TITLE NEWS

APRIL, 1930

Vol. 9 No. 4

The Publication of
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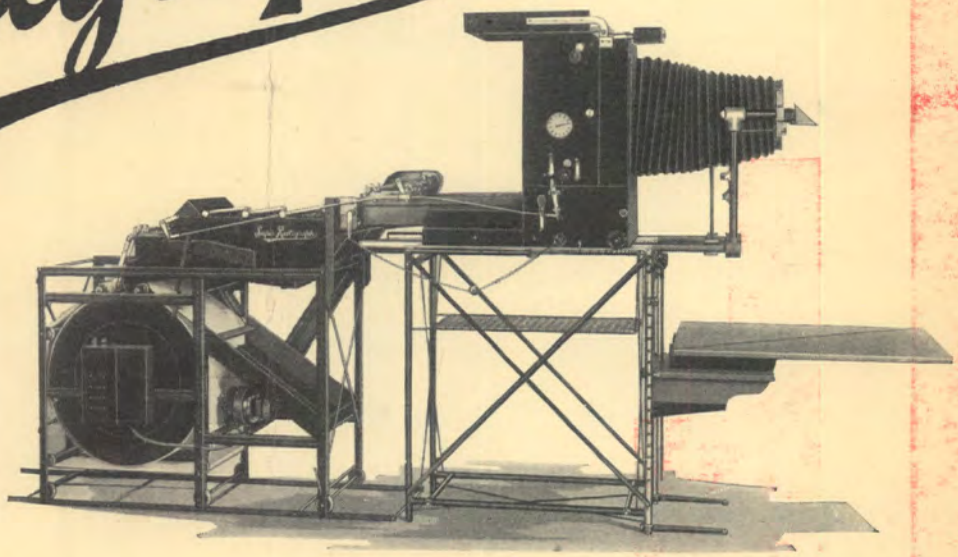

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THOSE in any science, vocation, business profession, or concentrating their endeavors on anything, undoubtedly know more of its functions, advantages, shortcomings, problems, needs, in short, more about it generally than anyone else. Engineers, doctors, dentists, realtors, bankers, and others, even those in the title business, know more about their respective lines than those not in it.

All vocations, businessess, industries, in fact, every part and institution of American life, including the title people, are sincerely interested in improving the efficiency and developing their service or product to the nth degree.

Dentists conduct clinics to preserve children's teeth; the medical profession stresses prevention more than treatment of disease. Others do likewise.

When the public wants something improved, needs relief or reform, it usually goes to that particular business, depends upon and helps it do the necessary.

But not so in title matters. Those in the title business are ignorantly ignored; no attention is paid to them; their position, knowledge or desire to be agreeable—the proponents of reform jump clear over their heads, and register an emotional fantasy for just one thing—the Torrens System of Title Registration.

Ask any advocate of the Torrens Law what it is and he has just one inspired answer: "It cuts out all trouble in title matters, and gives you a government title."

They know little or nothing of its principles, complications; how it has actually proven in practice, and that it affords no protection, and does not simplify title matters.

They rush blindly into tying their wagon to this mythical hallucination, totally ignoring the fact that our present recording system was instituted in this country by its founders to provide American citizens with such a simple, protective system as no other country had: one that would permit our citizens to own, enjoy, possess and deal in real property as could be done by no others.

Those in the title business know there are many things needed to modernize our title system, title evidence, and matters generally of vital concern to realty transactions and adding to the liquidity of real estate as an investment or commodity.

AS FAR back as 1913, the American Title Association had a group of the greatest title authorities of the country study the needs of the title business, and present a solution.

If these advocates of improvement would spend their considerations and energy in cooperating with those in the title business, the desire would be accomplished.

The Torrens system is not the solution.

The title business is not afraid of the Torrens system. It does not oppose it because it would hurt the private title business. On the contrary, it would make added business, particularly in initial registration.

It does oppose it for the following reasons:

It creates a complicated system, with many more chances of trouble than the public recording idea, and adds another system, both of them requiring abstracts or other guarantees as to regularity and sufficiency.

It is insufficient, because there are more matters affecting a title than shown by county record offices or by courts, and additional certificates and work are necessary to complete the things not covered by a memorial.

It puts the government into a highly technical business, and its administration, the deciding of vital questions about one's property rights, whose words, decisions and acts are to be indefeasible.

It fails absolutely to give protection to those registering land under the system.

It must be indefeasible to accomplish its purpose in any degree. If so, then it opens the way to legalized, judicially approved fraud, to the taking away of homes and property from actual owners, destroys the constitutional protection that one cannot be deprived of his property without due process of law, and annihilates the sacred doctrine of possession, "nine points of law."

If indefeasible, its very purpose is destroyed.

It has no place in this country because it is foreign to our ideas and ideals; cannot now be injected to supersede all existing laws and rights of property owners.

If indefeasible, its resultant complications will become terrible.

If defeasible, it is useless, unnecessary and will only create a weak, second title system.

There is a wealth of available proof in support of every one of the above reasons.

IT BEGINS with a law suit, recovery from the "assurance" fund is usually only through a law suit, and the reports of higher court decisions are full of cases. There is a case now pending in Minnesota where the registrar overlooked entering a second mortgage on the memorial. Recovery occasioned a law suit and the registrar's defense is that the memorial is only a reference and there is an obligation on the part of purchaser to examine all instruments and proceedings upon which it is based. This is in direct contradiction to the theory of prima facie indefeasibility, and other decisions that no outside investigation need be made. This further substantiates the theory of title people that Torrens proceeding abstracts are necessary. One title company has made 17,000 Torrens proceeding certificates in recent years, and makes take-offs and keeps records of irregular Torrens titles. There are many cases of two owners holding certificates to the same land, or a memorial issued on the wrong land or to the wrong owner.

Every title man knows there are a lot of things necessary to be covered outside of the recorder's office, courts of record, and others, and each Torrens transaction occasions in addition to the memorial, a chasing around and finding out about all these other matters.

The administration of the Torrens system is in the hands of ever-changing, elected or appointed, public officials, who not only supervise and put through deals at their will, but are charged with passing and scrutinizing people's real estate transactions. Many of these officials would never before have had any experience in a single realty deal, much less know the bare rudiments of the various steps. But their acts would be final, and in the case of Eliason vs. Wilborn, indefeasible. Imagine the situation in case of a boom. Lining up at the post office during Christmas would be mild.

THE whole principle seeking to be upheld in Eliason vs. Wilborn is "indefeasibility," even at the expense of rightful ownership, constitutional privileges and upholding fraud. Get relief from the assurance fund provided. In St. Paul this is about $11,000.00; Minneapolis, $6,978.98; Duluth $27,231.00; while in Imperial County, California, in a case now pending, the Supreme Court affirmed a judgment in a single case in excess of the entire fund, and the balance is to bear interest at 6%, and be paid whenever available. That's something to look forward to—and for a long time at present rate of accumulation. In many counties there are from a few to only a few hundred dollars. If a title company had such resources back of its policies, it would cause a riot, yet people will go to the Torrens system because it is "government protection." The Torrens system specifically states that when one comes into the system, he gives up grounds for defense other than provided for in the statute, and opens himself to being deprived of his property from fraud, lack of notice and other causes heretofore considered repugnant.

Sentimentality for the theory of indefeasibility has caused many to fail to see—not even investigate—what it may lead into. It's a far cry to advocate "own your own home," and then let the buyer depend upon a Torrens certificate, when it is based upon a law, affirmed by judicial decision, whereby the owner can be deprived of his home by subsequent acts of fraud by others, a new valid root of title established in a stranger to the owner, no one required to take notice of rights of parties in possession, knowledge that there exists any unregistered lien, claim, demand or interest shall *not* be imputed as fraud, and many other things "jumped over" and the owner forced to look for relief from a lawsuit.

If there are people and interests really interested and concerned about greater safety and more simplicity in titles, why don't they make at least a gesture of good will towards and negotiations for mutual work with the title industry.

Would they take their sick child to a witch doctor?

TAKING A WATCH TO THE BLACKSMITH FOR REPAIR

THE Title people oppose the Torrens Law from an unselfish standpoint. They know it is an hallucination and won't accomplish anything but trouble.

When others fight or eliminate something and keep it from being foisted upon an uninformed public, loud cheers go up for the service rendered.

But not so in the case of the fight waged against Bill Torrens by the title industry. We're just credited with trying to preserve our own hides at the expense of the people.

And it's our own fault.

We have never been public-conscious in any way. The title people have done all their anti-Torrens work quietly, and kept silent as to why, and what they have done as a public service.

What value achievement if no resulting realization from anyone as to its purport and value?

It's time *now* that the title business broadcasts why the Torrens System is a dead letter in those states where it is to be had for the effort and expense of using, and why the title business opposes its spread to others.

Why sit around and let our sincere actions be the cause for smirky suspicion? In this we have been the creators of our own plight. Our hesitant, pussyfoot tactics about legislative matters—"leave the legislatures alone and they will leave you alone"—our timidity in general, and utter failure to build public relations, have lost for the title business a thanks and appreciation for preventing a calamitous title system being dropped on the heads of land owners and real estate investors, and brought doubt instead.

It's time for publicity for our side from now on.

TITLE NEWS

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Editor's Page

THE effectiveness of pictorially presenting thoughts is again happily illustrated in this issue. We feel particularly fortunate in having the services of Mr. Mishell, who is as versatile as he is clever. He is not only a title man and an attorney but an excellent artist as well. He has many other cartoons at the tip of his pencil and we advise you to watch for his drawings in future isues.

THE "Unusual Cases" and "Business Suggestions" contest recently announced by TITLE NEWS is provoking no little interest among the members, and many examples are being submitted. All contest material must reach the Executive Secretary's office before June 1, 1930, so start assembling your material now.

Following are the rules of the contest:

UNUSUAL CASES: First Prize $10.00; Second Prize $5.00 and Five Prizes of $2.00 each. In the course of your daily work you come upon hundreds of interesting cases, clauses, exceptional terms of conveyances, restrictions, unusual long-term leases and other unique provisions. Prizes as mentioned above will be awarded to those considered interesting in their order. All submitted will be published.

BUSINESS SUGGESTIONS: First Prize $10.00; Second Prize $5.00 and Five Prizes of $2.00 each. Many of our members have inaugurated schemes or ideas for building, maintaining or increasing business. Prizes will be awarded for the best suggestions. All submitted will be published.

Both contests are open to members and employees of any member.

THE association is soon going to commence a thorough survey and analysis of customs, practices, services, prices, cost of operation, and in general about everything in the title business, both abstracts and title insurance. A definite program has been outlined which will be the most pretentious ever undertaken. The next few issues of TITLE NEWS and special bulletins will tell the membership that their business guardian is on the job.

YOU will want to read and re-read, and then file for future reference, the coming issues of TITLE NEWS. Next month will appear a very fascinating article on examiners, by W. E. Nesom, of Shreveport, La. Another interesting, historical article will soon appear by Eugene Scanlon, and we have some splendid articles by some of our regular contributors—Chas. E. White, McCune Gill, and others.

■

ABOUT the authors and contributors this month:

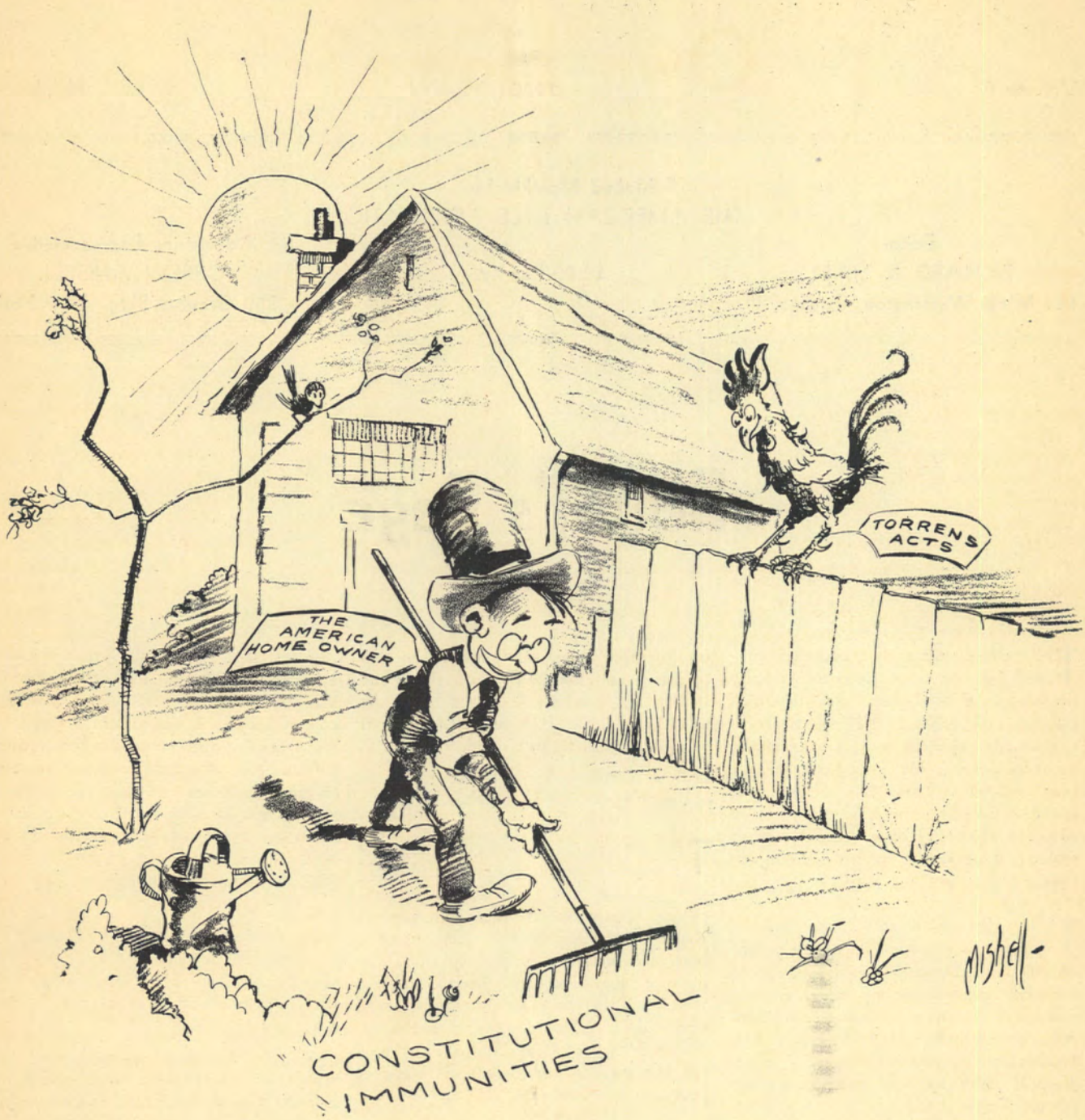
The paper on the Eliason vs. Wilborn case, entitled, "Are You Sure You Own Your Own Home?" by Franklin E. Vaughan, was recently read before the Law Club of Chicago and evoked a great deal of interest and appreciation. It combines a scholarly legal treatise of this particular case and the Torrens System in general with a human interest narrative. It is reprinted in TITLE NEWS by permission.

Mr. Vaughan has practiced law in Chicago for twenty-nine years. He holds an A. B. from the University of Chicago and an L. L. B. from Lake Forrest University. He is associated with the law firm of McGilvray, Eames, Vaughan & Tilley.

Mr. W. H. Winfree, author of the article on "Closing the Deal," needs no introduction to the title fraternity. He was one of the pioneer workers in the American Title Association and articles by him have appeared in TITLE NEWS before.

This one is not only interesting but has practical value to every title man. It shows the liability brokers incur when they undertake to recommend procedure and give advice to their clients about closing and other matters involved in real estate transactions. It would be well for real estate brokers to become acquainted with these facts.

Mr. Winfree is president of the Puget Sound Title Insurance Company, of Seattle, Wash.



The Bird That's After the Seeds of Constitutional Property Rights!

Are You Sure You Own Your Own Home?

By FRANKLIN E. VAUGHAN*

THE Joneses were getting restless in their apartment. Mr. Jones had done pretty well the last few years. He had saved some money and made some wise—or lucky—investments, so that now he had a very substantial nest-egg. Ethelbert was ten, Mary Frances was eight, and little Algernon was five. Mrs. Jones felt that an apartment was no place to bring up a family.

Then, too, automobile traffic was getting heavier every day and the children's playground, which was the street, was becoming so dangerous that Mrs. Jones worried from morning 'till night. The school was not so good, either. The proportion of children of varied extraction and African descent was constantly increasing, and the good old name of Jones was becoming conspicuous for its strangeness in the roll call.

The Joneses were progressive and read the ads. They knew that they ought to own their own home. So they started a series of Sunday excursions in search of the proper place. The more trips they made, the more discouraged they became, because it seemed almost impossible to find a lot that suited both their means and their taste.

One night, however, Mr. Jones came home much excited. A real estate broker had found just the place. It was a beautiful spot on the lake, with 300 feet of shore frontage and a very attractive home upon it. The owner happened to be an old friend, and he was willing to sell to Jones 100 feet at a very low price. The opportunity for the two families becoming neighbors was quite a factor and impetus to the deal.

Next Sunday Jones loaded up the old bus and out they went to inspect. The place was ideal. They would have their own beach and it was practically the only available piece of shore land for miles. A fine new school was only a block and a half away, with no through streets to cross. The lot was deep, heavily wooded, but with clear space large enough for a tennis court. And best of all, it was in the most desirable village in the community.

In short, it was perfect! Jones closed the deal at once and six months later found them living in their own home, especially designed and built to include all of Mr. and Mrs. Jones' pet ideas, and with every hope and indication that the Jones were permanently settled.

And here we ought to be able to say—"And so they lived happily ever after!" But strange and unheard of troubles were brewing for the Joneses. As Serjeant Buzfuz said—"The serpent was on the watch, the train was laid, the mine was preparing, the sapper and the miner was at work."

One night when Jones got off the 5:19 and climbed into the Tudor, he found Mrs. Jones much wrought up. Questions brought out the fact that late that afternoon a well-dressed man had driven up to the house and requested permission to go through it. When asked his purpose, the man said he had just purchased the premises, and, as he understood the Joneses had only a month to month lease, he would like to go through the house and make notes as to any needed repairs and the disposition of his furniture. When he saw Mrs. Jones' astonishment, he courteously waived his request and left his card that Jones might call him up.

Neither of the senior Joneses slept much that night. Early the next day Jones was at his lawyer's office with his story and the card of the courteous Mr. Smith. When he had finished, the lawyer said, "Have you or Mrs. Jones signed any papers involving this property since you bought the lot and made your building loan?"

"Certainly not!" said Jones.

"All right. Then you've nothing to worry about. I'll see this Smith. It's just a mistake of some kind—probably as to the identity of the property. You drop in tomorrow morning and I'll tell you all about it. Don't worry! I know your title is absolutely O. K."

Early next morning Jones had a 'phone call from his attorney, telling him to bring his Torrens certificate with him and come over at once. About 10:30 Jones arrived but without the certificate. The last he could remember about it was that several months before, in cleaning out his vault, he had laid it with a pile of papers on his desk. He had not seen it since.

"Well," said the attorney, "that explains it. Smith has a Torrens certificate for your property,—but it's based on a forged deed, so we've nothing to worry about."

Smith, it seems, had answered an ad which offered

"—A Recent Decision of the Illinois Supreme Court Holds That Smith Gets Your Home and You Get Some Money Out of Cook County—When, As, and If!"

*See editorial comment on page 7.

an attractive, new North Shore home at a bargain figure, because the owner was leaving town at once. The advertiser explained, on being interviewed, that he had recently purchased the premises, intending to bring his family on for early occupancy. Business changes had made this impossible and he would sell the equity for $10,000.00, subject to a $10,000.00 mortgage. The premises, he said, were occupied by the former owner, one Jones, who had a lease from month to month. He exhibited a Torrens certificate of recent date showing title in his own name and a lease between himself and Jones. The Joneses, he said, were nice people and he didn't want them disturbed.

Smith knew enough about North Shore values to realize, after he had located and inspected the premises, that $35,000.00 would be a low price. Inquiry from a maid developed that Mr. Jones lived there. Being a cautious man and yet anxious not to lose a bargain, he called in his lawyer, who investigated and informed him that he would be quite safe in paying over the $10,000.00 cash upon the depositing of the Torrens certificate and a deed with the registrar. Smith hastened to close the deal. He now held a Torrens certificate in his own name and wanted to move in as soon as possible. The advertiser had disappeared.

Jones' attorney traced back this entire transaction. It appeared that about three months before a man representing himself as John Slick had presented Jones' duplicate Torrens certificate at the registrar's office with a purported deed, duly acknowledged by Mr. and Mrs. Jones, and had requested the issuance of a new certificate in his own name. This was done. Six weeks later he again called at the registrar's office, this time with Mr. Smith and his attorney. The certificate in the name of John Slick, together with a deed from Slick to Smith, was deposited, Smith turned over $10,000.00 then and there, and shortly thereafter received his certificate.

"The whole business was a well planned fraud," said Jones' attorney. "It started with a theft when Slick or some one else stole your certificate. A forged deed purporting to be from you and your wife was the next step. It was finished when Slick got his $10,000.00 and skipped out. I'm sorry for Smith—he may be out $10,000.00. We'll just have to start proceedings to cancel the two last certificates."

So Jones' lawyer got busy and filed his petition, setting up the facts and anticipating little difficulty in clearing up Jones' title. No sooner had these proceedings been started, however, and service had upon Smith, than Smith's attorney called on Jones' attorney and asked him to read a recent case. Jones' attorney read it—and re-read it—then he called in Jones and said to him: "Well, old man, it looks as though you were up against it. There's a recent decision of the Illinois Supreme Court on 'all fours' with your case, and it holds that Smith gets your home and you get some money out of Cook County—when, as and if! I never would have believed it—but it's the law!"

And, except for a few slight differences, unimportant from a lawyer's point of view, the facts in the imaginary case of Mr. Jones' North Shore home coincide pretty accurately with those in the case of Eliason v. Wilborn, decided by the Illinois Supreme Court, June 19, 1929.

He Would Like to Go Through the House

Eliason owned a house, title registered under the Torrens Law, which he sold on partial payments, deed to follow later. He saw an ad of a man who bought the vendor's interests in such contracts. He called to see him and was told to bring in his certificate and contract to be looked over. He brought them in and on request left them for examination. Then commenced a period of chasing up the advertiser, one Napletone. He was a hard man to catch and after about four weeks, Eliason became alarmed and went over to the registrar's office to tell his troubles. There he learned that about three weeks before his Torrens certificate, together with a purported deed from himself and wife, had been deposited with the registrar and a new certificate issued a Napletone's name. Moreover, the Napletone certificate and a deed from Napletone to the Wilborns had since been deposited and a second new certificate was about to be issued to the Wilborns, who were innocent purchasers for value. Napletone was a crook involved in other similar deals and had disappeared.

Upon filing a petition to cancel the Napletone and Wilborn certificates the trial court held that the Wilborns, being innocent of any knowledge of Napletone's fraud and purchasers for value, acquired good title. Upon appeal to the Supreme Court this was affirmed. The exact question involved, as to the effect of the registration of a title derived through a forged deed, is new not only in Illinois, but, as far as is known, has not heretofore been passed upon in the United States, although there are several states having land registration acts in force.

It was urged by the appellants, on appeal, that unless it was by virtue of the Torrens Act, no title could pass under a forged deed—based upon the old Latin axiom, "Ex nihilo nihil fit" *(from nothing, nothing comes)*. Further, that the Torrens Act had no specific provision covering the effect of forged deeds and that therefore the general rule prevailed as to forged deeds and the Wilborns got nothing.

The Wilborns relied upon Sections 40 and 42 of the Torrens Act which provides in substance that, even though a transfer is tainted with fraud, when title has vested in a purchaser for value, with no notice of the fraud, such title shall prevail—claiming that forgery was included in the term fraud as used in the act and that therefore the Wilborns' title was good.

To this appellants replied that if these sections were so construed they were in violation of Section 2, Art. II of the Illinois Constitution prohibiting the taking of property without due process of law and also of the 14th Amendment to the Federal Constitution prohibiting any State from passing an act having such an effect.

These were practically the only questions involved in the appeal. The case was orally argued in February, 1927, and rested quietly for more than one and one-half years until October 25, 1928, when an opinion by Mr. Commissioner Partlow affirming the trial court was, "per curiam," *(by the court)* adopted as the opinion of the Court. Petition for re-hearing was filed, re-hearing granted, and, on June 19,

1929, the same opinion was readopted, Mr. Justice Heard dissenting.

As to the contention of appellants that Sections 40 and 42 of the Torrens Act do not include forgery and that the Torrens Act does not specifically cover the effect of a forged deed, the opinion says in part:

> "It is contended by appellants that a grantee in a forged deed takes no title; that Sections 40 and 42 of the Torrens Act do not by their terms include registered titles based upon forged deeds; that fraud and forgery, within the meaning of the law, are two separate and distinct things; that inasmuch as the act makes no reference or provision as to the effect of forgery upon the title of registered owners, the general principle of law prevails that no valid title can be based upon a forged deed, and that if these sections are otherwise construed they are unconstitutional.
>
> "The last part of Section 40 of the Torrens Act provides: 'The registered owner of any estate or interest in land brought under this act shall, except in cases of fraud to which he is a party, or of the person through whom he claims without valuable consideration paid in good faith, hold the same subject to the charges herein above set forth and also only to such estate, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office and free from all others except: (1) Any subsisting lease or agreement for a lease for a period of not exceeding five years, where there is actual occupation of the land under the lease. The term lease shall include a verbal letting. (2) General taxes for the calendar year in which the certificate of title is issued, and special taxes or assessments which have not been confirmed. (3) Such right of appeal, writ of error, right to appear and contest the application, and action to make counter-claim as is allowed by this Act."

Section 42 is as follows:

> "Except in case of fraud and except as herein otherwise provided, no person taking a transfer of registered land, or any estate or interest therein, or of any charge upon the same from the registered owner shall be held to inquire into the circumstances under which, or the consideration for which such owner or any previous registered owner was registered, or be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand or interest; and the knowledge that any unregistered lien, claim, demand or interest is in existence shall not of itself be imputed as fraud."

Fraud is the only exception mentioned in the statute where the certificate does not carry with it a good title. In cases of fraud the title is good in hands of a *"bona fide purchaser for value."*

After a discussion of the terms fraud and forgery the opinion proceeds:

> "The term 'fraud,' as used in the statute, is not limited to any particular kind of fraud but covers fraud of every kind and description, and therefore includes forgery."

The opinion then takes up the question as to the constitutionality of these sections when so construed and says:

> "In determining whether the statute is unconstitutional its various provisions must be considered as a whole. The act is optional in the various counties of the State. It is not compulsory in any county and can only become operative by a vote of the people, as provided in Section 110. After it has been adopted by a county it is not compulsory as to any person owning land in the county. No one is required to register his land unless he sees fit to do so. When an owner brings his land under the act he presumptively does so with notice of all of its provisions and requirements, including its rights, privileges and obligations. *When he does voluntarily submit his land to the operation of the act he has no cause to complain that the act is unconstitutional.* (Victor Chemical Works v. Industrial Board, 274 Ill. 11; Dietz v. Big Muddy Coal Co., 263 id. 480; Crooks v. Tazewell Coal Co., 263 id. 343; Deibeikis v. Link-Belt Co., 261 id. 454.) Under Section 46, when land is registered there is an implied agreement, which runs with the land, that the same shall be subject to the terms of the act and to all amendments and alterations thereto. Upon the original application to register, the statute requires that all persons interested or in possession shall be made parties defendant; that there shall be personal service or service by publication on all defendants; that there shall be a full and complete hearing, with ample opportunity to all parties to present and preserve their rights. Sections 36 provides for the preservation with the registrar of the original certificate of title issued and the delivery of a duplicate certificate to the applicant. Section 37 provides for the preservation of the evidence of the handwriting of the holder of the duplicate certificate, and that his receipt therefor, in his handwriting, shall be prima facie evidence of the genuineness of his signature. After the hearing, if a certificate is granted, the effect of such certificate is specified in Sections 40 and 42 above noted.
>
> "The land in this case was first registered in the names of the Haleys and a certificate was issued to them. When appellants bought it they knew the title had been registered, and they took it subject to all of the rights, privileges and obligations of such registration and the law applicable thereto. They were under no obligations to buy, but when they did buy and registered their title they came under all of the provisions of the act and were presumed to know all of its terms. The title was registered in appellants under Section 47, which provides that when a registered owner desires to sell his land he may transfer it by deed, and upon filing the deed in the registrar's office and surrendering to the registrar the duplicate certificate of title, and upon its being made to appear to the registrar that the transferor has the title proposed to be transferred, he shall issue and register a new certificate in the name of the applicant. After the title was registered in appellants it could not be registered in Napletone until the duplicate certificate to appellants was surrendered to the registrar. If Section 47 had been complied with it would have been impossible for Napletone to have accomplished this fraud. The act erected a safeguard against a forged transfer being registered, by the requirement that no transfer should be registered unless the owner's certificate was produced along with the instrument of transfer. Section 101 provides that any person wrongfully deprived of any land through the bringing of the same under the provisions of the act or by the registration of any other person as owner of such land, the person who is barred or who in any way is precluded from bringing an action for the recovery of such land shall have a right of action for damages against the county and may file a claim with the county board or bring an action at law for the recovery of such damages. In Board of Education v. Blodgett, 155 Ill. 441, it was held that the deprivation of a remedy is equivalent to a deprivation of the right which it is intended to vindicate, unless another remedy exists or is substituted for that which is taken away."

The substance of this holding is, that even though the application of Section 40 and 42 may result in the taking of real property without due process of law, nevertheless the right to raise such question is waived when an owner of land voluntarily registers his title or when a purchaser buys land so registered. In other words, that you may not have the benefit (if any there be) of this Act without waiving your constitutional rights as to due process of law.

Moreover, says the court, even if you do lose your land without due process of law, you have a right to obtain compensation for it by recourse to the "indemnity fund" established by the Act or by suing the County.

In effect the opinion also says that if Eliason had taken proper care of his duplicate certificate and had not permitted it to be stolen, his land would have been safe. This,

of course, is untrue, since, under the reasoning of the opinion, the registrar might issue a new certificate upon a forged deed and forged duplicate certificate, or even upon no deed and no certificate, and when such title has vested in an innocent purchaser for value, the original owner must have recourse to the indemnity fund.

To attempt to refer, even briefly, to the authorities relied upon by both sides to sustain their respective positions would carry this article far beyond a reader's endurance. It was recognized by both sides that the clear intent of the Torrens Act was to enable the purchaser of land registered thereunder to depend entirely upon the certificate exhibited by the vendor. Similar Acts in force in Australia, New Zealand and some parts of Canada contain specific provisions to the effect that a title derived through a forged deed shall be good in the name of a bona fide purchaser for value. Cases from these jurisdictions would be directly in point were it not for the fact, first, that the Illinois Act contains no such provisions and, second, that the countries referred to are without the inhibitions enacted in the Illinois and Federal Constitutions.

There is also a specific provision as to forgery in the California Act, being Section 38 thereof, the constitutionality of which has not yet been passed upon.

The very question involved was anticipated 18 years ago by Mr. W. C. Niblack, who wrote a little volume entitled: "Niblack's Analysis of the Torrens System." He said:

> "*The Effect of Forgery in This Country.* We have discussed the effect of the forgery of instruments respecting registered land as if the conditions of the law were the same in this and in foreign countries. In foreign countries the legislative power may declare that the production of the last duplicate certificate of title shall be conclusive authority to a registrar to make a new registration, and may declare also that a new registration on a transfer from the last registered owner shall be valid and shall be conclusive evidence of title. When it declares that a registration void for forgery shall become the root of a new title, in favor of a bona fide transferee for value from the owner whose certificate was issued as the result of the forgery, there is the end of it. But in this country there are constitutional limitations on the power of the legislatures to pass laws, and no law of a state may deprive any person of property without due process of law. There are many decisions of courts in this country on the question as to what is and what is not due process of law, and as the system develops, the Torrens statutes of this country are likely to swell the number of them very greatly. Before it can be said that the Torrens system is a secure method of conveyancing and dealing with land in this country, it must be established firmly that such statutory declarations are valid and effective here. In order to work the system, certificates must vest an indefeasible title, and it will not do to deal with registered land under a system where any registration, no matter how far back, may be set aside as void. In England landowners cried out vehemently against a statute which gave effect to a title founded on a forgery. They were more concerned about holding the lands they had than about an improved system under which they might take title to other lands, and they refused to put their lands under the Act of 1875. In framing the Act of 1897 due deference was paid to this objection to the Torrens system, and a registration founded on a forgery was declared to be absolutely void for all purposes, and a person suffering loss by the rectification of the register was given compensation from the indemnity fund. This provision, making all registrations under a forgery absolutely void, greatly impairs the symmetry and effectiveness of the English system, for it is directly contrary to the cardinal principle that a bona fide transferee for value from the last registered owner holds a certificate which is conclusive evidence of title to registered land. If such statutory declarations as we have mentioned are null and void under our constitutional limitations, the American, Ontario and English systems are practically alike as to the result of a forgery, except that no recourse to the indemnity fund is given in any of the American Statutes to the person who may suffer loss from the rectification of the register. It may be that Section 38 of the California Act is constitutional and valid, but for the determination of this matter, and of many questions arising under Torrens statutes, we must wait until the Supreme Court of the United States has rendered its decision."

Following Mr. Niblack's last suggestion, the Supreme Court of the United States is to be given an opportunity to pass upon the questions involved, as the Eliason case is now pending in that Court on appeal. The two principal points presented to that Court for decision are:

First: is an individual, desirous of registering or taking title to lands in Illinois under the Torrens law, obliged to waive certain constitutional rights in order so to do, and,

Second: Can the property of a registrant be taken from him and he be referred to the Indemnity Fund for compensation, when such taking is not for a public use.

In connection with the Eliason case it is interesting to know that another case, in which the question as to whether or not you still own your own home may be involved, is pending in the Illinois Supreme Court. This is the case of Sheaff v. Duplissis, argued at the October, 1929, term.

This case is complicated by various questions as to practice, laches, etc., but the original complainant, now appellant, seeks a ruling from the Supreme Court on the question as to whether or not his client is barred by certain sections of the Torrens Act from asserting his title.

Section 26 of the Torrens Act provides in substance as follows:

> "The order or decree so made and entered shall, except as herein otherwise provided, be forever binding and conclusive upon all persons, whether mentioned by name in the petition or included in 'all whom it may concern'. * * * * Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of such application or the pendency thereof, may, at any time within two years after the entry of such order or decree, *and not afterwards,* appear and file his sworn answer to such application in like manner as is hereinbefore prescribed for making answer."

Section 27 of the same Act reads:

> "No person shall commence any action at law or in equity for the recovery of lands or assert any interest or right in or lien or demand upon the same, or make entry thereon adversely to the title or interest as found, ordered or decreed by the court, unless within two years after the entry of the order or decree. This section shall be construed as giving such right of action to such persons only as shall not, because of some irregularity, insufficiently, or for some other cause, be bound and concluded by such order or decree."

People v. Simon, 176 Ill. 165, is generally recognized as the leading case on the constitutionality of the Illinois Torrens Act. In this case it was said:

> "To the extent that the Act attempts to transfer property without due process of law, it cannot be upheld."

The Simon case recognizes that the intent of the Act is to provide for personal service on all parties in possession and all holders of record titles upon whom service can be had in the State. What, however, is the result if parties in possession are neither made parties defendant by name nor served with process unless it be by the description of "all whom it may concern," *and,* they fail to appear within the two year period provided for in Sections 26 and 27? The Simon case says,

> "We are also of the opinion that sections 26 and 40 can be sustained by construing them as a limitation

> law. 'Whenever an act of the legislature can be so construed and applied as to avoid conflict with the constitution, and give to it the force of law, such construction will be adopted by the courts. Therefore, acts of the legislature in terms retrospective, and which, literally interpreted would invalidate and destroy vested rights, are upheld by giving them prospective operation only, for, applied to and operating upon future acts and transactions only, they are rules of property, under and subject to which the citizen acquires property rights, and are obnoxious to no constitutional limitation, but as retroactive laws they reach to and destroy existing rights, through force of the legislative will, without a hearing or judgment of law. So will acts of the legistature having elements of limitation, and capable of being so applied and administered, although the words are broad enough to, and do, literally read, strike at the right itself, be construed to limit and control the remedy, for as such they are valid but as weapons destructive of vested rights they are void, and such force only will be given the acts as the legislature could impart to them.' (Newland v. Marsh, 19 Ill. 376.)"

In the Sheaff case there were three transfers of the complainant, Sheaff's, title between the entry of the decree registering the title in Duplissis, in 1911 and the filing of the bill by Sheaff in 1920. Judge Foell held that under the plain wording of Section 26, construed as a limitations act and Section 27, which is a limitations act by its terms, the complainant and his predecessors in title were barred two years from the entry of the decree. Appellant claims that these sections, if so construed, are unconstitutional under the "due process" clause.

There is authority for both sides of this proposition. Section 41 of the California Torrens Act provides that in any action for ejectment, partition or possession of land the certificate of title shall be conclusive evidence, etc. The case of Follette v. Pacific Light & Power Co., 189 Cal. 193, decided in June, 1922, was an action of ejectment based upon a Torrens certificate. The title was originally registered in one Bogart who failed to mention or serve the Power Company, which was in possession of a part of the land under an easement for right of way. After Follette acquired title he sought to eject the Power Company, relying on Section 41. The Power Company successfully defended on the ground that it was in possession and not served, and the Supreme Court held that Section 41 was obnoxious to the due process clause of the Federal Constitution (14th Amendment).

On the other hand, in the case of Grey Alba v. De la Cruz, 17 Philippine Reports, 49, a person in possession of land sought to be registered was not made a party by name to the proceedings and a decree of registration was entered. The Act made the decree conclusive unless reopened within thirty days upon a showing of fraud. It was contended, upon a petition to reopen, that the failure to include petitioner by name amounted to a fraud.

The court held that the evidence showed the registrant had proceeded in good faith and that there was no evidence of fraud and held, further, that the petitioner was sufficiently made a party and served within the meaning of the "due process" clause, by the publication of a notice "to all whom it may concern."

While these are apparently the only two cases passing directly upon this point, the Supreme Court of Illinois has used language in one case, at least, which, if taken literally, would definitely determine that all persons, whether in possession or not, and whether made parties by name and served, or only served by publication under the designation of "all whom it may concern," are alike barred at the expiration of two years from the entry of the decree.

Rasch v. Rasch, 278 Ill. 261 was a bill filed by a father to set aside certain conveyances to his children. By one of these deeds the father conveyed the premises on which he resided, and title to these premises was later registered by a son in his own name as trustee. The Supreme Court, in holding that the father was bound by the decree of registration and referring to the Torrens Act, said:

> "Appellee was residing on the property at the time of those proceedings, and under the provisions of Section 16 of that act was a necessary party to such proceedings, and in a collateral proceeding such as this it must be presumed that he was made a party. (Field v. Peeples, 180 Ill. 376.)
>
> Under the provisions of Section 22 of the Act Appellee had a right to enter his appearance in such proceeding and file an answer and have his rights adjudicated therein. His omission to do so is his own fault. Under the provisions of Section 26 of the same act any person having an interest in or a lien upon the land who has not been actually served with process or notified of the filing of such application or the pendency thereof, may at any time within two years after the entry of such order or decree, and not afterwards, appear and file a sworn answer to such application in like manner as if he had been summoned in the original proceedings, so that, *even if appellee was not a party to the original application,* by virtue of the provisions of this section he had the right to appear in that proceeding and have his rights adjudicated therein, *and on his failure to do so must be held bound by that decree.* No such action appears to have been taken by appellee and he is therefore bound by the decree, which vests all the right, title and interest in the property in Christian A. Rasch as trustee for his brothers and sister, so that the same is a bar against appellee maintaining his present action."

Of course, the force of the latter portion of this quotation is weakened by the statement that in a collateral proceeding it is presumed that the father, being a necessary party, was actually made a party. Thus the language that, even if he was not a party, he would be bound by the decree after two years, becomes, to a degree, "*obiter dicta.*" *(An extra opinion unnecessary to the points in question.)* If given its full force, this language would be decisive, and would establish the law that a decree registering title to your home or mine, is binding after two years, even though you or I, residing in the home, were not made parties to the registration proceedings.

Appellant, in his brief in the Sheaff case says: "*Any legal mind is shocked by the proposition that land in the possession of the owner who has a record title may be taken from him by a court which gives him no notice and no opportunity to be heard.*" True!—but the legal minds of this country have been so often shocked in the last decade, that they are rapidly becoming shock proof. There is today a growing tendency in the Courts to sweep aside as out-grown and obsolete many of the provisions of the Bill of Rights which were formerly regarded as impregnable bulwarks.

But, so insidious, gradual and persistent has been the undermining of this bulwark of the Bill of Rights that now the legal mind scarcely lifts a legal eye-brow at each new crumbling breach.

And so, when anyone asks you if you own your own home, it might be wise to investigate before answering.

If your title is registered under the Torrens Act, be sure, first, that your Owner's Duplicate Certificate is safe in the vault. Then, it might be wise to make sure also that no one has presented a forged certificate and a forged deed to the Registrar without your knowledge.

If your title is evidenced by an abstract, then it might be advisable to examine the records every twenty-three months to see that someone else has not recorded something adverse to your title. In such a case, however, you do have the protection of the honored doctrine of possession and the rights granted by the public recording acts.

If you have a guaranty policy, it is the title company's worry and law suit.

Realtors Association Enters Defense of Torrens Case

Considers Theory of Indefeasibility More Vital Than Protection From Fraud

PRACTICALLY no interest has been manifested of late in the Torrens System of Land Title Registration. Those in the title business have paid little attention or thought much of it for years. They generally concluded that it had become a dead issue, and apparently eliminated as a pest, like other obnoxious things.

Recently, though, there appeared in Illinois the case of Eliason vs. Wilborn.

And no particular notice was warranted by that action for a long time. It was just another Torrens case so far as the title people were concerned. But others considered it differently and two instances gave it such a color as to warrant action by the title business.

The decision of the Supreme Court of the State of Illinois gave legislative and judicial approval of fraud to the extent that it can disposses one of his property from such an act. The case was naturally appealed to the Supreme Court of the United States.

Afterwards, under date of Jan. 18, 1930, a form letter was sent out by the Torrens Land Title Registration League, 10103 Ewing Ave., South Chicago, with the stamped signature of Robert E. L. Brooks, secretary, to officers of the various state and the national association of real estate boards.

Excerpts from it are as follows:

> "We enclose herewith decree of the Illinois Supreme Court in the case of Eliason vs. Wilborn, in which appellants sought to set aside a Torrens Certificate issued by the Registrar of Titles of Cook County, Ill., on the ground that it was based upon a forged deed."
>
> "The Illinois Supreme Court held that a Torrens Certificate issued to an innocent purchaser conveyed an indefeasible title notwithstanding the fact that it was issued on a forged deed and that the injured party has recourse through the Guaranty Fund for compensation for the loss sustained."
>
> "This is the most vital question ever raised against the constitutionality of the Land Registration Act. If the decree of the Illinois Supreme Court is upheld by the United States Supreme Court, it will settle for all time and in all states and territories of the United States the question of whether a Torrens Certificate conveys an indefeasible title in the hands of an innocent purchaser even though issued upon a forged deed. If appellants' position is sustained it will seriously impair the usefulness of the law. * *
>
> "We would like to have the support of the National and all State Associations of Real Estate Boards in this work."

This letter actually asked the Realtors' support in legalizing fraud, and giving judicial approval to depriving a citizen of his property through forgery.

There is a certain ironical ignorance displayed in this missile broadcast over the country. At the bottom of the letterhead is printed this statement of the high ideals and philanthropic aim of the "League:"

> *"The object of the Torrens Land Title Registration League is to benefit 'Home Owners' by promoting and facilitating the use of the 'Torrens System' throughout Cook County and the State of Illinois.* * * *"

A most laudable ambition—to benefit home owners depending upon a Torrens Certificate by soliciting funds to uphold a viciousness of judicial approval that will kick a man out of his home, deprive him of his property and let him get his relief from a political manned bureau, with a fund insufficient (with the exception of one county in the entire country) to pay a single substantial loss and then probably only by means of a law suit, in which technical defenses can, as they have been on many occasions, set up as excuses to keep from paying out of a public fund.

Whether or not any of the outside state Realtors associations responded to the plea for help is not known. The natural guess is that those in distant parts were not concerned with "kicking in" their hard earned funds or giving any support to help maintain and fight a battle in Cook County, Illinois, and be big brother under an appeal from an organization which solicited it upon a letter head which stated its object was to promote and facilitate the use of the Torrens System throughout Cook County and the State of Illinois.

National Association of Real Estate Boards Enters

Even at this point of the case, the American Title Association might not have had more than casual interest, but something else happened.

During the latter part of March, an item appeared in newspapers and real estate board magazines and bulletins over the country under various headings such as: "REALTOR COUNSEL DEFENDS TITLE ACT;" "MacCHESNEY TO APPEAR IN TORRENS LAND CASE;" and others similar.

The nature of the item and its verbatim printing showed it to be a formal, prepared news release, emanating from some source.

It was quite hard to believe that the National Association of Real Estate Boards had entered into the support of this case, taken any public stand or made any public declaration of supporting the Torrens System, because of its being such a technical, controversial matter, particularly in view of the contrary idea of its taking any part in the Torrens question, gained after some few consultations on the subject had in recent years between officers of that Association and those of the American Title Association.

It was learned, too, that Mr. MacChesney had at the same time entered in the same capacity as *amicus curiae* for the National Conference of Commissioners on Uniform State Laws, as its attorney and Counsel, but to date no publicity of that fact yet been noticed.

Information soon reached the American Title Association office that the news item had been released from the office

of the National Association of Real Estate Boards. This can certainly be considered as little regard for the title business, a somewhat kindred vocation. It was thoughtless to say the least when one considers the attitude of friendliness and cooperation the American Title Association and those comprising its membership have always given the Realtors, individually, through their state and national organizations, by supporting their activities, work in organizing, handling of conventions, legislative programs, and rendering actual, direct service is so many instances. The Realtors have called upon the title people many times—and never found them wanting. Then too, the title business opposes the Torrens system entirely unselfishly.

Efforts to interpret the news item did not clearly convey the status of the National Association of Real Estate Boards in the case.

If, however, the Realtors Association had made entry in the defense in any way, by lending of counsel, his name, or any other degree of participation or support, the title business was challenged, at least entitled, to an explanation.

Title Association Makes Inquiry

An inquiry was accordingly made by the executive secretary of the American Title Association under date of April 2, 1930, directed to the executive secretary of the National Association of Real Estate Boards, as follows:

> "The case of Eliason vs. Wilborn, now in the supreme court of the United States on an appeal from Illinois, concerns a question involved in the Torrens Act of this state. Until recent developments, this case would probably have been considered by the American Title Association as merely another Torrens suit. No particular significance would have been attached to it and the only attention that would have been given it was whatever notations might have been made by our court decision service.
>
> "However, as stated above, developments have changed this viewpoint somewhat. The first of them was when it assumed an extraordinary and nationwide status by reason of a letter and accompanying matter being mailed generally over the country to various organizations, groups, and others, and particularly to the Realtors associations, suggesting moral and financial support to its defense. These were mailed by a local Torrens organization. The other was recent publicity, the content of which shows it to be a prepared news release sent from some source.
>
> "In view of the rather extraordinary nature of this item, not only by its presentation of this especial case but by the particular emphasis upon the entry into its defense of General Nathan William MacChesney, general counsel of the National Association of Real Estate Boards, I trust I am not being presumptuous in asking the questions following:
>
> "Did this news release emanate from the general office or from any department of the National Association of Real Estate Boards?
>
> "Is the National Association of Real Estate Boards interested in this case, to the extent your association is making it a matter of association concern and activity?
>
> "Is the National Association of Real Estate Boards contributing to the defense of this case either by financial assistance or by lending to the defense the name and services of its general counsel?
>
> "I will appreciate hearing from you at your earliest convenience."

Reply was received under date of April 7, as follows:

"In re: Eliason v. Wilborn Supreme Court of the United States:

> "I have your letter of the second instant in this matter, directing attention to a letter sent out by the Torrens Land Title Registration League and given wide circulation; and also to certain recent publicity. In regard to this you ask several questions as follows:
>
> "1. 'Did this news release emanate from the general office or from any department of the National Association of Real Estate Boards?'
>
> "The only item that the National Association of Real Estate Boards or anyone connected with it has issued in regard to the Torrens Act appeared in our News Service of March 18, of which I enclose a copy.
>
> "2. 'Is the National Association of Real Estate Boards interested in this case, to the extent that this association is making it a matter of association concern and activity?'
>
> "The National Association of Real Estate Boards is made up of 625 Member Boards throughout the United States and Canada which local boards have a total membership of nearly 40,000 members. In the 22 states and territories of the United States in which land registration laws have been enacted there are 287 constituent member boards of the National Association which have a total membership of over 21,000. Accordingly it is necessary that the National Association recognize the Torrens System as one of the methods now employed for the registration of land titles. The large membership of the National Association in the 22 states in which such registration acts have been adopted necessarily is interested in the stability of titles which have been established under this system. For this reason the National Association has approved of the Uniform Land Registration Act drafted and approved by the National Conference of Commissioners on Uniform State Laws in 1916, which uniform act is similar in character to the Torrens Act adopted in the various states.
>
> "The uniform act provides that every registered owner shall hold his land free of any adverse claims, rights or encumbrances (with three exceptions); but that this provision shall not apply to the benefit of a registered owner in cases of fraud or forgery to which he is a party or a privy without valuable consideration paid in good faith. This provision of the uniform act is similar to a provision of the Torrens Act of Illinois except that the word forgery does not appear in the Illinois Act.
>
> "It is now contended that if the Illinois Act is construed to include *forgery* in Section 40 (which is expressly included in the uniform act) it is unconstitutional. The National Association is interested in upholding the constitutionality of the Torrens Act to the extent of the provisions found in the Uniform Act.
>
> "3. 'Is the National Association of Real Estate Boards contributing to the defense of this case either by financial assistance or by lending to the defense the name and services of its general counsel?'
>
> "For these reasons the National Association requested General MacChesney, its General Counsel, to ask leave of the Supreme Court of the United States to enter his appearance as *amicus curiae* for the National Association of Real Estate Boards and to join in the briefs which had been filed in support of the constitutionality of the Illinois law. General MacChesney appeared before the Supreme in this matter; and the result was that he filed his appearance there as additional counsel for the appellees in the case.
>
> "The National Association, while interested in upholding the constitutionality of a registration system which now obtains in 22 states, has never taken, nor does it now take, any position as favoring the Torrens System of registration over and against that embodied in the general recording acts found in the various states.
>
> "We do not plan to submit any briefs other than those now filed and are not making any contributions to the defense of the case other than the appearance and service of our General Counsel."

The News Service Bulletin included the following item:

GENERAL MacCHESNEY TO APPEAR BEFORE UNITED STATES SUPREME COURT IN DEFENSE OF TORRENS LAW

"General Nathan William MacChesney, who is general counsel for the National Association of Real Estate Boards, will appear April 28 before the United States Supreme Court as one of the attorneys for the appellees in defense of the Torrens Land Title Registration Act in the case of Eliason versus Wilborn, an appeal from the Supreme Court of the State of Illinois.

"The case involves a property purchaser's certificate of title issued upon a deed alleged to have been forged by a broker representing the appellants. The question is upon whether or not this certificate can be relied upon to give title to the appellees."

MacChesney Files Motions in Supreme Court of the United States

There were filed in the United States Supreme Court by Nathan William MacChesney two motions. One was that of the National Conference of Commissioners on Uniform State Laws for leave to appear as *amicus curiae* by its attorney and counsel to join in the Brief of Appellee and Brief and Argument of Clayton F. Smith, Registrar of Titles of Cook County, Illinois, on Merits of Case.

Statement in Support of Motion is as follows:

"The National Conference of Commissioners on Uniform State Laws in 1916 drafted and approved 'An Act to Provide for the Settlement, Registration, Transfer, and Assurance of Titles to Land, and to Establish or Designate Courts of Land Registration, with Jurisdiction for Said Purposes, and to Make Uniform the Laws of the States Enacting the Same,' which, Section 1 provides, may be cited as The Uniform Land Registration Act (Handbook, National Conference 1928, p. 580). The American Bar Association approved this uniform act the same year, 1916, and recommended it for enactment by the legislatures of the various states. (Reports of American Bar Association, Vol. XLI, pp. 26, 428.) The Commissioners' Note appended to the Act shows it is similar to the statutes obtaining in a number of the states (9 Uniform Laws Annotated 150). The Uniform Land Registration Act has been adopted in Georgia, Utah and Virginia.

"No. 74 of the uniform act provides that every registered owner under it shall hold the land free of any adverse claims, rights or encumbrances (with three exceptions). No. 75 of the uniform act provides that No. 74 shall not apply to the benefit of the registered owner in cases of fraud or *forgery* to which he is a party or in which he is a privy without valuable consideration paid in good faith. This section (No. 75 of the uniform act) is similar to Section 40 of the Torrens Act of Illinois except that the word *forgery* does not appear in the Illinois Act.

"The appellants contended in the Supreme Court of Illinois that, if Sections 40 and 42 of the Illinois Act be held to cover registered titles based upon forged instruments, they are unconstitutional; in other words, if Section 40 of the Illinois Act is construed to include *forgery* (which is specifically included in the uniform act), it is unconstitutional.

"It is particularly for this reason that the National Conference of Commissioners on Uniform State Laws is interested in the defense of the Illinois Act against the attack that it is unconstitutional in the respect claimed by the appellants, and asks leave to appear and join in the briefs supporting the law.

"NATHAN WILLIAM MacCHESNEY,
"Attorney and Counsel for National Conference of Commissioners on Uniform State Laws.
"MacChesney, Whiteford & Wells
Of Counsel."

The second was a similar motion of the National Association of Real Estate Boards. The statement in support is as follows:

"The National Association of Real Estate Boards was organized as a corporation not for pecuniary profit in 1908 with the object of uniting the real estate men of America for the purpose of exerting effectively a combined influence upon matters affecting real estate interests.

"The membership of the National Association of Real Estate Boards consists of local real estate boards. This membership is now made up of 625 Constituent Member Boards throughout the United States and Canada (8 boards in Canada) which local boards have a total membership of nearly 40,000. Affiliated with the National Association of Real Estate Boards are 33 state associations of real estate boards which represent in an intimate way the real estate interests of the states. In the 22 states and territories of the United States in which land registration acts have been enacted there are 287 Constituent Members Boards of the National Association of Real Estate Boards which have a total membership of over 21,000. The total membership of the 34 Member Boards in Illinois is over 4,400. For 16 of these states there are also state associations of real estate boards.

"The activities of the National Association of Real Estate Boards are carried on largely through subsidiary organizations known as Divisions. There are 10 such Divisions: Appraisal Division, Brokers' Division, Cooperative Apartment Division, Farm Lands Division, Home Builders and Subdividers Division, Industrial Property Division, Mortgage and Finance Division, Property Management Division, "Realtor" Secretaries Division and Property Owners Division. These Divisions are organized for practical research, for raising the standards of the business and for protecting real estate.

"The entire membership of the National Association of Real Estate Boards and all of its Divisions approve the general purpose of the Torrens System of registration of land titles. The 21,000 members of the constituent real estate boards in states now having such laws are interested in maintaining and improving them. The whole membership is interested in extending the system to other states.

"The Code of Ethics of the National Association of Real Estate Boards begins with the phrase 'Under all is the land.' Consequently the interest of the membership of the national organization in this case centers in two basic ideas:

(a) Sound titles of land, and
(b) Simplification of the transfer of land.

These principles are particularly vital to home builders and to members of the Property Owners Division.

"The National Association of Real Estate Boards favors the Uniform Land Registration Act drafted and approved by the National Conference of Commissioners on Uniform State Laws in 1916 (Handbook of National Conference, 1928, p. 580), and approved by American Bar Association in the same year (Reports of American Bar Association, Vol. XLI, pp. 26, 428). This uniform act is similar in character to the Torrens Act adopted in the various states.

"For these reasons, it is the concern of the National Association of Real Estate Boards, and of its Member Boards throughout the United States and Canada, to defend the Illinois Torrens Act against constitutional attack in this court. It is for this purpose that the National Association of Real Estate Boards asks leave to appear and to join in the briefs filed in support of the law.

"Respectfully submitted,
"NATHAN WILLIAM MacCHESNEY,
"General Counsel for National Association of Real

Estate Boards.
"MacChesney, Whiteford & Wells,
Of Counsel."

Both motions were personally presented to the Supreme Court of the United States, but denied. Mr. MacChesney therefore appears only as additional counsel for the appellee, the Wilborns, and the National Realtors Association is not of record. However, it entered and made wide publicity of the circumstance.

Title Association Assumes Position

As a result of these proceedings the American Title Association naturally assumes in respect to them, an action to uphold its ideas. They are:

It expresses its surprise in having learned that the National Association of Real Estate Boards had actively and publicly entered a highly controversial question and, against the long maintained position of the title association, without at least advising it of their contemplated action, and acquainting themselves with the reasons for the principles endeavoring to be upheld by the title business.

It points attention to the inconsistency of the National Association of Real Estate Boards actively advocating government entry into a highly specialized business, when for years that organization has repeatedly and publicly expressed its opposition of *"government in business."*

It questions the competency of the Realtors association, not so much in its endorsing a complicated, technical theory embodying a radical departure entirely foreign to American ideals and ideas, and quite outside the scope of the real estate business, but in taking such a position in lending aid to such a disputed matter.

It particularly challenges and disputes the statements in the motion before the United States Supreme Court, wherein it is stated: (1) that the *entire membership* of the National Association of Real Estate Boards and *all of its Divisions approve* the general purpose of the Torrens System, and (2)—that the *whole* membership is interested in extending the system to other states; (3)—that the National Association of Real Estate Boards *favors* the Uniform Land Registration Act drafted and approved by the National Conference of Commissioners on Uniform State Laws in 1916, for the following reasons:

(1) It is doubtful if but a very, very small per cent of the membership of the National Realtors Association in the various states having the Torrens Law are really acquainted with its provisions. Further, statistics show that there cannot be much interest from any in maintaining and improving the system, even using it. It is further doubted that the membership and divisions of the National Realtors Association are vitally interested in anything so colossal as the Torrens System and its perfection and extension.

(2) The statement in the motion that the whole membership is interested in extending the system to other states is very broad—so much so that its propriety in the particular place used questioned, and this appearing in a brief filed in the United States Supreme Court or anywise made a matter of public record, especially deplored.

(3) The Uniform Land Registration Act, in virtual obscurity for a number of years, is almost ancient history and certain it is that while the National Association of Real Estate Boards may *favor* it, the question is asked, who and how many of them know its provisions; and is this many-a-year-ago endorsement and approval sufficient reason for such a loyalty as to warrant the Realtors Association continuing activities on behalf of the Torrens Law? Might not conditions and circumstances of the time influenced its approval years ago, and those things together with changes since warrant a change of attitude by the Realtors?

How can there be reconciled the statement that their interest in this case centers on one of two basic ideas: (a) Sound Title to land—when the case in question seeks to uphold a system that will establish and sustain a title and ownership growing out of fraud, actual forgery, if you please, the most despicable of crimes, and the point in question, thereby giving legislative and judicial approval to fraud, to the depriving of a bona fide owner, in possession of his property, without legal recourse or constitutional privileges, and chase him to an indeterminate, non-existing (in many cases) "assurance fund," entry to which will often only be had by a long drawn out expensive law suit.

Better return the feudal system where a man can protect his rights by might.

It protests against anything that will annihilate the principle, doctrine, and protection of possession, *"nine points of law,"* and the root and basis of so many land titles—the safeguard of so many.

It shudders to think of there being possible a system of "within the law" fraud in realty transactions, with the principle seeking to be upheld in this case of an open and directed run and recourse on the (even Cook County) insufficient *"assurance fund"*—certainly inadequate anywhere, should such a way be pointed.

Article 21 of the Code of Ethics of the National Association of Real Estate Board says: *"It is the duty of every Realtor to protect the public against fraud, * * * * * in connection with real estate transactions."* **And yet it endorses a system that provides "that in cases of fraud (including forgery) the title is good in the case of a bona fide purchaser for value, and the registration of a person for value in good faith, claiming under any one of these (fraud or forgery) will hold the title as against the former registered owner who is the victim of the forgery, and all claiming under him. A forged transfer or mortgage will become the root of a valid title," and that "such a law is not unconstitutional because it deprived appellants of the title to their property without due process of law. It makes ample provision for the protection of all persons interested." (By a mythical "assurance fund" and a law suit.)**

Every owner or mortgagee under a Torrens certificate is the potential victim of being deprived of his property through fraud and/or forgery by a system which holds the indefeasibility of a certificate, i. e., the notations on a memorial, more sacred than possession, paid for ownership, and constitutional rights.

If the Realtors are interested in Sound Titles to land, can this be it?

(b) Simplification of the transfer of land will not be found in the Torrens System. The American Title Association has outlined a program for the simplification of land titles, prepared by the greatest authorities on land titles in the country, and suggests to these advocates of the Torrens and other schemes, that if as much energy were given to that program as expended in these other theories, there would be a simplification in the transfer of land.

Recent developments and decisions in Torrens

cases have shown that abstracts are necessary for the Torrens title the same as the record.

Business interests, realty organizations, if you please, in countries having had the Torrens System since their beginning are agitating a change to the public recording system and seeking title insurance.

Advocating the Torrens Law is simply misdirected energy.

It asks the National Association of Real Estate Boards' consideration to its reconsideration of the Torrens question and the removal from its records of any record of its having approved the Torrens System of Land Title Registration and thereby rescind any definite stand and approval having been taken in this controversial measure.

The American Title Association would not, however, have any objection to the National Association of Real Estate Boards continuing its approval and endorsement of the Uniform Land Registration Act (Handbook, National Conference, 1928, page 580) as a model or for reference, and as desirable in its provisions for those who were considering the passage of a Torrens Law or for amending existing statutes.

No Effect on Title Business

Any decision in this case will not affect the title business except in its work to present the fallacy of the Torrens System and give added ammunition for its efforts to dehorn the theories advanced.

If the appeal of the appellants is sustained, it simply is another of the long list saying you cannot take a man's property from him without due process of law.

A decision for the appellees would be the greatest argument ever yet available for anti-Torrens agitation. In fact for years those opposed to the Torrens System have longed for an actual case substantiating their contention that the Torrens System provided a great opportunity for fraud in real estate transactions in establishing root of valid title by "jumping over" the fradulent acts, and depriving an actual owner of his property, i. e., the home he is living in.

In short, it means that there is established in this country a system whereby a mere scrap of paper, with the notations entered thereon, even though based on fraud and forgery, stands above the rights of possession, public notice and the constitution.

National Title Guaranty Company in New Home

The new sixteen-story building of the National Title Guaranty Company at 185 Montague St., Brooklyn, N. Y., was officially opened on April 3. The title company occupies the mezzanine, second, third, fourth, and fifth floors and space on the main floor with the National Exchange Bank and Trust Company of New York, with which several officers and directors of the title company are affiliated.

Organized in Brooklyn in 1924, the National Title Guaranty Company's home and Brooklyn offices were located, until the completion of the new building, directly opposite on Montague St. The growth of the company is reflected in the increase from an initial capital of $150,000 to $6,300,000, as of December 31, 1929. Last year the company erected a ten-story building to house its Jamaica, Long Island, offices. The Guaranteed Mortgage Company was purchased in 1929 and became the New York office at 350 Madison Ave.

Manasseh Miller, president of the Prudential Savings Bank and vice president of the new National Exchange Bank, is president of the title company. James J. Brooke, also a vice president of the new bank, is first vice president. Michael Furst is chairman of the board of directors, and the other officers are Clarence Kempner and William Boardman, vice presidents; Matthew S. McNamara, treasurer; August Hasenflug, secretary; Willard B. Kapper, James L. Bennett, Samuel D. Schwartz, and Archibald D. McKeige, assistant secretaries.

The impressive title company structure is one of the most advanced examples of modern architecture erected in this country.

The treatment of both the exterior and interior of the building is modern, but not modernistic, with the lighting forming an integral part of the architecture. The exterior is of Indiana limestone, with the first floor of stone grille work designed by René Chambelan, the sculptor. The building's exterior is illuminated at night by flood lights emanating from the second floor and all set-backs from the twelfth floor up playing on the tower. An additional lighting effect is created from behind the stone grille work with two fourteen-foot light standards of black granite, surmounted by light sources of gold-plated bronze, flanking the building on the street.

The combination of Belgian black marble and Benedict nickel makes the entrance hall to the building unique. The black marble ceiling, which gives the lobby added height, is the first ever used in this country, according to the architects. The entrance to the bank is from the main lobby.

The picture herewith shows "Bankers' Row" on Brooklyn's "Wall Street" (left to right): Brooklyn Trust Company, National City Bank, National Exchange Bank and Trust Company in the new title company building, and Chase National Bank.

Closing the Deal

By W. H. WINFREE

Seattle, Washington

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

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

The listing agreements in general use by real estate brokers in the Pacific Northwest are so drawn that they do not obligate the broker to close the deal, nor to wait for his commission until the purchase money is paid, so as to make the above rule applicable. They are so worded that in the language of the Supreme Court in the case of Armstrong v. Oakley, 23 Wash. 122, "When the agent procures a purchaser ready, willing, and able to buy on the terms proposed, his employment is at an end."

Agent of Both Parties

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

It is not amiss to say that the statutory provision requiring a broker to have a written contract to entitle him to a commission for buying or selling real estate has nothing to do with the agency in connection with the closing of a real estate transaction. Our Supreme Court makes this very plain in its decision in the case of Stuart v. Preston, 77 Wash. 559. When the broker has earned his commission by making a sale or a purchase, he then ceases to represent his principal under the contract for buying or selling and a new relationship springs into existence. As was said in 9 Corpus Juris 518, just above cited, when the bargain has been definitely settled, the employment under the contract to buy or sell is terminated and a new relationship may be created, and when the broker closes the deal he must and does represent all of the parties to the transaction.

W. H. Winfree

Special Skill

If the subject of agency requires special skill, the agent is liable for loss due to want of skill if he enters upon the agency business, even if the agency is gratuitous: 2 Corpus Juris, page 723, and cases cited. The authorities there collected, with practically no dissent, hold that:

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

If the question of the liability of a broker for losses from mistakes in closing is ever presented to our Supreme Court there is little doubt but that it will hold that a broker "professes and holds himself out as possessing special skill" by reason of his following such general practice, and his liability will be measured by the skill of a specialist in closing.

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

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

Representations

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

"One who makes a statement expect-

ing it to be acted upon must have knowledge of the fact concerning which he speaks or he is liable." See Lasman v. Calhoun, 111 Wash. 467; Katham v. Comstock (Wis.), 122 N. W. 1044; 28 Lawyers' Reports, Annotated (N. S.), 201, and long list of authorities collected in the note commencing with page 202.

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

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

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

Little Things

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

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

Essentials in Closing

While it is seldom that a broker is able to point to a loss in dollars occasioned by the inattention to the little things in closing a deal, a direct monetary loss will occur if he fails to perform properly some essential in closing.

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

Evidence of Title. Does the contract call for an abstract or a title policy? If an abstract, the one who is to receive the title evidenced by the abstract should be advised to have it examined by his attorney.

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

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

Care should be exercised that in each instrument,

Every blank is filled in or ruled out;

Every name is correctly written;

There is given the marital status of individual grantors and mortgagors at the time the title was acquired;

The marital status of an individual grantee is given;

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

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

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

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

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

These details having been given careful attention, and everything found regular, the closing agent must then determine if the delivery of all of the instruments would carry out every provision of the contract. A mistake may, we believe, be most easily made in two particulars: one, that the grantor or grantors in a deed, or vendor or vendors in a contract, have not such a title as they contracted to convey or sell; and second, that there are encumbrances against the property which the purchaser did not agree to in his contract of purchase.

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

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

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

Conditional Bills of Sale. A great many household necessities and conveniences are sold on conditional bills of sale. This is particularly true of heating, cooling and cooking apparatus. These things may constitute a substantial item in the value of property. The closing agent should see that any balance unpaid on such items is adjusted when the deal is closed.

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

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

Recently the vendee in an executory contract of sale who had made the initial payment and had taken possession of the property, called and said she wanted to terminate the contract, have her money refunded, and be paid some damages. Our escrow officer had some difficulty in ascertaining the trouble, but finally the woman said the house was infested with bedbugs. Our escrow officer, who has some sense of humor, said, "Madam, remember I told you we knew nothing of, and did not insure against, rights of parties in possession."

But to be serious, notice is of two kinds: one by the records, which is called constructive notice; and the other by possession, which is called actual notice; and if anyone is in possession of the premises, their rights should be ascertained.

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

The statutes of practically all of the states give a lien on real estate for laboring on and furnishing material to a structure erected thereon. One entitled to such a lien may file his claim at any time within ninety days after he has ceased to labor or furnish material. There may be nothing about the premises to give warning of the right of either mechanics' or materialmen's liens, no claim may be of record, and still the right of lien against the property may exist.

Escrows. If a deed is lodged with a holder to receive partial payments and to be delivered to the grantee when the terms of the escrow are complied with, the same care should be exercised as to the rights of all the parties in the particulars heretofore enumerated; and further, care should be exercised that there is a written contract of sale in addition to the escrow instructions. It is the general rule of law that an escrow may be proven by parol, but if it pertains to the sale and purchase of real estate it must rest on an enforceable written contract: McLain v. Healy, 98 Wash. 489. 10 Ruling Case Law 622.

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

Insurance. I am told that it is not unusual for someone to walk into the office of one of the mortgage companies and say he wants to pay interest or an installment on a mortgage, and the mortgage company can find no loan with such a person. After some inquiry it is ascertained that the one proposing to make the payment has bought the property, and on further investigation it is ascertained that the fire insurance policy or policies with the mortgage company carry no riders showing a change in title or sale under contract. In such a case the mortgage company is protected against loss by fire, but neither the seller nor purchaser is protected. It is most important that all policies of insurance should be examined to see that the name of the insured in any new policies and of the assignee in old policies conforms with the name of the grantee in the deed or the vendor in an executory contract, and proper riders placed on the policies protecting everyone who has an interest in or lien on the property.

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

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

It only takes a few moments to file a deed, or mortgage, or to secure a judgment, and, if it is necessary to have a title investigated up to the time that a sale is made, is it not just as necessary to have the record examined between the date of the sale and the date of the closing? One who closes without such investigation is not only not measuring up to the requirements of one having special skill, but is not taking the precautions of the ordinarily prudent man in business affairs.

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

STATEMENT OF OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912.

Morris, Ill., for Apr. 1, 1930.

Of TITLE NEWS, published monthly at Mount

State of Illinois } ss.
County of Cook }

Before me, a notary in and for the state and county aforesaid, personally appeared Richard B. Hall, who, having been duly sworn according to law, deposes and says that he is the editor of TITLE NEWS, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management, (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of Aug. 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are: Publisher, American Title Association, Chicago, Ill.; editor, Richard B. Hall, Chicago, Ill.; managing editor, Richard B. Hall, Chicago, Ill.; business manager, Miriam Dickey, Chicago, Ill.

2. That the owner is American Title Association, Chicago, Ill. President, Donzel Stoney, 250 Montgomery St., San Francisco, Cal.; Vice President, Edwin H. Lindow, Union Title & Guaranty Co., Detroit, Mich.; Treasurer, J. M. Whitsitt, Guaranty Title Trust Co., Nashville, Tenn.; Executive Secretary, Richard B. Hall, 111 West Washington St., Chicago, Ill.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interst direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date shown above is (This information is required from daily publications only.)

RICHARD B. HALL.

Sworn to and subscribed before me this 31st day of March, 1930.

(SEAL) BETTY BISHOP.

(My commission expires Sept. 26, 1932.)

L. L. Brown Paper Company Inaugurates Certified Paper Service

So that executives shall be in a position to know that their vital records and documents are on imperishable paper, a new service known as "Certified Papers" has been established by the L. L. Brown Paper Company.

This service is one by which record, document and correspondence papers are guaranteed as follows: (1) that the rags from which they are made are none but white linen and cotton clippings, the percentage being clearly indicated; (2) that they are free from destructive residual chemicals in either the partly finished or finished paper; (3) that they are wholy immune to disintegration; (4) that they are of the highest quality and value and that they have the greatest degree of permanency and durability in their respective grades.

All record and correspondence papers which meet the four points of certification mentioned are conspicuously marked with a certificate before the packages of papers leave the mills.

The Miscellaneous Index

Items of Interest About Title Folk and the Title Business

The Mortgage, Bond & Title Corporation, with its head office in Baltimore, Md., has increased its paid-in capital stock by $500,000, since Jan. 1, which brings its paid-in capital and surplus to nearly $7,000,000, and its combined resources to about $47,000,000.

This new capital stock was bought by the Chemical Bank & Trust Company of New York City, whose president, Mr. Percy H. Johnson, was elected a director of the Mortgage, Bond & Title Corporation.

Entering the national title insurance field in October, 1929, this company has now qualified in several states and has completed plans for qualifying in several more in the near future.

The Stewart Title Guaranty Company of Texas has recently purchased the former home of the Federal Land Bank in Houston and is occupying the entire building. Modern and complete equipment for the handling of abstract and title insurance business has been installed and provision made for future expansion.

The Stewart Title Guaranty Company also maintains offices in the following Texas cities: Amarillo, Austin, Beaumont, Brownsville, Corpus Christi, Corsicana, Dallas, Edinburg, El Paso, Floresville, Fort Worth, Galveston, Kingsville, Lubbock, San Angelo, San Antonio, Vernon, and Wichita Falls.

Charles D. Vollers, editor of TITLEGRAM, monthly publication of the Oklahoma Title Association, reports that the advertising space used in TITLEGRAM has increased nearly 100 per cent during the past year. This has necessitated the enlargement of the magazine, and the March issue has been increased in size by four pages.

TITLEGRAM is a splendid example of a peppy, interesting, state association publication, and any state organization contemplating the issuance of such an organ can get many valuable suggestions from it.

The Mortgage, Bond & Title Corporation of New York and Baltimore announces the appointment of the following Miami, Fla., companies as agents for the issuance of their policies:

Commonwealth Title Corporation, Dade County Abstract, Title Insurance & Trust Company, and Florida Title Company.

The Oregon Title Association is going strong, and particularly worthy of comment are the exceedingly clever bulletins which are being prepared and sent out by B. F. Wylde, president. Those of recent date have carried a forceful appeal for attendance of regional meetings to be held the latter part of April and the first of May.

You are first attracted to the page by a clever cartoon which takes away the "canned" appearance of the average mimeographed bulletin. The letter itself carries an irresistible appeal and challenge to every abstracter to take an active interest in state and national association affairs and thereby raise the standard of the title profession.

The Potter Title & Trust Company of Pittsburgh, Pa., has issued its twenty-eighth annual edition of the Allegheny County Legal Directory, for distribution among friends and clients.

It is a handy little book, vest pocket size, 288 pages, and contains the following information: List of all attorneys in Allegheny County with addresses and telephone numbers; list of city, county and state officials, banks and trust companies, building and loan associations, etc.

An interesting series of articles have recently appeared in the Daily Journal of Commerce, Portland, Ore., written by E. T. Dwyer, assistant secretary of the Title & Trust Company. Following is a list of the titles of some of these articles: "Title Firm Likened to Manufacturing Plant in Operation"; "Title Bases Play Important Part in Subdivision Plats"; "Defective Titles Frequently Cause Costly Lawsuits"; "Court Procedure in Foreclosure Same if Title Is Insured."

The Lawyers & Realtors Title Insurance Company of Seattle, Wash., has leased the entire second floor of the Washington Mutual Building and will move into their new quarters, April 1. They were formerly located in the Home Savings Building.

The BADGER ABSTRACTER is the latest addition to the list of state association publications. It is edited by George H. Decker, secretary of the Wisconsin Title Association, and is devoted to articles of interest to title men, title squibs, association news, and items about association members. It also contains a roster of Wisconsin Title Association members.

The Union Title & Guaranty Company of Detroit, Mich., has taken over the escrow and the surveying and engineering departments of the Union Trust Company of that city. The title company is now in position to furnish complete title service within its own institution, and directly handle all steps in connection with issuance of full coverage policies.

The New York Title & Mortgage Co. has issued a booklet showing eleven reasons for title insurance. They tell a story based upon some actual incidents and facts revealed in the issuance of policies. Each is illustrated by an appropriate picture that adds to the effectiveness of the presentation.

Suggestions have been made from time to time that abstracters furnish their local law schools or state universities with specimen abstracts for use in property law courses.

Barney Colson of the Alachua County Abstract Company, Gainesville, Fla., has done this, as well as addressing the Commerce Club, made up of men from the college of business administration and journalism, on the abstract business. Prof. George W. Thompson, professor in the University of Florida Law School, in his class work often uses copies of abstracts compiled by Mr. Colson's company, and has highly complimented their method of abstracting.

THE TENTH

ANNUAL CONVENTION

of the

New York State Title Association

will be held at

Rochester

June 5, 6, and 7, 1930

◆

Put a red circle around these dates on your calendar NOW

Illinois Abstracters Association

will hold its

ANNUAL CONVENTION

in

Chicago

June 6 and 7

at

HOTEL SHERMAN

◆

There will be special entertainment for the ladies

Every Titleman in Illinois

should make reservations immediately

◆

All Iowa Titlemen

should plan to attend the

ANNUAL CONVENTION

of the

Iowa Title Association

to be held at

STORM LAKE

June 5 and 6

◆

◆

We have had several inquiries concerning abstract plants for sale.

Those interested in disposing of their business, please write to the Executive Secretary's Office, giving full particulars as to the following:

Price—terms, if any.

Complete description of plant.

Number of competitors.

Numbers of plants in county.

Gross business for each year of last five year period.

◆

The American Title Association

Officers, 1930

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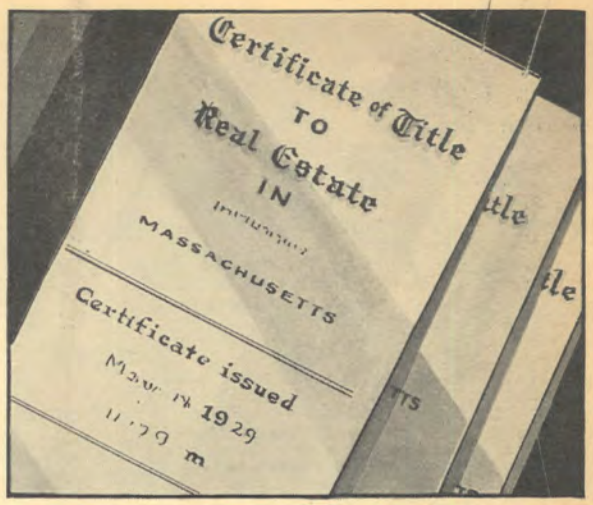

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