in the note as originally executed but were inserted later, without the knowledge or consent of Benedict or of the maker of the note. It was held that this was not a material alteration and hence judgment was rendered for plaintiff; but it was resolved that if the alteration had been in a material part the note would have been void even though the alteration were by a stranger—a mere "spoliation;" and if the alteration had been by the payee himself the note would have been void whether the alteration were in a material or immaterial part. All of which is still (between the parties) pretty much the law to-day, the recent negotiable instrument statutes having returned to the doctrine of this case of Coke's.

**COOK'S CASE.** In this case a record of a conveyance or common recovery indicated the name of the place or description as "Iffield" instead of "Isfield," the latter being the correct name. This may have been merely the negligence of a clerk, or a confusion between the long "s" then used and the letter "f." But the court (even in that super-technical age) agreed that the description was good and should be amended, which ought to serve as an example to those title examiners who delight to make much of small discrepancies in names.

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Thus have we considered an even dozen of the principal property cases reported by the most famous property lawyer, commentator and reporter of his day—cases that are still continually referred to, as basic authority, and cases that should be as familiar to those who deal with property law to-day as they were to those who, 325 years ago, were accustomed to read their law reports in black letter French. In the words of Coke, *"Observe, reader, your old books, for they are the fountains out of which the law issues."*

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# A TITLE TRANSACTION IN KING SOLOMON'S DAY

## (*The Gospel according to Philip, the Abstracter*)

Solomon, King of Israel
(No spouse unites)
—to—
Hiram, King of Tyre

WARRANTY DEED
Dated 1110 B. C.
2nd Kings, Chapters (?)
Consideration—see supra.

And it came to pass in the land of Israel, when all the earth was smeared up with the Begats, that the Queen of Sheba, a right royal Jane, and fair to look upon withal, did signify her intention of paying a visit unto Solomon, King of Israel, and great were his preparations therefor. He forthwith hired an orchestra from the land of the Jazzites, and signed up all the dancers from the Follies of 1110 B. C. and dug deep into his coffers for gold and silver and precious stones wherewith to pay the fiddlers and dancers. And lo, in thus putting on the dog, Solomon became exceedingly low in jack and he called unto him a Scrivener, cunning in the ways of the law, and said unto him, I will sell unto Hiram, King of Tyre, the timber lot in Section 16, Canaan Township, and replenish my coffers with the proceeds thereof. And the Scrivener did thereupon draw up a deed, in the form prescribed by the laws of Moses, whereby King Solomon did convey and warrant unto Hiram, King of Tyre, the timber lot in Canaan Township, for the consideration of six hundred threescore and ten shekels, and other good and valuable consideration, being a keg of Spikenard, some mixed spices, three camels and some Lucky Strikes. And King Solomon signed the deed and said unto the Scrivener, Go ye unto Hiram, King of Tyre, and deliver unto him the deed and bring me the jack and other valuable consideration. And the Scrivener waited upon Hiram, King of Tyre, who summoned his counselors and bade them give the deed the once-over. And the counselors did consult the text books and decisions of Moses, and did gravely advise Hiram that the spouse of Solomon should unite in the deed and relinquish dower. And these tidings the Scrivener brought unto Solomon, who was exceedingly wroth threat at, and raged and tore his hair and tugged at his whiskers, and bitterly cursed the counselors of Hiram, whom he did call cheap shysters and Philadelphians. For Solomon had seven hundred wives and three hundred concubines, and the right of dower was scattered all over the length and breadth of the land, even among the Moabites, the Ammonites, the Edomites, the Hittites and other Ites of high and low degree. And Solomon said unto his Scrivener, Go ye and get quitclaim deeds from all these skirts to satisfy these scurvy counselors, and shake a leg, for bill collectors do haunt my palace. And for forty days and forty nights the Scrivener drove his chariot through all the land and gathered the signatures of the wives, both legal and at common law, of Solomon, all of whom did sign except one Sarah, a Hittite, who held out for an hundred shekels and a new hat. And Solomon was greatly incensed at Sarah, and he summoned his chief headsman and said unto him, Put on thine axe an edge keen even as the blade of Gillette, and go ye unto Sarah, the Hittite, and cut off her inchoate right of dower. And the headsman did the thing, and thus the title was quieted to the timber lot in Section 16, Canaan Township, sold by Solomon, King of Israel, unto Hiram, King of Tyre.

*Phil Carspecken,*
*Burlington, Iowa.*

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## State Title Association Organized in Connecticut

At a meeting of representatives of title companies held in Stamford, Dec. 15, a state association was perfected. William Webb of the Bridgeport Land & Title Co. was the instigator of the move and a representative group responded to his call for the meeting. Edward C. Wyckoff, president-elect of the American Title Association, attended and told of the benefits from affiliation with the national association, as well as many things of value and interest that would arise locally.

Carleton H. Stevens of the Real Estate Title Co., New Haven, was elected vice president; James E. Brinckerhoff, attorney for Fidelity Title & Trust Co., Stamford, secretary-treasurer; and an executive committee composed of the following: Harvey W. Chapman, president of Kelsey Title Co., Bridgeport; Walter N. Maguire, attorney, Charter Oak Title & Trust Co., Stamford; Norris E. Pierson, attorney, Western Connecticut Title & Mortgage Co., Stamford.

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## A Standard City Planning Act

The Department of Commerce of the United States has issued its pamphlet on the standard city plan enabling act. It is another of the many examples of work on practical things done by the department in recent years and in carrying out the ideas of Secretary Herbert Hoover to aid business and general development.

A most representative advisory committee was appointed which ably assisted in the work. While the report is comparatively short, it is very concise and deals with every possible phase of a city planning act, including intents and purposes, recommendations, and all the details of operation.

It covers four general subjects which experience has shown to be a necessary part of planning legislation. They are: (1) the making of the city plan and the organization of the city planning commission, (2) control of subdivisions, (3) control of buildings in mapped streets, and (4) a regional plan and planning commissions.

Anyone interested can get a copy by remitting 15 cents to the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C., and asking for the pamphlet, "A Standard City Planning Enabling Act."

# "Service—What Is Thy Meaning"

By Richard B. Hall, Executive Secretary

Where is the dividing line in that wonderful function of "service" where a business courtesy stops and a legitimate work begins? To answer this immediately calls to mind that perplexing problem confronting all business, "what is SERVICE, after all?" and, the other ingredient of every act and thing, the common sense perspective.

Everyone in the title business, particularly the abstracters, wonder and ponder much over the things they are asked to do, which service people seem to think they should have for nothing. Although I have heard this discussed many times—almost as often as discounts, cut-throat competition and curbstoners—there have been very few definite opinions expressed and not as many conclusions reached.

Nor does this problem confront us alone. All businesses have had to consider it, especially of recent years. Service is a muchly abused word; many wish it could be kicked out of the language and it has gotten to the point where a good way to lose out in negotiations is just to mention service. Then one gets suspicious and oftentimes runs. This business of service has been run into the ground for two reasons. One is that in the wild scramble of intense competition in the past few years, some have not been able to distinguish between offering legitimate inducements and making a fool out of themselves. The other is that we have had waves of "buyer's markets" when the public was quick to recognize its chances and then work them to death.

Most businesses have taken them in hand. It used to be that when you bought an automobile, the dealer would keep it running mechanically free for nearly the life of the thing. Free inspections, free service for a year, free tow-ins within 20 miles and all kinds of such stuff nearly wrecked the automobile dealers. Their repair shops sapped their lives. Now that has ended. They look it over at the end of 250 miles and that is all. The short-life manufacturer's guarantee against defects soon runs and then you pay bills.

The battery man used to test your battery and put in distilled water free. It entailed the purchase of a water still. other equipment and wages for competent and trained battery men. They soon found out that did not pay so they charge just ten cents each time—a small item but they protect themselves against the expense. Even make a little money.

There are many examples of this which everyone can recall them to mind. There are others going merrily on. Many businesses are scratching their heads and wondering how it all happened. Each year they seem to have a greater volume of sales, have had more units, but the profits are growing smaller each year, often there are none. The cost of doing business —"SERVICE"—is eating them up.

Some have taken care of it by adding to the cost. Many concerns, particularly manufacturers of products, radios, vacuum sweepers, fountain pens and others, give a lifetime guarantee, maintain factory branches and send out experts periodically or upon call to service their appliances. But the consumer has been made to pay. True, he does not pay each time, but I ask you to notice the increased price in such commodities that have come about in the past few years. This increased selling mark was to provide for these servicing departments and also for the better and more efficient machine, because the better the article, the less servicing is required.

No business, profession, or personal service institution has been able to escape this entirely. At first it was competition indulged in by those of the same class. Then came the low-price chain store, cash-and-carry, factory outlet and otherwise, who came in because it was thought people would rather pay less for the commodity and do without so much service. That only fanned the flame because they all found out there had to be so much service and no strict or hard-boiled disposition could exist. Other problems have arisen and sometimes we wonder when and where it is all going to. Stores in the cities are having to build garages or provide free parking facilities to draw trade from the outlying districts or chain stores. They check your grips or packages, take care of the babies, have play rooms for the children, give toys with every pair of shoes or a boy's suit, and do most anything to get your trade. One thing that was always a wonderment to me was the wrapping and mailing facilities always provided—free. I know several men, and women too, who never wrap a Christmas package. They buy the stuff and the stores wrap and send them, free.

And what of our own business? The first thing that comes to mind is that there can be no ironclad rule to apply to all places. The attending circumstances must prevail, anyway influence. I have heard so many abstracters bring up this matter and often have come to the opinion that the abstract business was the world's first-class sucker and undoubtedly imposed upon very much. But if so, why does he stand for it and why not change? Then again, after learning so many things at state conventions and regional meetings, I formed the conclusion that he wasn't giving away little matters of service. It was not that he was being a goof on these things so much as that he was confusing these service matters with other things. The real fault was that he was giving away abstracts, making so many special prices for complete abstracts, special chains of titles, and such things as those rather than services he could and should do to honestly build up good will and attract people to his place of business.

However, the purpose of this article is to deal with the little matters of service and not the other flagrant fool practices that are prevelant. They will be handled later in a separate article.

In the first place, we should visualize the fact that the abstract office is not a popular place. People do not come in them because they look pretty or have any special inducements—even women cannot shop and meet in a pleasing atmosphere in an abstract office. People never come into one for any purpose other than to collect bills, solicit for community enterprises or for something they need at the very last minute, having probably tried in many ways to do without; that is, unless it is for some helpful information such as can only be easily obtained from the abstracter's records.

In addition to the fact that no one ever comes into the abstracter's office except because of necessity, who are those who do come in? It is not exaggerating to say that eighty per cent of the abstracters get eighty per cent of their business from just a few sources. They are the real estate men, mortgage loan companies or representatives, bankers, lawyers and building and loan associations. In the smallest places, may be fifty per cent comes from these sources and the balance from the individual, but in the greatest number, increasing more so each year as to the percentage from this number, increasing likewise in every place regardless of size, the abstracter's business is derived from such agencies.

The first thing that appears then, is that we are not a popular or common place of business and our trade comes from a select and group source. Then there immediately flashes the fact that these people who bring in the work are not the actual consumer, but are merely bringing it in to us as an agency or intermediary. We are dependent upon them, and they get nothing out of bringing the abstracts in to us. (Most real estate men sell land without charging a commission; most loan companies lend money for

nothing and no abstracters ever give commissions.) But despite the allusions, this condition is a factor and the abstracter must give it consideration.

Now the next thing to consider is the nature of the gratuities and what these services are that are rendered. The most prevalent are for the furnishing of information. After all, though, all the abstracter has to sell is information based upon the facilities for finding out or giving. His principal products of this are, of course, abstracts, and any kind of a formal title report. Too many abstracters give these away, but as stated, this will be handled in a special article to follow later. On the other hand, some abstracters take too much of a one-track opinion of the situation and take their information-giving facilities too seriously.

I have been in abstract offices where the first thing that met my gaze was a large sign in bold, very black letters. "Information is all we have to sell. We charge for it." Obviously, one feels as though he were going into a lion's den of some kind. I am always for the abstracter who gets every cent he can, who gets more for what he does and finds more ways of getting remuneration but there must likewise be a consideration of the fact that we can and must in all businesses, do little things that make for good will of the public in general and our customers in particular.

On the other hand and as an opposite extreme, there are all too many cases where the abstracter is the goat and long established custom has decreed that he gets nothing except for a formal job of abstracting, and then it's all too little. Probably one real reason for the impositions is that the average abstract office is the community bureau of information on all kinds of matters. The nature of the business brings this about, for the abstracter is in constant contact with the business affairs of the people of his county, knows much of private business affairs of many, and his routine takes him into the family and business records of the past. He gets affidavits about most everybody and everything. He almost knows the court, marriage, birth and burial records by heart and then, in the course of his work, he must be a lawyer, real estate expert, real estate loan man, surveyor, draftsman and what not. What abstracter cannot recall the many times he has been asked about wills, contracts, how to close real estate deals, about rental leases, chickens running loose and so many others.

Several amusing incidents are included among the lot. One day I received a phone call asking for information on a very technical subject and it was so unusual as to be startling. The party was asked if he was not mistaken in the direction of his inquiry. He replied that he had called the city library and they had referred him to the abstract office. With the matter checked to me in this way I was determined to fulfill expectations and, after perusing around the various books and sources of information on hand, furnished the gentlemen with the desired data.

An abstracter once told of a woman calling his office and asking if he could tell her where her husband was. He just happened to glance out his office window and, seeing the sought-after gentlemen just entering the village drug store, was able to reply "Yes, he is in Bill Brown's drug store. Call phone number 652."

All these things are nice to have as a part of your reputed ability but, of course, they do not make you any money directly. They cannot be considered as business impositions either. As a rule the abstracter knows personally or knows of practically every substantial citizen and property owner in the county. This is certainly true of the smaller places and to a great extent in every city of considerable size. Consequently people believe him to be able to help them in many matters.

But the more direct business matters, information of the nature of which can only be secured by some work and from his permanent data, are the things that perplex the average abstracter.

Among them are requests for information as to the present owner of a piece of property; what mortgages are against it, when due, rate of interest, terms, and to whom assigned; small plats showing the owners of various lots in a main street block or certain area; a "pencil report" or pencil abstract of certain instruments, or the title for a stated length of time; statement as to judgments, suits pending and taxes; record owner for some material man or contractor so he can file a mechanic's lien; advancement of recording fees; drawing of affidavits, deeds, mortgages, chattel mortgages, notes, all kinds of papers, in fact; looking into a probate file and giving list of heirs; and many others of a like nature.

Where, when and upon what to draw the line depends upon a number of things as to where a charge is warranted and upon what items. Attending circumstances, the source of the request, common sense and business judgment all enter into the proposition.

First let us look at some of the attending circumstances and influences. Every business, no matter what its nature, must create a certain amount of good will. Business and the world in general owes nobody or nothing a living or existence and everything must stand in a certain good light. In late years, even banks, public utilities, yes, even the government, has learned this and it has reached the point where many private institutions, industries and all enterprises, in fact, bid for public favor by the creation of public relations departments or through the activities and representations of trade associations and other mediums, to accomplish this all essential thing.

The abstracter should therefore take advantage of every opportunity to do this. He should also keep in mind that his business is not one of popular and eevryday use, but people generally come to him through necessity He will therefore really be used to a small degree in comparison with others and there will not be a stream of people coming and going into his place. In one of the most valuable and timely addresses ever given before an American Title Association convention, Worrall Wilson, in his paper before the Denver meeting, recommended that the abstracter increase his logical activities and build his business so that many more people would be coming in and out of the office.

If the court house is away from the center of business and your office in the heart of it, does it not sound like good business to have it known that the real estate men, lawyers, and others can get information from your near-by office instead of having to make a long trip to the court house? This is particularly true where there are county indexes and easily accessable records where the public can get the data anyway and FREE. One of the causes in many places for agitation and the reason that the county installs county indexes, confiscates the abstracter's books, and the county goes into the abstract business, is because of the arbitrary attitude of the abstracter or the poor service he even sometimes renders on paid jobs.

But one of the basic elements to the consideration of the problem is the fact that most of these requests, particularly for mere matters of information, come from the real estate men, loan companies, attorneys, banks and others, who are the abstracter's best and majority of customers. It has gotten so in the past few years that a majority of the abstracter's business comes from these few sources.

No one ever has to fear the fair-minded, really responsible and businesslike man. But they are not all that way, and even with them at times, as well as with the other varieties often, these little requests for services are unfair and known at the time to be impositions. All too often, too, there is a deliberate attempt by unfair or unscrupulous people to impose upon the title company in such matters, working it because the party in question has some volume, or worse yet, just a little patronage now and then.

It would therefore seem that if a real estate man is trying to find the owner of a property because he has a prospective customer, wants an idea as to the owner, the mortgage encumbrance against it, or the mortgage broker wants similar information for the help it will do him in closing or negotiating a deal, the abstracter can

well afford to give it and be glad of the chance to serve a good customer, who later will have an abstract or title job on the matter. This same rule might hold true in the case of ascertaining the amount of taxes a property has to bear, or even if they are paid, and also in case of judgments against a party when they can easily be ascertained.

Likewise if someone just wants to know if a property is in John Johns' name, or if it is J. J. or John Johns, it is a pretty good policy to look it up and tell him.

Drawing plats of a vicinity, whether they be a block of ground or the so-called "township" or "section" ownership maps, warrants compensation, no matter from what source.

No abstracter should feel that he should gratuitously furnish any lumber company, material or supply house, contractor or other with information of the record ownership for the purpose of filing mechanic's liens. Many abstracters, particularly in the larger places, derive quite a little revenue from this source.

When it comes to making any of the so-called "pencil" jobs, the taboo is put upon them right away. There should be no such thing as a pencil report, pencil supplement, or otherwise. Such requests constitute one of the biggest pests and impositions in the business. They are asked for many times on the premise that they are preliminary to a real job that will come later, but one of the characteristics of this class of order is the fact that these later jobs never materialize.

Likewise, no abstracter should furnish any good customer, poor customer, bank, lawyer or any other with mere matters of information when he knows that a deal will be closed upon it without any abstract job. This is particularly true of banks which are making loans on second mortgages, even firsts, to some bank customer, and are taking the real estate security more as an addition to the moral security than for it alone. We are also reminded of this practice by lawyers, who will lots of times bring a foreclosure, suit to quiet title and others without a certified abstract or real title report, and evade same by coming in, looking over the abstracter's books, or otherwise working him for free information upon which they will base their action.

When it comes to drawing papers, whether they be affidavits, conveyances or what not, every abstracter should have a set scale of charges and stick to it. If he does not, then he is running competition to the lawyers, bankers and others who do, or should. Anyhow, all such cases are worth money, and afford a wonderful means of revenue. Abstracters should specialize in securing and drawing affidavits and getting such things as are necessary for perfecting title. He should get better fees when considerable work is involved in securing the necessary affidavits, quit-claim deeds, etc. An abstracter should develop his business along the line of rendering complete title service, and be paid a fitting compensation.

Much has been said about advancing recording fees, taxes and other items. While this sometimes involves an outlay of some little amount (often quite a burden to the average abstracter's ability), it is good business when done as a convenience to a *thoroughly responsible* customer. Many recorders require cash at the time of filing. In fact, this is required by law in most states, or practiced by nearly every county recorder. Some have used this as a business getting argument or assurance of satisfaction of customers. And the money need not be outstanding for any length of time. No one would expect the abstracter to be out of money for any length of time for such advancements, and statements for such can be rendered every few days, once a week, twice a month or any other time as per agreement. This is a particularly nice service to render out-of-town loan companies and others. "Send your papers to us for recording, we will advance the fees" has secured and kept business for many an abstracter and even big title company. pany.

An abstracter should not, however, represent people at tax sales, or other such things, without compensation and here again is a chance many abstracters use to advantage for profit by charging a fixed fee, or percentage.

So it evolves itself into a common sense business proposition. You can and should render the little niceties of service to people generally; go a little further with your regular customers, but at the same time you do not have to be a goof or goat. When it involves some work, calls upon your skill, or from a resource such as you only have and cannot furnish without effort, charge for it. Let the little things go—but make up for them by legitimate and commensurate charges upon the items that will bear the traffic.

Because the abstracter can and does serve in so many ways, he has unquestionably let himself be imposed upon in many ways. People are willing, as a rule, and glad to pay for legitimate service. They will think more of you if you charge for same, and likewise, lose some of their respect for you if you let them work you.

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# Guaranty of Titles of Realty Held to Be Insurance Business

## Liability of Company to Income Tax Determined by Ruling of Bureau of Internal Revenue

Bureau of Internal Revenue, General Counsel's Memorandum 5355.

In the opinion which follows the General Counsel of the Bureau of Internal Revenue holds that where the income of a guaranty company is derived principally from the insuring of titles to real property and it does not engage in any other distinctive line of business, the company is taxable as an insurance company within the provisions of Section 246 of the Revenue Act of 1926. The full text of the opinion follows:

An opinion is requested as to whether the M Guaranty Co. is entitled to be taxed for income tax purposes as an insurance company (other than a life or mutual insurance company) under the provisions of Section 246 of the Revenue Act of 1926.

The evidence presented discloses that the company was incorporated in March, 1920, under an Act of 1902 of the State of R, providing for the regulation of insurance companies and the transaction of insurance business. The company was duly authorized by the department of insurance of the State of R to transact the business of insuring against loss or damage on account of encumbrances upon or defects in title to real property, and against loss by reason of the non-payment of principal of and interest on bonds and mortgages. In addition thereto the company was authorized to employ its capital and surplus to take, buy, sell, and deal in first mortgages on real estate, and to issue bonds, debentures, and certificates against such mortgages. It is stated that although the company, under its charter and under the insurance law of the State, has power to deal in first mortgages and issue certificates against them, it has never issued any certificates against such mortgages but has devoted its efforts exclusively to the title insurance business.

It appears that all of the company's income is derived from premiums received in payment of title insurance with the exception of (1) income from securities deposited, as required by the law of the State, with the insurance department of the State of R as security for policyholders, and (2) rent from subleasing a part of the premises occupied by the company as its home office.

As the company's income is derived principally from the insuring of titles to real property and it does not engage in any other distinctive line of business, the company is taxable as an insurance company (other than a life or mutual insurance company) under the provisions of Section 246 of the Revenue Act of 1926.

# A LIEN OF FEDERAL JUDGMENTS AND DECREES

By Charles P. Wattles, Attorney, South Bend, Indiana

The question, which appears as the subject of this article, is limited to those which arise in the application of the Act of Congress of Aug. 1, 1888. Many attorneys have failed to appreciate the effect of this statute, but the recent decision of Rhea vs. Smith has brought sharply to the attention of attorneys throughout the country, the question of the lien of judgments and decrees of the United States Court.

In order that we may thoroughly understand the situation here in Indiana, and I may say in passing that it applies to many states as well, it is my purpose in this article to review the Federal statutes specifically dealing with the subject of Federal liens, with a review of the principal cases bearing upon the question and as applied to our local situation.

One cannot have a complete understanding of the legal consequences without knowing the history of the enactments, amendments and repeal of the various sections of the Federal statutes dealing with Federal judgments and decrees.

Previous to 1888 I find no Federal statute dealing specifically with the subject of judgment liens. In 1789 a statute[1] was passed providing that

"The laws of the several states except where the constitution, treaties or statues of the United States otherwise require or provide, shall be regarded as rules and decisions in trials at common law in the courts of the United States in cases where they apply."

In 1840 the following statute[2] was passed.

"Judgments and decrees rendered in a circuit or district court within any state shall cease to be liens on real estate or chattels real in the same manner and at like periods as judgments and decrees of the courts of such state cease, by law, to be liens thereon."

In 1872 another statute[3] was enacted, as follows:

"The party recovering a judgment in any common law case in any circuit or district court shall be entitled to similar remedies upon the same by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the State in which court is held, or by any such laws hereafter enacted, which may be adopted by general rules of such circuit or district court; and such court may from time to time, by general rules, adopt such state laws as may hereafter be enforced in such state in relation to remedies upon judgments as aforesaid by execution or otherwise."

There is a long line of decisions under these statutes to the effect that a lien in the Federal court has the same effect throughout the territorial jurisdiction as the lien of a state court has throughout its territorial jurisdiction. Of the numerous decisions on this point, the leading case is Massingill vs. Downs decided in 1849, and which is quoted at length in the very recent case of Rhea vs. Smith. In Massingill vs. Downs[4] it is held that in those states where the judgment on the execution of a state court creates a lien only within the county, in which the judgment is rendered, a similar proceeding in the circuit or district court of the United States will create a lien to the extent of the jurisdiction. This has been the practical construction of the power of the courts of the United States, whether the lien was held to be created by the issuing of process or by express statute. Any other construction would tend to subvert, or at least materially affect the judicial power of the Union. It would place suitors in state courts in a much better position than in the Federal courts.

In United States vs. Humphreys[5] it was held that a Federal judgment need not be recorded to be valid. This case arose in Virginia, there being a statute in that state requiring judgments in state courts to be recorded. This case was decided previous to the passage of the present Federal statute of 1888.

The next enactment was the Act of Aug. 1, 1888[6] which, as originally enacted, reads as follows:

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

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

The Act of Mar. 2, 1895, amended Section 3 of the above Act to read as follows:

"Sec. 3. That nothing herein contained shall be construed to require the docketing of a judgment or decree of a United States Court, or the filing of a transcript thereof, in any state office within the same county, or the same parish in the State of Louisiana, in which the judgment or decree is rendered, in order that such judgment or decree may be a lien on any property within such county, if the Clerk of the United States Court be required by law to have a permanent office and a judgment record open at all times for public inspection in such county or parish."

On Jan. 1, 1913, the original Section 3 was repealed. Apparently this section was not specifically repealed by the Act of 1895, and on Jan. 1, 1917[7], the amended Section 3 was repealed.

Thus, since Jan. 1, 1917, the judgment lien law has consisted of Section 1 of the original Act of Aug. 1, 1888. From Aug. 1, 1888, until Jan.1, 1917, it was not necessary to docket a Federal judgment in accordance with the state law in those cases where the judgment was rendered by a Federal court sitting in the county where the land was situated.

By way of illustration we shall suppose that a judgment was rendered in a Federal court sitting in Wayne County, Mich. The judgment would be a lien on all land in Wayne County whether or not the Federal judgment was docketed or recorded in accordance with any law providing for docketing or recording a judgment of the state court.

This has not been the law since Jan. 1, 1917, and all Federal judgments, whether rendered in the county where the land lies, or whether rendered in another county, must comply with Section 1 of the Act of Aug. 1, 1888.

The law, then, with reference to judgments of United States Courts, is what it was previously to 1888. The declaratory part of the enactment previous to the proviso in Section one, merely restates the law as laid down in numerous cases, reference to which has been made. The declaratory part of the law reads as follows:

"That judgments and decrees if rendered in a circuit or District Court of the United States within any State shall be liens on property throughout such State in the same manner and to the same extent and under the same conditions only as if such judgments had been rendered by a Court of general jurisdiction of such State."

Thus the various states may be classified with reference to Section one into two classes. In the first class, we find those states whose statutes are such that no advantage can be taken of the above proviso. In the second class we find those states whose judgment lien laws are such that advantage may be taken of the proviso, but of which no advantage has been taken by legislation. Indiana is a splendid example of the first class, as will hereafter be pointed out. With these facts in mind we come now to a discussion of Rhea vs. Smith[8], the most recent case, in order to show the application

to the principles laid down above.

The simple facts of Rhea vs. Smith are these: One Blanche A. Whitlock was the common source of title of both plaintiff and defendant and in 1921 owned the property in dispute situated in Jasper County, Mo. As plaintiff she brought suit in the United States District Court for the south division of the West District of Missouri, at Joplin, in Jasper County. On Jan. 10, 1921, suit was dismissed and the costs adjudged against her in the sum of $8,890.20.

On Apr. 5, 1921, she conveyed the property in dispute to Thomas C. Smith for $5,000.00. On July 22, 1921, execution was issued upon the judgment is the Federal Court, and under it the Marshal sold part of the land for $200.00 and conveyed it by his deed to the plaintiff, Rhea. In December, 1921, on another execution the balance of the land was sold and conveyed to Rhea for $25.00.

The contention of Rhea was that the judgment of the Federal Court was a lien on the real estate from rendition; that his title was acquired through execution sales and was superior to any title secured by subsequent conveyance.

Smith, respondent in the case under consideration, contended that in as much as no transcript of the judgment had been filed in the office of the Clerk of the Circuit Court as required by Missouri law, the judgment was not a lien, and the conveyance to Smith by Whitlock, the judgment debtor, was free from its encumbrance.

The contention of Rhea was based upon the legislative acts of the State of Missouri which were adopted in an effort to comply with the requirement of Section 1 of the Congressional Act of 1888, which statutes read as follows:

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

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

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

The Supreme Court of Missouri upheld the contention of Rhea[9]. The opinion first recognizes that there is a difference in the position of the lien of the Federal court, and that of a state court, but decides that the lack of conformity is so slight as to make no material difference, and should not be regarded as a failure to conform. In the second place the court pointed out that the judgments of the Supreme Court of the state and the courts of Appeals of St. Louis and Kansas City could only become a lien on the real estate of a judgment defendant in a particular county, upon the filing of a transcript of the judgment in the Clerk's office where the land lies, these, in the minds of the Supreme Court of Missouri showing conformity. In the third place the Missouri court recognized the element of time which could possibly elapse between the rendition of a judgment in the Federal Court and the recording of a transcript of the same. Such a lack of conformity between judgments of State and United States courts was dismissed with the thought that

"It would take but a short time and a very little trouble to transcribe a judgment of a Federal Court sitting in a County Seat and to file it in the office of the County Clerk of the Circuit Court in the same place on the day of its rendition and thus put it on par with the lien of any judgment of the State Circuit Court rendered on the same day."

Likewise the Supreme Court dwelled upon the significance attached upon the purpose of Congress in repealing Article 3 of the Statute of 1888 as amended by the Statute of 1895 and previously referred to. The Missouri Court held that the repeal of that section indicates Congress's intention to permit the requirement in the State Statute that there should be some additional record of the Federal judgment in the State Court in the County where the Federal Court sits, without destroying the desired conformity.

Chief Justice Taft reversed the decision of the Supreme Court of Missouri upon the grounds that Sections 1555, 1556 and 1554 of the Missouri Statutes (supra) do not secure the needed conformity in the creation, extent, and operation of the resulting liens upon land as between Federal and State court judgments.

Taking up the reasoning of the Missouri Court, the Supreme Court holds that the United States District and Circuit Courts cannot be put on the same basis as appellant State Courts in Missouri, having like the Federal District Court a larger jurisdiction than a County and says:

"It is obvious, however, that the District Court of the United States is a Court of first instance of general jurisdiction just as the Circuit Courts of the various Counties in Missouri are Courts of general jurisdiction of the first instance. The conformity required should obtain as between them and not as between the Federal Court and the State appellate courts.

With reference to the amount of time necessary to transcribe a judgment and record it, the court finds that there is a possibility that there would be no prejudice to the holder of a judgment, but that the risk to be run by the forgetfulness of attorneys of having this done, or otherwise, is a factor to be considered and makes a real difference between the provision for the lien of the Federal Court judgment and the instant attaching of a lien upon the rendition of the State Court judgment, without Court action. With reference to the repealing of Section 3 of the Statute of 1888 as amended, the Chief Justice concedes for the purpose of argument that it was Congress's intention to permit the requirement in a State Statute that there should be some additional record with reference to Federal judgments but decides that this does not show, that in order to secure conformity there must not be a similar requirement for a formal record in the State Court of the County of its judgment to create a lien.

The decision may be well summarized in the following words of the Chief Justice:

"It is the inequality which permits a lien instantly to attach to the rendition of the judgment without more in the State Court which does not so attach in the Federal Court in that same County that prevents compliance with the requirement of Section 1 of the Act of 1888."

## *Books Reviewed*

### "Real Estate Titles and Conveyancing"

by

NELSON L. NORTH

and

DEWITT VAN BUREN

719 pages, 6x9 inches, $6. Published by Prentice-Hall, Inc., New York.

Nelson L. North, Member of the New York Bar and Lecturer on Real Estate, New York University; and DeWitt Van Buren, also Member of the Bar, and Manager, Maintenance of Plant and Records, Title Guarantee & Trust Co., Brooklyn, have written a new book on "Real Estate Titles and Conveyancing." It will be of special interest to all who are now, or who later may be, confronted with problems on titles. This complete book is up-to-date, thorough and above all, it is practical.

This book was purposely constructed and arranged so as to quickly familiarize lawyers and realtors with the work of examining a title as conducted by title and abstracting companies. Its clear exposition makes it easier for them to conduct their business relations with these companies after they have engaged such a company to examine a title. The chapters on "Report of Title," and "Preparation for Closing Title," take up particularly the matter of disposing of objections which may be raised by title and abstracting companies in the examination of a title.

Then there is a chapter on "Real Estate Contract Law-Suits," in which will be found complete discussions on non-performance of contracts and various types of actions which may be brought to make an unmarketable title marketable. The chapter on "Transfer of Title" contains valuable pointers which should help you to overcome obstacles which your clients meet in closing real estate transactions. Escrows are explained to show how and when to use escrows where the circumstances of a transaction make it advisable to do so.

In addition, the book reprints, explains, and reproduces more than 200 forms used in real estate title and conveyancing work—forms which you can use to safeguard your clients in every step taken from the time a survey is made until "clear title" is delivered. All in all, this book is packed with an unusual amount of important data, presented clearly logically, and in an interesting manner.

In so far as those principles are applicable to the situation in Indiana, we shall first look at the Statutes with reference to judgments. Sec. 659 (Burns Revised Statutes 1926) defines the lien of a judgment as follows:

"All final judgments in the Supreme and circuit courts for the recovery of money or costs shall be a lien upon real estate and chattels real liable to execution in the county where judgment is rendered for the space of ten years after the rendition thereof, and no longer, exclusive of the time during which the party may be restrained from proceeding thereon by any appeal or injunction, or by the death of the defendant, or by agreement of the parties entered of record."

This Act was in force Sept. 19, 1881. Sec. 664 (Burns Revised Statutes 1926) provides for the recording of transcripts from the United States courts as follows:

"Any person interested may file, or cause to be filed, in the office of the clerk of any circuit court of this state a copy of any judgment rendered by the district or circuit courts of the United States in and for the district of Indiana, certified by the clerk of, and under the seal of, such court of the United States, and when so filed, the same shall be entered in the order-book and judgment docket in the same manner as judgment rendered in any such circuit court of the State of Indiana."

This Act was in force Feb. 18, 1893. Sec. 665 (Burns Revised Statutes 1926) defines the lien of such a judgment as follows:

"Such judgment, from the time of filing the copy aforesaid, shall be a lien upon all the real estate, including chattels real, of the judgment debtor situated in the county where filed, as fully as if such judgment had been rendered therein."

Thus it will be seen that Indiana falls within the first classification previously referred to, the wording of the Statute being such that no advantage can be taken of the proviso in the Act of Aug. 1, 1888, and no legislation having been had on the subject of judgment liens for nearly seven years previous to the Federal Act. A judgment in this State is a general lien from the date of rendition, and no provision is made for "registering, recording, docketing, or indexing" the same in order to make it a valid lien. Therefore Sec. 665 of the Indiana Statutes, which provides that a Federal judgment shall be a lien from the time of filing of the transcript of such judgment, is inoperative. In other words, any law passed by a State Legislature for the purpose of taking advantage of the privilege permitted by the 1888 Statute must put Federal liens exactly on a par with judgments rendered in State courts.

The word "exactly" is used advisedly for it was decided in Lineker vs. Dillon that a California law, which attempted to take advantage of the proviso of the Act of Aug. 1, 1888, but which in part placed Federal judgments in a less favorable position than judgments in State courts, was inoperative.

The Federal Statute creating the District court for Indiana, and as amended, provides that the State of Indiana shall constitute one judicial district to be known as the District of Indiana. For the purpose of holding terms of Court, the District is divided into seven divisions. In 1925 provision was made for one additional Judge for the District of Indiana.

It goes without saying, and has been repeatedly held, that the jurisdiction of a District court is coextensive with the jurisdiction of the judicial District and extends no further, save as Congress has expressly extended it. Likewise it has been repeatedly held that a District court has jurisdiction coextensive with its District regardless of the creation of divisions within the District or the multiplication of places of holding court.

In the case of Rhea vs. Smith, Chief Justice Taft makes the statement that the judgment in the District court of Missouri attaches to all lands of the judgment debtor in the two judicial Districts of Missouri. This is somewhat indefinite dictum not necessary to the decision and in the light of the Act of Aug. 1, 1888, it is doubtful if the court intended to indicate that a Federal judgment became a lien throughout the State, rather than throughout the District, in which it was rendered.

In attempting to substantiate this dictum of the court, I have found one case[1] decided previous to the Act of Aug. 1, 1888, which goes even further than the statement of the Chief Justice, and holds that the lien of a Federal judgment may extend beyond the territorial jurisdiction of the court rendering the decision. This opinion was rendered in a District court of Pennsylvania, but seems to stand alone and has not been followed by other courts. This opinion was based on the Federal Statute providing that all writs of execution upon judgments or decrees obtained in a Circuit or District court, in any State which is divided into two or more Districts, may run and be executed in any part of the State but it is issuable and returnable to the court where the judgment was obtained. The court held that the right of lien depended on the right of execution and that therefore a judgment is a lien throughout the State. The Act of Aug. 1, 1888, however, defines the territorial extent and regulates the lien of the judgment, and I believe there was no intent, and it was not necessary in the decision in Rhea vs. Smith to give the judgment extra-territorial jurisdiction.

From these premises, we can reach only one conclusion, and that is that in Indiana, and all states, with similar statutes, the lien of a Federal judgment attaches to lands of the judgment debtor throughout the state; that is, coextensive with the boundaries of the judicial district. This is a troublesome and unfortunate situation. The state whose judgment laws are such that advantage can be taken of the proviso in the 1888 law but where no statute has been passed

(Continued on page 14.)

# MERITORIOUS TITLE ADVERTISEMENTS

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

*WE INSURE MARKETABILITY*

## EMPIRE STATE TITLE NEWS

*STATE WIDE TITLE INSURANCE*

*Issued by* HUDSON COUNTIES TITLE & MORTGAGE CO.

No. 1 NEWBURGH, N. Y. OCTOBER, 1928

### *"T. G. Co." Extends Service*

The Title Guarantee and Trust Company, familiarly known as the "T. G. Co." was organized in 1883 and is the largest and strongest title insurance company in business. The field covered to date has been New York City and Long Island, and, through the Westchester Title & Trust Co., the County of Westchester.

Many of its clients transact business throughout the entire state but have been unable to secure the benefits of title examinations and insurance from this company outside of the territory mentioned. The care and thoroughness of its examinations of title are responsible for the fact that this company handles most of the title business in New York City. It has many competitors but no equal. This company has now made arrangements to underwrite title policies to be issued by Hudson Counties Title & Mortgage Company of Newburgh, N. Y. and Syracuse Title & Guaranty Co. of Syracuse, N. Y. The companies named will search and examine the title and the searches will then be examined by the "T. G. Co." which will join in the title policy to be issued. The value of this double examination cannot be overestimated. The client wants a title company to make sure that his title is good *before* he buys not to pay his loss if it proves defective *after* he takes title. He wants undisturbed title and possession not money damages. It is hardly necessary to state that the combined assets of either of the "up state" companies with the "T. G. Co." insures payment of any loss which may be suffered.

Hudson Counties Title & Mortgage Company has been examining and insuring "up state" titles for several years except in Westchester, Sullivan, Monroe, Onondaga and Erie Counties. The policy of the company has been to furnish the benefits of title insurance throughout the state but not in competition with any of the local companies in the territory mentioned.

Syracuse Title & Guaranty Co. operates in the City of Syracuse and vicinity and is recognized as one of the leading title companies in the state.

The "up state" companies will, of course, continue to handle the major part of their title business independently of the "T. G. Co." which will only underwrite the larger policies where the amount involved is such that the smaller companies feel that the client should have the financial backing of the New York City Company.

The applications for title insurance in Syracuse and vicinity should be sent direct to the Syracuse Title & Guaranty Co. and for insurance elsewhere in the state direct to the Hudson Counties Title & Mortgage Company but not to the Title Guarantee and Trust Company in any case. These companies will handle all of the details of the underwriting with the Title Guarantee and Trust Company.

*Form of Policies*

The policies to be issued insure "marketability" of title not simply against defects of title. The distinction between these policies is stated elsewhere in the "News."

### *Title Co. Wins*

The value of title insurance was again proved in an interesting lawsuit which was recently tried before Hon. Joseph Morschauser, Supreme Court Justice.

The property in question is located in Rockland County and was owned by John J. Haggerty and Helen T. Haggerty, his wife. Mrs. Haggerty applied to Hudson Counties Title & Mortgage Company for a mortgage loan and the Clerk's records revealed a deed from Haggerty to the applicant. After the loan was granted, Mrs. Haggerty conveyed to Mr. and Mrs. Kelleher. Shortly thereafter Haggerty brought suit alleging that he had never signed the alleged deed to his wife and that, if signed by him, the execution was obtained by fraud. The Title Company was called in to defend the suit under its policy.

After hearing the evidence, Justice Morschauser sustained the deed and dismissed the complaint.

Title insurance is the only safe method to follow when purchasing property.

### *Two Kinds of Title Insurance*

There are at least two kinds of title insurance.

The one is based on a search and the opinion of a local attorney but no examination of the search and the legal questions involved by the title company. The policy is issued on the usual principles of insurance, i. e., in a large volume of business there will be losses but the ratio of losses to income is such that it is profitable nevertheless. This may be termed "impersonal" title insurance.

The other is based on the principle of service and protection, i. e., the company makes a very careful search of the title records and then has this search carefully examined in its own office so as to make sure that the client will never be disturbed in the possession of his home or place of business. It is more important to him to have the company fully protect him *before* he buys than to pay him if he suffers a loss *after* he takes title. This is "personal" title insurance. The title company which furnishes this type of service feels a personal responsibility like that of the client's personal attorney. They furnish protection as well as insurance and are always prepared to pay the loss if any results in spite of the care and precautions which are taken.

The charge made for service by each company is substantially the same but the results are vastly different.

Attractive four page house organ, issued by this company. Replete with interesting news, and punches about the title business. Distributed to clients, customers, real estate brokers, lawyers, banks and others generally. A good contact maker.

## THE LIEN OF FEDERAL JUDGMENTS

(Continued from page 13.)

permitting the docketing and recording in exactly the same manner as state judgments are recorded, is laboring under the same practical difficulty.

Such a state of affairs tends to make titles to real estate unmerchantable, without the complete search indicated. As a matter of practice, such a search is out of the question, or causes such unnecessary delay as to not be undertaken. Where title insurance companies are operating, unless the search is made, or the same is expressly expected from the policy, a liability arises which I am sure, none care to undertake. This chaotic state can only be overcome by remedial legislation in those states falling within the first class, heretofore mentioned, and additional legislation for those states falling in the second class. The situation demands the attention of every thinking attorney, to the end that it may be remedied at the earliest possible moment.

### NOTES.

[1]Revised Statutes, Section 721—U. S. Comp. St. 1538.
[2]Revised Statutes, Section 927—U. S. Comp. St. 1608.
[3]Revised Statutes, Section 916—U. S. Comp. St. 1540.
[4]7 How (U. S.) 760 (1849) To the same effect See Ward v Chamberlain 17 U. S. (L Ed) 319 (1862); Barth v McKeever Fed case No. 1069 (1868); U. S. v Scott Fed case No. 16242 (1878).
[5]Fed case No. 15422 (1879).
[6]Ch 729—25 Stat L 357—U. S. Comp. St. 1606.
[7]Act of August 23, 1916—Ch 1397—39 Stat L 531.
[8]274 U. S.—434—71 L Ed 1139.
[9]308 Mo 422, 272 SW 964.
[10]275 Fed 460—1921—See also annotation Rhea v Smith—71 L Ed 1139 et seq.
[11]Prevost v Gorrell Fed case 11400 (1877).

The quicker some of these reformers understand that the kick of performing is in doing it secretly, the quicker will be the date of restitution of some of our liberties.

# COMMITTEES

# American Title Association, 1929

### JUDICIARY COMMITTEE

William X. Weed, White Plains, N. Y., GENERAL CHAIRMAN, Counsel, *Westchester Title & Trust Co.*

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Harry Paschal, Atlanta, Ga., *Atlanta Title & Trust Co.*
George Batchelor, Indianapolis, Ind., *State Life Insurance Co.*
Olaf I. Rove, Milwaukee, Wis., *Northwestern Mutual Life Insurance Co.*
R. K. MacConnell, Pittsburgh, Pa., *Title Guaranty Co.*
John F. Keough, Los Angeles, Calif., *Title Guarantee & Trust Co.*
J. W. Woodford, Seattle, Wash., *Lawyers & Realtors Title Insurance Co.*

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N. W. Thompson, Los Angeles, Calif., *Title Inusrance & Trust Co.*
Cornelius Doremus, Ridgewood, N. J., *Fidelity Title & Mortgage Guaranty Co.*

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Harvey Humphrey, Los Angeles, Calif., *Security Title Insurance & Guraantee Co.*
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James E. Sheridan, Detroit, Mich., *Union Title & Guaranty Co.*
Donald B. Graham, Denver, Colo., *Title Guaranty Co.*
Fred Hall, Cleveland, Ohio, *Land Title Abstract & Trust Co.*

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Donald B. Graham, Denver, Colo., CHAIRMAN, *Title Guaranty Co.*
The President and Secretary of each state association.

### LEGISLATIVE COMMITTEE

R. O. Huff, San Antonio, Tex., GENERAL CHAIRMAN.

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*District No. 1* (Wellington E. Barto, Camden, N. J. *District Chairman).*
New Jersey: Wellington E. Barto, Camden, *West Jersey Title & Guaranty Co.*
New York: R. Chittick, New York City, *Lawyers Title & Trust Co., 160 Broadway.*
Connecticut: Paul S. Chapman, Bridgeport, *Kelsey Title Co.*
Rhode Island: Edward L. Singsen, Providence, *Title Guarantee Co. of Rhode Island.*
Massachusetts: Theo W. Ellis, Springfield, *Ellis Title & Conveyancing Co.*

*District No. 2* (Pierce Mecutchen, Philadelphia, Pa., *District Chairman).*

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Pennsylvania: Pierce Mecutchen, Philadelphia, *Real Estate Title Insurance & Trust Co.*
West Virginia: George E. Price, Charleston, *George Washington Life Insurance Co.*
Virginia: H. Laurie Smith, Richmond, *Lawyers Title Insurance Co.*

*District No. 3:* (Richard P. Marks, Jacksonville, Fla., *District Chairman).*

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Florida: Richard P. Marks, Jacksonville, *Title & Trust Co. of Florida.*
North Carolina: D. W. Sorrel, Durham.
South Carolina: J. Waties Thomas, % *Thomas & Lumpkin.*
Georgia: Hubert M. Rylee, Athens.

*District No. 4* (Coit L. Blacker, Columbus, Ohio, *District Chairman).*

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Tennessee: John C. Adams, Memphis, *Bank of Commerce & Trust Co.*
Kentucky: Chas. A. Haeberle, Louisville, *Louisville Title Co.*
Ohio: Coit L. Blacker, Columbus, *Guarantee Title & Trust Co.*
Indiana: W. O. Elliott, Terre Haute, *Vigo Abstract Co.*

*District No. 5* (David P. Anderson, Birmingham, Ala., *District Chairman).*

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Louisiana: W. E. Nesom, Shreveport, *Caddo Abstract Co.*
Alabama: David P. Anderson, Birmingham, *Alabama Title & Trust Co.*
Mississippi: F. M. Trussell, Jackson, *Abstract Title & Guaranty Co.*

*District No. 6* (W. A. Mercer, Little Rock, Arkansas, *District Chairman).*

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Arkansas: W. A. Mercer, Little Rock, *Arkansas Abstract & Guaranty Co.*
Missouri: C. B. Vardeman, Kansas City, *Missouri Abstract & Title Insurance Co.*
Illinois: Arthur C. Marriott, Wheaton, *DuPage Title Co.*

*District No. 7* (Ray Trucks, Baldwin, Mich., *District Chairman).*

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North Dakota: John L. Bowers, Manden, *Manden Abstract Co.*
Minnesota: E. D. Boyce, Mankato, *Blue Earth County Abstract Co.*
Wisconsin: Julius E. Roehr, Milwaukee, *Milwaukee Abstract & Title Guaranty Co.*
Michigan: Ray Trucks, Baldwin, *Lake County Abstract Co.*

*District No. 8* (Frank N. Stepanek, Cedar Rapids, Ia., *District Chairman).*

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South Dakota: A. L. Bodley, Sioux Falls, *Getty Abstract Co.*
Iowa: Frank N. Stepanek, Cedar Rapids, *Linn County Abstract Co.*

Nebraska: Leo J. Crosby, Omaha, *Midland Title Co., Peters Trust Bldg.*

Wyoming: Kirk G. Hartung, Cheyenne, *Laramie County Abstract Co.*

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Kansas: Ernest McClure, Garnett, *White Abstract & Investment Co.*

Oklahoma: Ray McLain, Oklahoma City, *American First Trust Co.*

Colorado: Milton G. Gage, Sterling, *Platte Valley Title & Mortgage Co.*

New Mexico: J. M. Avery, Sante Fe, *Avery-Bowman Co.*

*District No. 10*

Texas: Mildred A. Vogel, El Paso, *Stewart Title Guaranty Co.*

*District No. 11* (C. J. Struble, Oakland, Calif., *District Chairman).*

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Utah: Robert G. Kemp, Salt Lake City, *Intermountain Title Guaranty Co.*

Nevada: A. A. Hinman, Las Vegas, *Title & Trust Co.*

Arizona: H. B. Wilkinson, Phoenix, *Phoenix Title & Trust Co.*

*District No. 12* (A. W. Clarke, Driggs, Idaho, *District Chairman).*

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Oregon: P. M. Janney, Medford, *Jackson County Abstract Co.*

Montana: C. C. Johnson, Plentywood, *Sheridan County Abstract Co.*

Idaho: A. W. Clarke, Driggs, *Teton Abstract Co.*

# Endorsement of Insured Title Aids Salability of Mortgage Bonds, Land Trust Certificates

By McCune Gill, St. Louis, Mo.

*Advertisements for sale of various securities never fail to tell of their many desirable points, appraisal by some impressive company, legality passed upon by So-and-So, attorneys, but why do not the title companies that insure the title see that the statement is also included that the title is insured? The following, reprinted from the magazine "TRUST COMPANIES," shows how one company goes even further and endorses the bonds and certificates.*

The problem of how to sell large mortgages to small investors has long since been solved—mortgage bonds. And more recently the problem of how to sell them tax free has been solved—land trust certificates. But the problem of providing, for the purchasers of these fractional securities, the safety that they could provide for themselves if they were buying the old time small mortgages has not been generally solved.

The investor in a small mortgage can hold his own title policy, his own fire policy, his own mechanics lien bond, his own survey. But the investor in bonds under a large mortgage or in land trust certificates has been left to wonder whether these necessary protective measures have been carried out in his behalf.

It has occurred to some of the trust companies selling mortgage bonds and land trust certificates that some assurance of protection should be printed on the back of each bond, in the form of a statement of policy, signed by a title company, authoritatively answering the safety questions of any future holder of the bond—all on his own piece of paper.

The sales appeal of such a bond should be, and has been found to be, much greater than that of a bond not carrying such a policy. And when investors have become accustomed to such safety service, it is quite impossible for a competitor to sell them bonds without such protection. Title companies charge little, if anything, more than their regular premiums, as compensation for signing each bond.

The best way to visualize this new safety and sales device is to set forth the form of a policy, as follows:

**Title Insurance**

**For valuable consideration the ..... Title and Trust Company hereby guarantees to the present or future holders of this bond,**

**1. That this is one of a series of .....bonds aggregating the principal amount of $..... secured by a mortgage, now in the possession of the undersigned, dated....., 19...., recorded....., 19....., in book...., page ...., of the office of the Recorder of Deeds of the County of....., State of .....**

**2. That said mortgage was validly executed by the owner of, and is at this date a first and paramount lien on a marketable fee simple title in and to (description of lot).**

**3. That the building known as the .....Apartments, at number .....street, is located on the above described lot, and is in the possession of ....., the mortgagor in said mortgage, and his tenants, and that a survey showing the above facts is in the possession of the undersigned.**

**4. That all building restrictions and zoning and building ordinances applying to said property have been complied with.**

**5. That all general and special taxes and assessments on said property that are now a lien have been paid excepting only the general taxes for the year..... which are not yet payable.**

**6. That all present or future liens of mechanics or material men that may be asserted against said building or lot will be defended, and if established as a lien prior to the lien of said mortgage, will be paid, by the undersigned; that this obligation is further secured by a surety company lien and completion bond in the possession of the undersigned, and by the segregation of the proceeds of sales of bonds into a separate trust account on deposit with the undersigned.**

**7. That policies of fire, tornado, explosion and earthquake, insurance each in amounts greater than the mortgage indebtedness, with standard mortgage clauses attached, have been deposited with the undersigned, and will be maintained during the life of the mortgage.**

**Dated this .... day of....., 19.....**

**.....Title and Trust Company,**

**by.....**

**Vice President.**

Experience has clearly shown that such form as above, featuring title insurance and printed on each bond of a real estate bond issue, or land trust certificate issue, has very materially increased its salability.

## Pamphlet on Title Insurance Sales Talk

"And Hearing, They Believed," the playlet written by James E. Sheridan, vice president of the Union Title & Guaranty Co., Detroit, and which was given at the Seattle convention, has been issued in pamphlet form by the company. Those who heard it at the convention or read it in the printed proceedings, will recall how arguments for title insurance and answers to knotty questions on abstracts and titles are cleverly sugar-coated in this more or less dramatic, certainly keen and forceful sales talk.

Needless to say, this story is attractively presented in a finely printed book. Copies can be secured by writing to the company.

# *Just a Day in An Abstracter's Life*

The country title man had turned
His key within the lock,
And in his office saw the time
Was nearly eight o'clock.

His mail was heavy on this morn;
He thought he'd have to rush:
His profits for to-day, he knew,
Would surely make him blush.

He tore a letter open wide,
Then threw it on the floor.
It told him Beach was selling books
And pencils as of yore.

Another one from Brown and S.,
He read it with a grin.
It advertised huge fire proof safes
To keep his profits in.

One from a firm away down East
Insuring titles, and
Advising him to peg away
With toes right in the sand.

"By Gum!" he said to Genevive,
Who was his faithful clerk,
"It's gol darn strange in all this mail
There ain't a bit of work."

The telephone upon the wall
Rang out and made him jump.
Some work he'd get in sixteen weeks,
And something to "look up."

Old Ezra Brown came tottering in
And sat down with a frown;
Then asked how much 'twould cost for them
To bring his abstract down.

It figured up to seven five,
But Ezra said: "Too strong,"
And 'lowed as how he guessed he'd be
A goin' right along.

He ambled toward the door and blew
His nose with all his might;
Then asked them if they'd get it out
Before tomorrow night.

Young Blackstone, who came out of school
In nineteen twenty-eight,
Asked would they please change entry Ten,
And show a different date.

The date, it seems, was all O. K.
So far as records went,
But if the abstract "just were changed
They couldn't lose a cent."

A young man with a trick device
Was talking, saying nil,
And Genevive asked seven times
About a certain Will.

He helped her through one gloomy phrase
And then got stuck a bit;
"Just make a copy of the Will,"
He said without much wit.

Josephus Smith came blustering in,
And he was surely mad;
His abstract was all wrong, "by gum,
It certainly was bad."

When Smith had bought the place last year
The abstract showed a flaw;
But Smith knew more about abstracts
Than all the men of law.

He thought his title mark'table
Until he went to sell;
But now he blamed the title man,
And hoped he'd go to Hell.

At six o'clock he closed the vault,
And filled the stove with coal;
Reflecting that the work that day
Had left him in the hole.

And in the street he met a man
Who told him just how fine
Abstracting was, and other things
Along the same old line.

He said 'twas clean and done with ease,
Remarked how kind was fate,
And that abstracting sure must pay,
The profits were so great.

And when he left, the abstract man
Saw red with both his eyes:
"Where ignorance is bliss," he groaned,
" 'Tis folly to be wise."

*Paul Rickert,*

*Roberts County Abstract Co., Sisseton, South Dakota.*

**DON'T FORGET—**

**PAY YOUR 1929 DUES**

**PROMPTLY!**

# 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.

*Is this trust valid?*

"For daughter A for life, then to granddaughter B for life, then to the heirs of her body in fee, but if none to sisters C and D, and niece E or the survivors for life, and then to a Hospital in fee." Held good as not a perpetuity, in a common law State, because all the lives were in being at testator's death; but the court overlooked the rule in Shelley's case and the statute as to fee tail, which would have given B the fee simple. Van Roy v. Hoover, 117 So. 887 (Florida).

---

*Where government lot lies unequally in two forties, is "half" of lot determined by line between forties?*

No; half will mean half of the area of lot, especially where the acreage in the deed so indicates. Smith v. Caravasios, 118 So. 10 (Florida).

---

*Do mechanic's liens date from date of filing or date of commencement of work?*

Usually date from commencement of work (as to priority over mortgage); but some statutes provide otherwise, as in case of a tenancy by entireties in Florida. Parker v. Gamble, 118 So. 21.

---

*When is suit to enforce reversion barred?*

Held barred in ten years after first breach of condition in Louisiana. DeMontluzin v. Company, 118 So. 33.

---

*Can a suit to partition remainders be brought during the life estate?*

This differs in each state; thus in Illinois such a suit is void if there is a provision that the property is "to be divided" at death of life tenant, but good otherwise if remainders are vested. Gaham v. Golden, 162 N. E. 164. Dee v. Dee, 212 See. 338.

---

*Is devise to son for life with remainder to his "children and grandchildren" governed by the rule in Shelley's Case?*

No; the remainder must be to "heirs" or "heirs of body." Beall v. Beall, 162 N. E. 152 (Illinois).

---

*Do partition deeds change land from ancestral to non-ancestral?*

No; Lee v. Fike, 162 N. E. 682 (Ohio).

---

*Where wife has dower in leasehold, can husband surrender lease without her consent?*

Held that he can, and dower is barred, if lease was about to be forfeited for nonpayment of rent. National v. Gram, 162 N. E. 704 (Ohio).

---

*Can easement be created without written instrument?*

Yes; as where owner of two lots, served by joint walk, sells one lot without referring to easement. Clement v. Fischer, 162 N. E. 706 (Ohio).

---

*Does description bounded by ocean carry to high or low tide?*

To low tide, if description in deed by Colony in 1685, includes "marshes"; but doubtful, if it includes only "beaches." Best v. City, 162 N. E. 497 (New York).

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*Can a second mortgagee buy at tax sale and cut out first mortgage?*

Not in North Dakota. Baird v. Fischer, 220 N. W. 892.

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*Does mortgage merge when mortgagee buys fee?*

Not if he takes in name of straw man. Knowles v. Older, 220 N. W. 625 (North Dakota).

---

*Does privilege to release 40 acres or more give right to release fractional 1/16 section of less than 40 acres?*

Yes. Fowler v. Sapre, 220 N. W. 733 (Michigan).

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*Is a will good if signed at the top?*

It is if the statute does not require that it be "subscribed." In re Thomas Estate, 220 N. W. 764 (Michigan).

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*Can court order mortgage binding insane wife's dower?*

Not where statute authorizes only sale for reinvestment. Petition of Cody, 220 N. W. 788 (Michigan).

---

*Does deed of lot carry easement over adjoining private street?*

Yes; the easement is an appurtenance even though not specifically included. Erit v. Association, 162 N. E. 581 (New York).

---

*Does incorporated church succeed to title formerly held by trustees?*

Not necessarily; although court can appoint the corporation as successor trustee. Kedrovsky v. Archbishop, 162 N. E. 588 (New York).

---

*Can property rented out be homestead?*

It is a homestead if owner intended to move in after renter left. Harter v. Davison, 220 N. W. 862 (South Dakota).

---

*Can a joint will be revoked by the survivor?*

Usually can; as where husband and wife devised all to

survivor for life, then to third person; the survivor can revoke the latter clause. Beveridge v. Bailey 220 N. W. 868 (South Dakota).

---

*What is effect of conveyance of reversionary right to person other than owner of land?*

It conveys nothing but does extinguish the reversionary right. Oakland v. Mack, 220 N. W. 801 (Michigan).

---

*Are valid life estates defeated, because followed by remainders that are void as perpetuities?*

Yes; all are defeated (in most states) as part of a void scheme of postponement of vesting. In re Feeney Estate, 142 Atl. 284 (Pennsylvania).

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*Do calls for adjoining owners govern over distances?*

Yes; such boundaries are considered as monuments. Dinaid v. Ranoldi, 142 Atl. 145 (Rhode Island).

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*Is a sewer considered to be so hidden that implied easement cannot arise?*

Usually to be hidden, but held apparent in Rhode Island because inlets were not hidden. Wiesel v. Smira, 142 Atl. 148.

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*Does purchaser "subject to" mortgage assume payment personally?*

Usually not, but held he does in Maryland, Rosenthal v. Heft, 142 Atl. 598.

---

*Does restriction that lot be used "for residential purposes, any residence to cost $17,500," bar apartments?*

No; not even an eight family apartment costing $3,500 per apartment. Huntington v. Dennis, 143 S. E. 52 (North Carolina).

---

*Does remainder to "descendants" include children of living children?*

No; only the living children and children of deceased children are included. Hospital v. Fitzgerald, 142 Atl. 330 (Rhode Island).

---

*What should escrowee do if several parties claim the fund?*

Make them interplead for it in a suit. McDonald v. Board, 142 Atl. 261 (Maryland).

---

*Is an advertisement, begun on November 16, four weeks' notice of sale on December 14?*

Yes; because, by excluding the first day and including the last, there is a 28 days' notice. Winter v. O'Neill, 142 Atl. 263 (Maryland).

---

*Does filling blanks, after signing, void an instrument?*

This differs in different States; it is good in New Jersey. Koehler v. Cadis, 142 Atl. 757.

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*Why are tax titles dangerous although seemingly held in conformity to statute?*

Because "the courts will seize upon the slightest flaw in tax sales to restore the property to the owner." McCandless v. Schaffer, 142 Atl. 566 (New Jersey).

---

*Does money bequest bar dower?*

Statutes usually provide that bequest of personal property does not bar dower unless so provided in will; but devise of real property bars dower without reference thereto. In re Green's Estate, 142 Atl. 825 (Delaware).

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*Does priority of mechanics' liens depend on date of filing?*

No; they are all of equal lien, and date from commencement of work, under most statutes. New Haven v. Haggerty, 142 Atl. 847 (Connecticut).

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*Does a devise to a person's "issue" go to his widow?*

No; Stanley v. Stanley, 142 Atl. 851 (Connecticut).

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*Can wife appoint her husband as her attorney in fact to mortgage her lands?*

She can in Massachusetts. Molaguti v. Rasen, 160 N. E. 532.

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*Can wife convey her inchoate dower to stranger without joinder of husband?*

Not in Indiana. Railroaders v. Rifner, 160 N. E. 56.

---

*Is divorce on constructive service binding in other states?*

The states are divided; in Ohio the divorce is good as to the persons but bad as to their property or dower rights. Snyder v. Buckeye, 160 N. E. 37.

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*Is devise to unnecessary witness good?*

Good in some states; but bad in New Jersey (as where he is third witness and only two are necessary). Patanska v. Kuzina, 141 Atl. 88.

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*Can receiver's certificates be decreed to be superior to prior mortgages?*

No. Central v. American, 141 Atl. 111 (Maryland).

---

*Is trustee liable for certifying bonds of unrecorded mortgage?*

Not where trustee's certificate does not state that mortgage is recorded. Bell v. Trust Co., 140 Atl. 900 (Pennsylvania).

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*Is statute authorizing cancellation of leases in 15 years, constitutional?*

Yes; as Maryland statute stating that lessee can purchase fee by paying 6% capitalization of rent. Marburg v. Mercantile, 140 Atl. 336.

---

*What are requirements of deed from Indian tribe in consideration of services to tribe?*

It must be executed before judge, and approved by Secretary of Interior, Indian Commissioner and tribal authorities. Pueblo v. Fall, 47 U. S. Sup. Ct. 361 (Oklahoma).

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