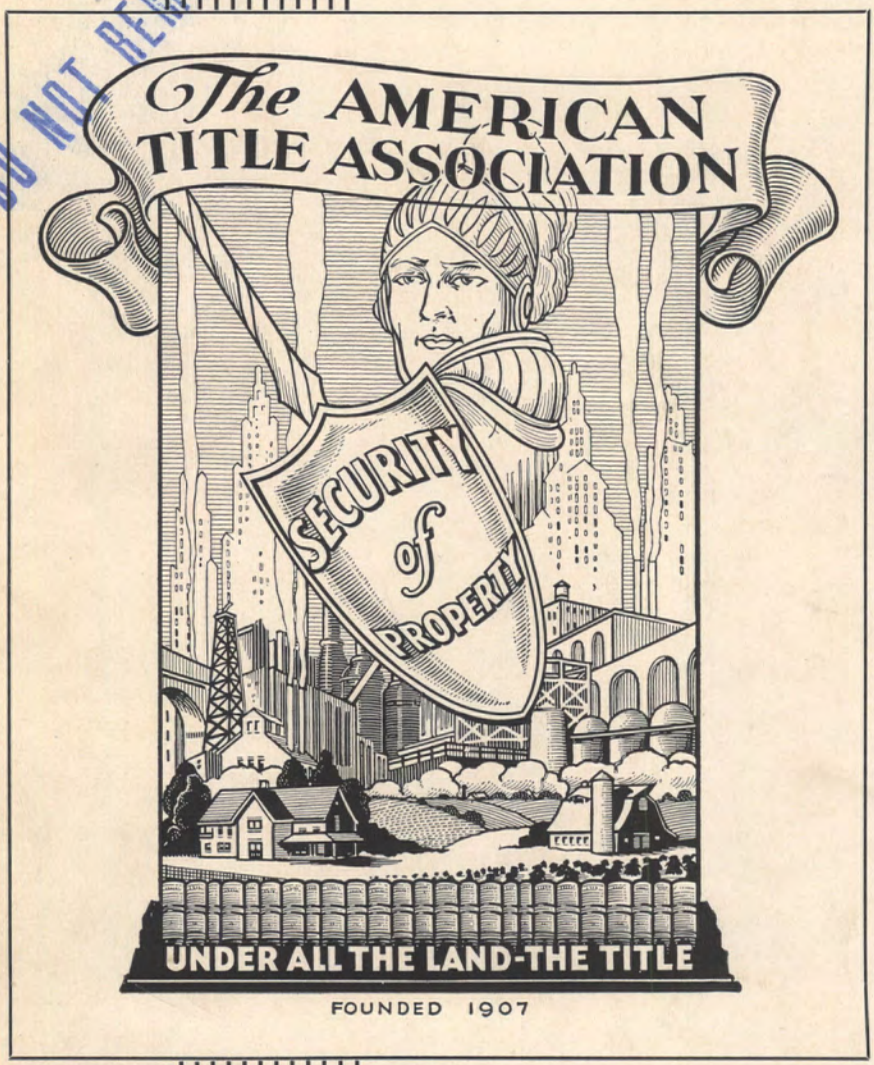
TITLE NEWS



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PROCEEDINGS

Twenty-sixth Annual Convention

DEL MONTE, CALIFORNIA, 1932

The American Title Association

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Proceedings of the Twenty-Sixth Annual Convention of the AMERICAN TITLE ASSOCIATION

June 28th, 29th and 30th, 1932

Del Monte, California

The convention was called to order June 28th, 1932, at 10:00 a. m., by President James S. Johns. The convention was opened with prayer.

Address of the President

JAMES S. JOHNS
Pendleton, Oregon

At this time, when the problems of the moment threaten to obscure our vision, at this time when we all feel the need of renewed strength and inspiration, it is particularly appropriate that this, the twenty-sixth annual meeting of the American Title Association, should be held in California. It is heartening for us to view at close range the marvelous progress which our neighbors and friends in the California Land Title Association have accomplished. From this contemplation of their successes the men and women of the title profession from other parts of this nation can and will attack our problems with renewed vigor and with greater expectation of success. California has been successful, but like all successful enterprises, they are not content. Not before in their history have they had so many plans on their program as now. Ever striving to improve, the title people of California indeed represent a group from whose book of progress every state association in our organization could well take a leaf. The Californians have learned that to get the most out of one's lot in life he must build a service station on it.

It is the privilege of the President at this time to present a report of the conduct of the American Title Association and of its position. In presenting this report let me quote first from the "Life and Letters of Henry Lee Higginson," the great New England banker. Speaking of the crisis of 1857, he says:

> "This crisis is a very useful event in our country. People stop, add up their accounts, ascertain the truth concerning their money, see their awful pace, give up much of their wicked extravagance, discover the difference between necessaries and luxuries, go to work again, and they are wiser men. If we had no such troubles the poor would begin to think equality was a joke and the rich people would agree with them. Of course, much suffering results from it, but it is healthy. In the meantime the country is very rich and powerful, and has enormous resources. And all the real wealth is still in the land."

This applies forcibly to our situation today.

The uncovering and correct analysis of the deviations from that which is correct and right not only make possible but make imperative the elimination of these errors. Therefore, let us stop, add up our accounts and ascertain the truth regarding our position. Let us not forget that the splendid army of men and women making up the membership of the American Title Association are no exception to the well known fact that the people of this nation have never failed in an emergency, and they will not fail now.

There will always be differences of opinion on this, that or the other thing in every trade organization. Each member approaches the solution of the problems confronting his trade association from the standpoint of his own personal experience. Each member considers his own method of operation to be very nearly right. Each member, therefore, has somewhat of a prejudice against every method of operation which does not agree with his.

Our Association is a body which extends from the Atlantic to the Pacific, from the Canadian border to the Mexican border. The opportunities for contact between the members is necessarily limited since each one works in his own field. Close association and interchange of ideas is infrequent. The methods of evidencing land titles are still widely divergent, ranging from the system whereby the attorney's search of the record is augmented by his interviews with old timers who remember the facts, to title insurance including guaranteed surveys. The method of approach ranges from the Code Napoleon to the English Common Law and to the whims of some ignorant legislator who has succeeded in getting his nostrums regarding land titles embodied in the statute of some state.

We have banded this composite type of membership together for self-protection and for the advancement of our industry. On numerous occasions during the twenty-six years of the existence of this Association controversial questions have presented themselves, have been met courageously, settled satisfactorily, and the Association has grown in influence and strength. These questions have been met through the realization on the part of the membership that there is no unsolvable problem, that the solution of the problem requires wisdom, united effort, forbearance and charity. The solution of the problem has resulted in great victories for the individuals involved, in the subordinating and overcoming of their prejudices and personal feelings. The problems have been solved because the members have been able to consider the Association and its welfare first. Solutions have been found because the members sought light and did not engender heat.

You are selling eggs, so am I. You probably don't like some of my methods. I know that I heartily disprove of most of your methods. Nevertheless, we are both in the egg business and we must present a common front against the meat man and the dairyman who want to substitute something for eggs in the favor of the public. We must even cooperate to protect our egg business from the ravages of the health faddist who would attempt to make the public believe that our eggs will give them halitosis.

I urge that in working out the solutions to the many grave and serious questions which confront us, we approach the problems with the spirit which animated so many of us in our youth when we lustily sang that stirring hymn: "Onward, Christian Soldiers," of which part of the second verse reads:

> "We are not divided,
> All one body we,
> One in hope and doctrine,
> One in charity."

The budget for 1932 as adopted at the Tulsa Convention totaled $22,500.00. This was a reduction of practically one-third from the 1931 budget adopted at Richmond. On January 1st, 1931, the considerable deficit of $4,700.00 had been inherited from 1930. My brilliant predecessor in office, Edwin H. Lindow, whose abilities and talents were used unstintingly in promoting the welfare of this Association, not only hoped, but strove valiantly and successfully that the deficit be eliminated and that the Association enter 1932 with no deficit. It was found, however, that with a bill for printing Title News, and some other items of which the officers were not at that time advised, and under the system in vogue could not have been advised, we entered 1932 carrying about $1,650.00 of bills previously contracted. Added to the $22,500.00 budget adopted at Tulsa, we reach a total of $24,150.00 for which, unless other means be found, financial provision must be made if the requirements of the budget be observed. But in 1932 we have found it necessary not only to live within the limits of our budget, but rather we have gone further in attempting to set up our expenditures to balance our expected income for the year. We have only three paid employees, the Executive Secretary, his assistant, and the assistant treasurer, who keeps the books and attends to all the details of the Treasurer's office. These salaries are all materially lower than they were in 1931. Although bound by a long term lease, a considerable cut has been made in our rent. Supplies have been bought soundly and economically. Careful attention has been paid to the item of travel expense, for only extraordinary reasons are travel items incurred. In numerous cases we have had hearty co-operation from state associations which have assumed much, and sometimes, all of the travel expense. The cost of government has been reduced to our membership to such an extent that we are a solvent organization, and we now hope to complete the year 1932 with the budget balanced and all bills paid. With the co-operation of the members and of the state associations, this can be accomplished. It is the plain duty of each administration, not necessarily of the President, but of the entire staff, to complete the year financially solvent.

Our business is largely dependent on the mortgage and real estate markets. In the present chaotic condition of the mortgage business, and with the present uncertainty regarding real estate, it is probable that a long time will elapse before we enjoy large quantities of orders. Platting of new subdivisions will, doubtless, be light for many years. Mortgage money will be scarce. Such orders as we do receive will be extensions, resulting in decreased earnings. That being the case, continuing on our present plan means eventual oblivion for many abstract offices and probably for some title insurance companies. It is apparent, therefore, that after effecting all proper economies it will be necessary to readjust our asking prices to our probable expectancy of orders. This means, of course, that if there are no new subdivisions, if there are few orders which go back to the government, if our business is largely with extensions of abstracts or reissues of policies, then our present decreased earnings will be replaced by deficits unless our asking prices are increased. I have noted with considerable concern the concerted effort to reduce cost of this service which has been made in two of our states by users of title service. Loan companies, investment companies, oil companies, attorneys, and others, in both instances, by concerted action, sent a barrage of letters and complaints to the abstracters in the entire state. In some instances this had the effect of demoralizing some few of the title men to the extent that they started accepting orders at any price which was offered. I am happy to report that this campaign is now being countered by the holding of regional meetings, and that the morale of those abstracters who "fell" for the propaganda is being restored.

Regional meetings should be continued. There is more need for them at this time than at any time in our history. I feel certain that the abstracters are alive to the necessity for this activity. Perhaps the greatest benefit which accrues to the title interests from regional meetings is one which is never disclosed—that being that they lend strength and courage to the wavering title men who, without attendance at these regional meetings, might have succumbed to the unconscionable demands of certain of his customers, who might have listened with welcome ear to the stories that his competitor has decreased prices, or has offered discounts or rebates or commissions. Situations such as this, if they do exist, can be ironed out to the satisfaction of all concerned wherever regional meetings are held.

The National Association stands ready to co-operate with and assist any state desiring its help in the holding of regional meetings. Unfortunately the available funds do not permit us to expend even the amount allowed in our budget for traveling expenses. Therefore, if the assistance of an outsider is desired in conducting these regional meetings the state association will have to bear the traveling expense of the national representative.

We have small conception of the value of title service, of the responsibility entailed, of the liability assumed. It is amazing that even title insurance companies quote rates which vary widely. Title Insurance is used to a constantly increasing extent. The companies which employ this service often operate over a large territory. For comparable service in different parts of the country the prices are not comparable. If title insurance service can not be secured locally, and if in securing quotations from outside companies, the purchaser shops around, the prices are too widely divergent. The need for establishing the true value of this service was brought home to me very vividly in the recent bidding on certain government work in a southeastern state. The bids for this work from four title companies were: $39.75, $57.00, $109.00, and $134.75 per title respectively. With such disparities existing should we stand aghast that the government and the public shop around? Greater uniformity must be achieved that we may enjoy that complete confidence of the big users of title insurance which we desire.

Some misunderstanding and antagonisms formerly existed with the profession. Abstracters viewed with alarm the growing demand for title insurance. Abstracters felt that if title insurance supplants abstracts in the handling of the nation's business, the abstracter was doomed to extinction. Happily this feeling is passing and the local abstracter now realizes that before the issuance of a title insurance policy, a title company must have an accurate, thorough, and complete search made by the local abstracter. He realizes that instead of the title insurance company being a competitor, it is really an ally. In a pleasingly large number of instances the alliance is becoming closer and closer. The experience of our friends in California has shown that with the advent of title insurance, the local abstracter is not relegated to a subordinate position, but that, on the contrary, he assumes the position in his community and in his title company to which his talents and abilities naturally entitle him.

Conscious of this changed viewpoint of the abstracter, realizing the unity of thought actuating the members of all of the sections of the American Title Association, and mindful of the welfare of the abstracter as well as that of the title examiner, of the title insurance company, and of the users of our product, I feel that I would be remiss in the fulfillment of my obligations if I neglected to make the following recommendation:

I recommend to your serious consideration the desirability at this time of taking steps to impress upon the life insurance companies, and other lending companies, the necessity and great benefits of title insurance to them, and the desirability of getting them to adopt the policy of requiring title insurance with every loan. Here is a place where the facilities of the National Association should be used to the fullest extent through constant personal contacts with the life insurance companies, leading mortgage bankers, houses of origination of real estate mortgage bond issues, executives of the Mortgage Bankers' Association of America, of the American Bankers' Association, counsel for all of these, and numerous others, also by constant publicity from the national office to these same companies and individu-

als. As our financial condition improves, we must do more and more work of this character.

There is an appalling lack of contact between the members and the Executive Office. The office is maintained for the benefit of the membership, not for the President or for the Secretary. Neither the President nor the Secretary is endowed with such omniscience that all of the new ideas beneficial to the profession at large will be revealed to them. Several of the larger organizations on our roster have departments which give thought to the creation of new business. Some of the smaller members have worked out methods of creating new business which have been highly successful. I urge that our 2,000 members contact the office consistently, submitting questions which the Secretary can in turn submit to all members, and that they send us their practical ideas on ways of making money, ways of saving money, and ways of rendering a more adequate service, which the Secretary will in turn bulletin to all members. This is particularly urgent owing to the necessity of developing by-products if the smaller title companies and the abstract companies are to survive. And this will build an organization of inestimable value to every abstracter and title insurance man in the country.

Between 70 per cent and 80 per cent of our business is developed by mortgage bankers and realtors. In a few state associations and among some few individual companies, contacts with local units of such organizations as the State Association of Real Estate Boards, the local chapters of the Mortgage Bankers' Association and of the Realtors, the State and Local Chapters of the Banking Associations, and kindred organizations, are maintained. Here again California is among your leaders. The National Association co-operates with the national offices of these associations. It is urged that state associations and local companies make such contacts, if they are not already being made, and that they extend and cement the relations still further, if occasional and spasmodic contacts are now being carried on.

While such contacts have been found to be extremely beneficial to the title profession, yet the benefit is not at all one-sided. It has been found that the improved and additional service which title companies and abstracters can render redounds to the benefit of our clients. It has also been found in several instances that the facilities which we possess, and which we have sometimes offered to these kindred trade associations, have been of inestimable value. This is particularly true during legislative years.

A particularly satisfactory form of contact is the annual directory, on which the National Association is now working. This will be of a new physical appearance, the intention being to issue a booklet fitting an ordinary office envelope, and which can be mailed with letters, statements, etc. This, in my opinion is one of the best means of advertising yet devised. I would strongly urge every title and abstract office in the country to purchase a stack of these for local distribution to its clientele and potential clients; I would urge every state organization to acquire a goodly stock of these for distribution by mail to all organizations—and leading members thereof—with whom we have business relations.

I would further urge that at state conventions of such organizations as the Mortgage Bankers, State Bankers' Associations, Bar, Realtors, etc., our local members, wherever these conventions are being held, be furnished by your state associations with a stock of our directories for distribution to the delegates.

The cost of these directories is amazingly low; the form of advertising is dignified; and I am sure the returns will be pleasing.

We should be alert to the fact that at this time the municipalities, county, city, and state, are having to take over the ownership of tens of thousands of parcels of lands by reason of delinquent taxes and assessments. As long as these parcels are owned by the municipality they will be a tax burden. Whenever they are disposed of they will again go on the tax rolls. When they go on the tax rolls each of these parcels will become a potential source of income to us.

We are confronted with government agencies using title service or about to use title service to a greater extent than ever before in history. I refer to the Farm Mortgage Banks, to the prospective Home Mortgage Bank system, and to the Reconstruction Finance Corporation. It seems true that this latter governmental agency has carefully avoided using title service up to this date, but for that very reason it is likely to have a lot of it before it gets through. It is vitally necessary that the Association keep in close contact with the various governmental agencies which will soon be needing our services to the end that we shall be able to furnish them the type of title service which they most need.

Another hopeful sign in the development of title business, particularly in localities adjacent to large cities, is the significant trend toward the development of small farms. Tracts of three acres, or less, increased about 33 per cent during the decade between 1920 and 1930; while the number of medium sized and large sized farms decreased.

Dr. Oliver E. Baker, who is senior Agricultural Economist and Specialist in land economics with the United States Department of Agriculture, states:

> "It seems very likely that this trend toward small farms, largely operated by people engaged in other occupations, will be accelerated by the unemployment situation. In fact, thousands and thousands of unemployed from the cities have gone to relatives and friends on the farms. And, doubtless, many of these will remain.
>
> "It is probable, looking beyond the depression, that part-time farming will prove more permanent than full-time farming by these people, most of whom lack capital, and some of whom lack farm experience. With the return of prosperity, it may be expected that employment will be offered again in the cities, but the experience of the past two years will undoubtedly result in many of these people remaining on the parcels of land which they have acquired, spending an hour or two in the morning or in the evening cultivating it, as a means of greater security against possible future adversity."

I have referred in this report to the chaotic conditions existing in the mortgage and real estate markets. This is in no small part due to the excessive burden of taxation to which real property is subjected. This has reached such a point that ownership of real property for investment is highly unprofitable in most communities. In fact, home ownership has become an unattainable luxury in too many instances. It is common knowledge that village, city, county, state and federal taxation are crucifying real estate. We can not expect to continue long as a nation of home owners unless we, you and I, pay greater attention to our government, federal, state and municipal.

The cost of such luxuries as municipal auditoriums, magnificent county and city buildings, paved highways to every farm, not only as to original cost, but also as to interest and up-keep, must receive our serious consideration. Government expenses must be reduced by elimination of unnecessary employees, by cutting salary scales to those obtaining in comparable private enterprises, by elimination of unnecessary bureaus, and by elimination of all bureaus which private industry should support.

I quote from an editorial in the Chicago Tribune:

> EVOLUTION OF A BUREAU
>
> A news item from Salem, Ore., says that the federal employees in Crater Lake National Park will count the nuts the squirrels store away this fall. Students of government are advised to watch this, because here is the genesis of a government bureau. It is not always possible to catch one just as it breaks the shell. From the Crater Lake research various reports will go to Washington, and when they come in, a new set of offices with doorman, usher, superintendent, chief clerk, three assistant clerks, two stenographers, three filing clerks, and a publicity agent will be required.
>
> In 1933, this force will be expanded to meet the increased demands. It will then consist of fifty field agents, thirty envelope ad-

dressers, two policemen, two private elevator operators, ten typesetters and three pressmen. Later there will be six chemists, 200 forestry experts, ten acorn experts, ten chestnut specialists and ten agents well informed as to hickory nuts and paper shell pecans. In 1936, the bureau will move into a building of its own, and 1940, the squirrel and rodent department will be one of the foundations of the Government . . .

In the meanwhile, the new bureau of government may advise the citizens how to live after the taxes have been paid.

There may be enough acorns.

On the statute books in nearly every state is a personal property tax which is enforced not at all or in a very desultory manner. These taxes must be enforced before real estate can again be considered an asset.

It is a notorious fact that in many states the multiplicity of small counties with their attendant hordes of office holders causes the expense of county government to be extremely high. With modern means of communication and transportation such a multiplicity of governmental agencies is unnecessary. Careful attention is now being given by an increasingly large number of people to this form of governmental waste and extravagance. This is a reform in which our neighbors and friends from California appear to be taking the lead.

About a year ago the people of Campbell (one of Georgia's smallest counties) voted their county out of existence and aligned themselves with the richer county of Fulton. As a direct consequence of this act of county abolition, the people of what was Campbell County will pay $50,000.00 less in taxes this year than they did last. Here is an open road to real tax reduction and one that will appeal to the people of weak counties throughout the country to a greater and greater extent as the need for economy grows. Another form of governmental extravagance is the unnecessary continuance in many communities of both a city government and a county government although the boundaries are co-terminous.

We have loaded a very heavy debt on the next two generations. The credit of an alarmingly large number of governmental subdivisions is completely exhausted. Public expenses must be curtailed and of those remaining only a just share should be borne by real estate. The Federal Government has recently made an heroic effort to balance its budget. Its new taxes will bear heavily and irritatingly on every citizen. The time is ripe for the citizens to arise and take an active interest in matters pertaining to equality and reduction of taxes.

No group is more vitally interested in the problems here presented than the members of the American Title Association. I earnestly recommend that each member of our Association join with civic organizations and become leaders therein in presenting the demand that the expenses of government be reduced and that sources of wealth other than real estate bear their just proportion of the cost and that the political record of our representatives be given the closest scrutiny.

This report would not be complete without an expression of my deep appreciation to the chairmen of all sections, the chairman of each of the committees, and to each member who has given so untiringly f his time to the affairs of the Association. It would afford me great pleasure to take the time to explain to you in some detail the generous sacrifices which many of our members have made in order to promote the welfare of the Association. I want to pay a special tribute, however, to our Treasurer, J. M. Whitsitt, who has for many years given a magnificent service to the affairs of the Association. Mr. Whitsitt is a tower of strength and courage at this time.

When Dick Hall resigned it was felt by many members of the Association that it would be impossible for anyone else to fill his position acceptably. Everyone knows that any Executive Secretary succeeding Dick Hall has an extremely difficult position to fill. James E. Sheridan has taken charge of the situation like a veteran, has shown a wide grasp of the problems confronting the individual members of the Association, has through his bulletins and in other ways presented solutions to many of these perplexing problems, has shown that he is practical and has his feet on the ground, and has displayed an unusual amount of tact. When times are normal, when we are able to operate on a generous budget, when we can work along a greater number of constructive lines, when Mr. Sheridan can have a real opportunity to show his wares, he will accomplish marvels for this Association. I desire to express, publicly, my deep appreciation for the manner in which Mr. Sheridan has freed me from a thousand and one trying and perplexing details of the mangement of this Association; also for the extremely satisfactory manner in which he has represented the Association at the Pennsylvania, Iowa, and Illinois State Conventions. Since these conventions, I have received several letters of thanks for permitting his attendance, all couched in terms highly complimentary to him.

Stuart O'Melveny, Vice-President and Chairman of the Executive Committee, has endeared himself to every member of the Association with whom he has come in contact by his geniality, fairness, clarity of expression and sincerity. Very heavy and unusual duties have been imposed upon Mr. O'Melveny in conducting his own company and he is required to bear a particularly heavy burden of responsibility at this time. On that account he does not wish to take the presidency of this Association. Should Mr. O'Melveny consent to accepting the presidency of the Association for the ensuing term it will involve a great sacrifice to him. It is my sincere hope that you prevail upon him to accept the presidency and that during his term of office you give to him the same co-operation and friendly assistance which you are giving to me during the present term.

A need which has always existed but which is particularly evident in these times of stress, is the need for election to positions of honor in state and national associations, of men who will serve. Too often, it has been my observation, this honor is given to one who treats it too lightly, and who is unable or unwilling to give sufficient of his time and efforts to fittingly discharge the duties of his office. I would urge upon all our membership that great care be exercised in the selection of officers to head our groups, and that men upon whom these honors are conferred, be appraised of the expectation of the organization that the work of advancing the title interests of the state and nation be carried forward steadily and vigorously.

For generation after generation, man has fought for the land and fought to keep the land. It is inconceivable to me that a few years of livelihood in the factories of the United States, in our great cities, have destroyed this urge of thousands and thousands of years to possess a piece of land. I truly believe there will be a movement back to the land, unprecedented in the history of our country, if not of the world. It will not come tomorrow or next week; but as surely as day follows night, so will this urge be reborn in the hearts and desires of man.

And with that return, the title interests of America will come into their own, will once again enjoy the degree of prosperity to which our efforts entitle us in the building of chains of title for the protection of American industry and the American home.

In the words of the late Senator Frank B. Willis of Ohio:

"The spirit that made this proud nation was born of the idea that men who dared and toiled and produced should own what they made.

"The ownership of real estate is an incentive to good citizenship. The real estate man who stimulates home building strengthens the Republic. A man will fight for his home, but not for his hotel. You never heard of anybody waxing patriotic over contemplation of his boarding house. The virility of a nation depends upon its family life, and family life will wither and weaken to decay in two generations in an apartment house.

"There is something about ownership of realty that steadies and sobers. The man who has title in fee to a farm or a home is not likely to become an anarchist. Bolshevism does not feed and fatten on bucolics. . . ." (Applause).

The Secretary read a number of telegrams of greeting and good wishes from numerous members and friends. Among those received were messages from Judge Elwood C. Smith, Tom Dilworth, Dick Hall, Kenneth E. Rice and J. M. Dall. Also a telegram from Mr. Hiram S Cody, President of the Mortgage Bankers' Association of America, who expressed his pleasure over the increasingly warm relations between his and our associations.

Report of the Treasurer

J. M. WHITSITT

Nashville, Tennessee

COMBINED STATEMENT — Receipts and Disbursements—from January 1, 1932, to May 31, 1932—AMERICAN TITLE ASSOCIATION, J. M. Whitsitt, Treasurer.

RECEIPTS

State Dues	$1,912.00
Sustaining Fund	7,021.85
Individual Dues	527.50
Title Examiner	150.00
Insignia	9.00
Miscellaneous	61.74
Total Collections	9,682.09
Balance, Jan. 1, 1932	163.65
	$9,845.74

DISBURSEMENTS

Association Insignia	$ 23.67
Check Retd.	10.00
Asst. Treasurer	227.50
Executive Secretary	2,000.00
Office Rent	857.18
Stenographers	1,047.25
Postage	213.00
Stationery and Printing	150.75
Telegrams	44.11
Title News	1,018.62
Miscellaneous and Supplies	1,051.25
News Bulletin	577.37
Office Equipment	70.00
Traveling Expense	125.00
Balance, May 31, 1932	2,430.04
June 10, 1932.	$9,845.74

MR. WHITSITT: Comparing that with last year: We had received $15,804 and had spent $15,040. This year we have received $9,682 and have paid out $7,415, so we are running much lower this year than last. Except for current expenses, we have only one bill of $400 unpaid.

We are all going to have to pull together to raise enough money to get through this year. Mr. Sheridan and I differ somewhat in our estimates of the amount that it will take. I think it will take $10,000; his estimate is $8,700. Personally, I don't see how we can finish this year in the black unless we raise an additional $10,000. That will necessitate the state associations paying their state dues, and in addition, we must raise a few hundred dollars from the Sustaining Fund. I don't know just how that is to be done, but it must be done if we are to get through and not be in the red.

In addition to this report, I have the detailed statement showing the amounts paid by each state, if any one is interested in seeing it. I also have the auditor's report of last year, which any of you may see if you wish to know just how our money was spent. This is your Association and you are entitled to all of the information, so do not hesitate to come to me for any information in regard to finances.

PRESIDENT JOHNS: I may say in explanation, the Treasurer's report is rendered annually as of December 31st, and is audited before the Mid-winter meeting.

Moved, seconded and carried that the report be accepted and filed.

Report of Executive Secretary

JAMES E. SHERIDAN

Chicago, Illinois

To the Members of the American Title Association:

I submit herewith report as your Secretary for the period of March 1st, 1932, to date.

We summarize our work in national headquarters for the period indicated as follows:

We have issued twenty-one bulletins, ranging from those directed to state officers, to all members;

Have certified to the Treasurer for payment all bills received except those for items incurred in June and for a balance of $418.72 due the printers, and a balance due on office equipment which is payable quarterly;

Have cleared to the Treasurer all remittances received, either to the sustaining fund, dues, or miscellaneous;

Have prepared and forwarded publicity to about 250 newspapers. The last of these relates to the convention and will appear June 27th, carrying a photograph of President Johns;

Have tried to be of aid to our members in responding to questions and comments and are now in correspondence with some scores of members on various matters;

Have attended the conventions of the Pennsylvania, Iowa and Illinois state associations as liaison officer between the national and those state associations;

Have aided in the preparation of the program for this convention;

Miscellaneous duties of the office.

We give you herewith our budget for the year 1932 and a statement of what we expect our expenditures to be for the year. To the budget, it becomes necessary to add over $1,600 of unpaid bills for services and expenses incurred in 1931, making the total, added to the budget prepared at Tulsa, of $24,100. It early became apparent that it would not be particularly difficult to live within our budget; that would have been comparatively simple. But we have revised our entire financial plan and hope to live, for the year, within our expected income and out of it pay off the inherited bills.

Item	1932 Budget	1932 Expected Expenditures
Assistant Treasurer	$ 600.00	$ 472.50
Executive Secretary	6,500.00	5,500.00
Office Rent	2,200.00	1,896.18
Stenographers	3,250.00	2,573.75
Postage	1,250.00	1,250.00
Stationery and Printing	650.00	450.75
Telegrams	200.00	106.48
Miscellaneous and Supplies	2,000.00	1,556.96
News Bulletin	1,000.00	1,302.37
Office Equipment	100.00	170.00
Travel	1,750.00	600.00
Regional Meetings	500.00	200.00
Title News	2,500.00	2,500.00
	$22,500.00	$18,578.99

It is our hope that during the remainder of the year we will work upon the following:

Issue the Proceedings of this convention.

Issue the Annual Directory.

Frequent bulletins, acting as a clearing house for queries, comments, etc., on the following subjects and any others which, from time to time, may arise:

Budget for Abstract or Title Company.

Reconstruction Finance Corporation, new business.

Federal Home Loan Bank.

Advertising, Publicity, Public Relations.

Banking Codes of the states and effects on our business.

Price Schedules for Title Insurance and Abstracts.

Forms.

Annual Directory.

Regional Meetings.

Advertising Display Messages.

Speakers' Bureau.

Charges of Practice of Law (affecting trust companies primarily, but may affect us).

Showings in abstracts of Sheriff's deeds, foreclosure suits, tax sales, tax forfeitures, judgments, oil and gas leases, etc.

Procedure and Operations.

Abstract Contest.

Governmental expense and effect on the real estate and mortgage markets.

Loss and Claims Statistics, Defenses of Titles.

Important Supreme and Federal Court Decisions.

Important State Court Decisions.

Legislation.

Use of Title Insurance by U. S. Government.

Data on Financial Strength of our Members.

Data on Taxes Paid by our Members.

Legal Matters.

By-Products: Escrow, Survey, Tax Service, Chattel Mortgage, Collateral and Credit Data, and others.

We also hope to contact trade organizations or rather to continue contacts with those whose interests parallel ours, such as the bankers, building and loan, mortgage bankers, bar, real estate organizations, etc.

To contact large users or possible users of our products, such as counsel and comptrollers of the life insurance companies, the chain stores, oil companies, railroads, bond houses, etc.

To distribute publicity concerning the activities of our association and our members.

To build a department of vital statistics—statistical table on losses and claims.

To work upon and in the distribution of copy for advertising, particularly of direct by mail and display character.

Legislation, particularly in our state legislatures on matters of interest to us, perhaps particularly specifying the rewriting of the banking acts and looking to assurances that our evidences of title will be in every mortgage loan file.

Research work on by-products for abstract and title companies.

On group printing, following standardization of forms.

Aid state associations in connection with annual conventions and regional meeting.

Conditions over the country continue to be bad. As in the case of every trade organization, we have "trimmed our sails" in every conceivable way, and are overlooking nothing through which further economies can be effected. It is unfortunate that conditions are as they exist. We have a staff of two in our national office, including the speaker. At this moment, we have in hand material for two, probably three bulletins, on matters we believe of interest to the members, but it is physically impossible to get out more than we are now issuing.

For the most part our contacts with the members have been through the bulletin. With a few score of our members we have carried on and are now carrying on correspondence on this, that and the other subjects, but insofar as the entire membership is concerned, our contact has been the bulletin. We hope sincerely that we are on the right track in these. But we would ask you to bear in mind that we are not all-seeing. Unless we hear from you with queries, with comments, with ideas on new ways you have adopted to improve business or to effect savings—unless we receive material on these, we cannot have material to broadcast to other members.

For instance, we are sure it would be of benefit and help to other members if you sent us a resume of such of the minutes of the proceedings of meetings of your boards, meetings of officers and department heads, as to these directors or officers seemed proper to have broadcast to other members of the Association.

To my mind we in the title business are at an important turn in the road. We builded our rates for services upon what we considered a carefully planned and sound expectancy of a definite amount of business each year. We may continue on that road, but I fear that for a great many years to come that road will present ruts in the form of decreased number of orders, sink holes in the form of decreased earnings per order and other obstructions in the form of mounting costs of operation because of the changed character of our take-off work. In today's market, with an excess of recordings of unusual type, sheriff's deeds, tax sales, tax forfeitures, judgments, claims for mechanics' liens, foreclosure suits, oil and gas leases and others, and with a sharply curtailed expectancy of orders to handle, the title industry is hard pushed to earn dividends for stockholders.

So it might appear that we are at a turn in the road. One road, some fear, may lead to eventual oblivion. The other road may be called Land Title Expert Boulevard. Just as we have the chain stores putting in meat markets to draw trade into their stores, so perhaps must we evolve ways and means of servicing a greater number of people, and giving a greater number of services to those people. As the hotels installed coffee shops because people would not patronize their main dining rooms, so perhaps must we install other departments — chattel mortgage departments, tax servicing departments, departments for reports on condemnations, street widenings, street openings, etc. Perhaps we will be asked to furnish and perhaps we should be glad to furnish reports on real property for the credit departments of the banks, the big stores, the radio shops, the automobile dealers, and countless others.

Departments of Research, of Accounting, perhaps standardization thereof. Departments of Publicity and Advertising. Departments of Law, and broadcasting that we maintain such departments. Possibly these and others not now dreamed of are vital departments of our business.

An engineering department, whose product will be written into and become a part of a policy of title insurance, might easily become the requirement of large lenders of funds. And the closing of every mortgage loan in the escrow department of a legitimate, well organized, properly officered title company is but one more step along this road. And at another step may be the handling of funds in connection with all developments of real estate.

The title companies who travel this new road, to my mind, will live in greater harmony with their competitors and will early come to a realization that it is folly to sell at a loss. Perhaps it will mean a revamping of much of the organization and the weeding out of those who find themselves unable or unwilling to adapt themselves to modern practices.

It has been our pleasure to have attended the conventions of the Pennsylvania, Iowa and Illinois State Associations within the last three weeks. We have also had pleasure of corresponding with many members not before known to us. All have been an education to us. We are more than ever convinced of the stability of the title business and impressed by the high type of business man who represents our industry. No one could attend state conventions such as these without being impressed by the seriousness of purpose, by their straight dealings, their earnest discussions of problems of the day, and the limitless amount of research work being carried on quietly and unostentatiously for the improvement of our business. (Applause).

Report of National Councilor, U. S. Chamber of Commerce

JOHN R. UMSTED
Councilor
Philadelphia, Pennsylvania

PRESIDENT JOHNS: This report was to have been made by Henry E. Monroe of San Francisco, Alternate Councilor, who attended the National Convention of the Chamber of Commerce of the United States, but as Mr. Monroe was unable to be present, I will make that report.

Worrall Wilson, former President of the American Title Association and thoroughly beloved by every title man and title woman who has had the privilege of knowing him, was a candidate for Director of the Chamber of Commerce of the United States, and partly because of the recognition by that organization of Mr. Wilson's valued services and partly through the splendid efforts of Mr. Monroe, Mr. Wilson was elected as a member of the Board of Directors of that organization.

This is the first time that the title profession has been recognized by the Chamber of Commerce of the United States, and it is a considerable honor which has come to this organization and to Mr. Wilson.

The President appointed the Committee on Resolutions, to consist of Messrs. Harry M. Paschal of Atlanta, Ga., Chairman; J. K. Payton, Springfield, Ill., and Charlton Hall, Seattle, Wash.

The President appointed as Chairman of the Committee on Nominations Mr. Walter M. Daly of Portland, Ore.

How California Went Title Insurance Over Night

MORGAN E. LARUE

Vice-President, Title Insurance and Guaranty Co., Sacramento.
President, California Land Title Association

The heading of this discussion "How California Went Title Insurance Over Night," has a ring to me of the sensational. It, of course, is not meant to be taken literally. California, as a whole, did not "go title insurance over night." But the change from ancient, time-worn practices to modern title insurance exclusively was accomplished in many individual communities literally over night. The change in the most of Northern California was made in a period of about three years, and the whole of California, with the exception of two or three counties was on a title insurance basis within ten years after the beginning of the movement.

I will only attempt to discuss that bit of history as it applies particularly to Northern and Central California, by which I mean the counties around San Francisco Bay and north of the San Joaquin Valley. Fundamental changes in Southern California and the San Joaquin Valley are another story, and that story has been told and will be told by others much more conversant with that history than I.

Although the actual spread of title insurance over most of the Northern counties of the state was accomplished rather quickly, the factors which prepared and paved the way were in process of developing for a number of years.

I will briefly describe some of these factors:

San Francisco, which is the financial and industrial center of Northern and Central California, had long been using title insurance, and this city, because of the destruction of the public records in the fire of 1906, and the energy and farsightedness of the several title companies there located, had been for some time prior to the close of the war practically on an exclusive title insurance basis.

Alameda County, directly across the Bay, with the large and thriving cities of Oakland, Berkeley, Alameda and suburban communities, had also several title insurance companies, although I believe the use of title insurance was not so general at that time as in San Francisco.

The demand for and use of title insurance by the San Francisco and Alameda County real estate operators, banks and other investors throughout San Francisco's sphere of influence contributed toward gradually familiarizing people of this territory with its uses and conveniences.

It was fortunate for the spreading of the idea that in its development of title insurance the San Francisco title insurance companies had gradually established uniform premiums, based upon the amounts of transactions, and that the escrow, title search and issuing of the title policy were closed as one transaction and at a single fee or premium, so that the client could feel that he was not only having the title searched and examined, but was also receiving at no extra cost the efficient services of the title company in closing the transaction, services for which he would have been compelled to pay liberally if these services had been performed for him by others.

There was also at this time a chaotic condition of title practices and charges in the counties of this territory, and for that matter, in most of the counties of the State. Practices, customs, prices and evidences of title varied with each county, and frequently in each county, the buyer could by "shopping around" at the several title companies get almost any old thing at his own price. In some counties, only abstracts of title were made, and these were charged for by the page, by the number of instruments in the chain of title, by the number of years searched, or (as was the frequent result) the charge was fixed by the customer.

However, the practice of issuing certificates of title based upon an examination of the record title had been developing rather rapidly in some counties, although the rates and methods of charging were varied. In some counties the certificate of title had practically displaced the abstract and the public had thereby become accustomed to relying upon the services of the title companies' examinations and opinions, or certificates.

Any operator who was frequently compelled to do business with title companies in several different localities, was in continual trouble trying to cope with varying prices, various sorts of title evidence and varying degrees of financial responsibility. Obviously, the latter factor was important, as a title company doing business at the prevailing scales of remuneration in a county with a population of twenty thousand or less, could hardly be expected to have the financial strength to pay any substantial loss.

In the use of abstracts particularly, the injection into the picture of the attorney for the purchaser or encumbrancer often seriously delayed or blocked the closing of the transaction, not through any particular fault, lack of skill or intention of the examining attorney, but largely because of the fact that he must examine the whole chain of title which probably had been already examined many times before, but by other attorneys. Obviously, the attorney in many cases would show up as objections any number of trifling and frequently laughable record errors, because of his fear of what some future attorney's examination might bring out.

At the close of the war, the real estate market became very active. Rapid turnovers were common and good profits were being made by all classes of real estate investors. The tempo of this period required expeditious title service and title companies everywhere were adding to their staffs and working nights to get out orders.

All of these factors were preparing the way for progress and change—the example of the smooth-working system in use in the big cities, the impatience upon the part of our customers with the slow, clumsy and ineffective working of the machinery in use, and the dissatisfaction of the country title men with the rewards they were receiving in this period of golden opportunity as compared to well-trained technicians in other lines. Here were the seeds of change and progress—example and dissatisfaction.

The larger companies began at this time to look for other fields into which they could expand with profit to themselves and as a beneficial stabilizing influence. On the other hand, the smaller rural title companies largely were unable to finance themselves to issue title insurance and to meet the requirements of the insurance laws of the State, which required at least two hundred thousand dollars of paid-up capital and the deposit with the State Treasurer of at least one hundred thousand dollars in approved securities as the minimum qualification for title insurance companies.

Some of the San Francisco title insurance companies bought interests in or control of a few local companies and issued title policies based upon the reports of the smaller companies, but the big impetus in the North toward the spread of title insurance was the organizing in 1920 in San Jose of the Western Title Insurance Company by the late R. F. Chilcott and his associates, most of whom were the owners of title companies in the smaller cities of Northern California. This organization was financed by the sale of stock among real estate operators and the owners of smaller title companies.

It formed the title insurance affiliation by which, through payment of a portion of the title fees received as a premium, the local title company was enabled to issue the title insurance

policy of the title insurance company. In each case a formal contract was entered into setting forth the respective rights and obligations of each party. The local title company assumed the responsibility for record errors in the title policies, while the title insurance company assumed all off-record risks.

Periodical meetings of the local title companies with the officials of the title insurance company were held, and a smooth-working and efficient organization was developed, using the standard title insurance rates in use in San Francisco, and generally modelling its practices after those in vogue in that city, yet making such changes as proved to be necessary in the adoption of practices to a number of communities.

Some of the larger title insurance companies also began to enter into underwriting contracts with local companies and in many of the counties all the competitor companies were affiliated with title insurance companies and the way was paved for exclusive title insurance.

Price-cutting was rapidly abolished where these conditions prevailed, and this happy condition was largely due to the fact that a very simple schedule of rates was used, based entirely upon the amount and character of the transaction and the rate could be determined almost instantly by reference to a printed schedule, requiring no extensive work in order to arrive at an estimate of the fee.

The main phase in this development of a far-reaching title insurance system took about three years to accomplish, and its prospective success was apparent almost from the start. As an example of the extension of title insurance to a particular locality, I might describe the experience of Sacramento County, in which is located the company of which I am Secretary. This county now contains about one hundred and fifty thousand people of whom over two-thirds are concentrated in the City of Sacramento and its suburbs.

At the close of the war, there were two title companies, of which our company was one. The population growth of this county had been steady and slow for many years, but the pulse of the community had quickened before the war and at the close of hostilities, we were in a substantial upward swing, both in population and business generally, and this condition naturally had a very favorable effect on the real estate market and on our business as well, at least so far as volume was concerned.

We still issued numbers of abstracts and continuations, but had begun to develop certificates of title before the war, and this branch of the business was steadily increasing, due to its convenience in the closing of transactions. At the close of the war, about fifty per cent of the Sacramento business was in certificates of title.

Price schedules for both abstracts and certificates were very complicated, being based upon the work involved and the period of time elapsed, rather than the amount of the transaction, and a considerable amount of preliminary work had to be done in many cases in order to let a customer know the allowance to be made for title work in the closing of transactions.

This situation necessarily resulted in a great deal of confusion in the setting of prices, and although we were in entire accord and harmony, with an established schedule of rates, it frequently resulted on one of the companies fixing a rate below that set by its competitor, each in perfect good faith and without knowledge of its competitor's action.

We were in continual arguments with our customers both as to the logic of our rates and as to the amounts set, and while we both had, I believe, the confidence of our customers, I cannot say that I believe that we had their entire respect. We were just "Abstracters," and if any saving was to be made in the closing of a deal, all the parties might go in a body to the title company and attempt to get the price reduced from the top-heavy figure of $10.00 to the somewhat more reasonable figure of $5.00, which they would be willing to pay if we would drop everything in the office and get their work out that day.

When the Western Title Insurance Company was established our competitor was given a contract, but could make little progress because at that time we had no title insurance affiliation and he could only sell title insurance where it was cheaper than an abstract or certificate. Almost no escrows were used at that time.

In 1923, we affiliated with the Title Insurance and Guaranty Company of San Francisco, of which Donzel Stoney was the manager, and we were embarked on title insurance on October 1st, 1923.

Both companies still issued abstracts and certificates, and our initial experience proved to us that if we were ever to get anywhere it would be necessary to have but one form of title evidence, the title insurance policy. Accordingly, three months later, both companies ceased to make or continue abstracts, and on July 1, 1924, nine months later, both companies ceased to issue certificates of title, although we continued to give our customers a reduction in premiums where an outstanding certificate was surrendered and cancelled.

By this time, our customers had become accustomed to the use of title insurance and the closing of transactions through the use of escrows, and although average prices were substantially increased by exclusive title insurance, we found that we encountered almost no complaint from our customers. Paradoxical as the idea may seem, where we formerly had received vociferous kicks when we dared to so much as raise the schedule for a given type of work as much as $2.50, we were treated with much more respect when we doubled our rate per order.

I think several factors might account for this change in the feeling of our customers:

First, most real estate brokers, banks and many of the better law firms understood that we were not just offering the same product at a higher price, but that we were delivering a much higher type of protective service for which the fee charged was reasonable, and that in a difficult transaction, the escrow, for which no charge was made beyond the title insurance premium, afforded a safe and smooth-working method of closing. These classes of customers in reality helped us sell our new product, and their assistance was and is much appreciated by us.

Second, the application of the schedule of rates was simple in most cases and at the outset of the sale negotiations could be quickly determined. It was uniform as to each kind of transaction, and there were no more deviations than in the case of fire insurance, with which, of course, most customers were familiar.

Third, the example of the big neighboring city of San Francisco, where for a number of years practically nothing but title insurance had been used, and everybody seemed to thrive thereunder.

Fourth, business was on the up-grade, profits were large, and the public was in a mood where it no longer counted its pennies.

We believe we have built permanently. Our experience to date all over California has so far confirmed that belief. Where any community in California has once adopted title insurance as the standard there has been no returning to the methods of the past, but on the contrary the gains of the past have been consolidated, practices improved and the tendency has been toward steady improvement in the protection afforded the public.

The formation and successful operation of the Northern California Board of Title Underwriters for 1926, and the like successful formation of the Southern California Board of Title Underwriters and its subsequent very successful operation have increased uniformity in practices and rates for the benefit alike of the title companies and the public.

We find that the banks and realtors are consistent supporters, and we believe that the public generally, as it becomes familiar with the workings of the title insurance system, is also favorable to its continued operation.

The experience of the past three years has given all of us many a rude awakening, and a cynical attitude toward the stability of our institutions has developed in our people. It will require increasing and continuous effort and thought to keep our structure solid, but I for one believe that we have built for permanence and that the inevitable end of the depression and the recurrence of active realty markets will find us more than ever in a position to serve our customers and to profit thereby. (Applause).

PRESIDENT JOHNS: I will now call on James R. Ford, Vice-President of the Security Title Insurance and Guarantee Company, of Los Angeles, to continue the discussion of the subject from the point of view of Southern California.

How California Went Title Insurance Over Night

JAMES R. FORD
Vice-President, Security Title Insurance and Guarantee Comapny
Los Angeles, California

If it were possible for me to attribute to any one thing the ability of those engaged in the title business in California to adopt state wide title insurance as the future evidence of title, I would say that it is co-operation. It is a big word and is the necessary element in the success of any enterprise or venture wherein more than one unit is involved. Without it, California would today be issuing the proverbial fifty-seven varieties of title evidence and following a multitude of practices as various as there are personalities in the business. If Burroughs had not been able to make the various intricate parts of the delicate mechanism of his invention work in unison, we would not have the adding machine, but through his genius and wizardry he made them click and that is the answer to his success.

In our program that eventually led to state wide title insurance, we were led by men of vision and genius. Purposeful in their ideas and imbued with a desire to not only benefit those engaged in the title business by lifting them out of the mire of conservation, but at the same time to further dignify the business by bringing to each community the last word in title protection. There was no wizardry used in the program, neither did we have a magic wand to wave and by the use of fetching words bring about in the twinkling of an eye a radical change. No indeed, there was none of this. On the contrary, it has taken years of intensive study in which discussions of community problems have been many and varied in order for us to weld into a common practice the habits and custom of the masses. It was by no means an easy task. It was difficult and fraught with discouragement that required on our part patience and resourcefulness to overcome the many objections advanced why it could not be done.

In my fancy, it seems I can visualize that many of the problems we had to solve are similar to those existing in the different parts of the country at large. Indeed, many of the practices we found here had been transplanted from other states in the union to the point where our business practically represented a cross section of the title business in general. Then, too, I have heard Jim Johns vividly elucidate on the conditions existing as he had found and seen them, and it is through this medium that I draw the conclusion that we had much in common with you all. If I am right, then there ought to be something in our achievement, adaptable and beneficial for those interested in working out a similar program, local or otherwise.

Each of the states that have title business of any consequence at all has its own state association, and, if you will pardon the trite expression, may I say that the functions of your associations are just what you make them. In California, we are rather proud of our association, which through capable leadership, has grown into a real institution. It has been the instrumentality through which our theories have found expression, and after a thorough debate, have been accepted or rejected. Ever since its organization the members have taken an active part in the deliberations at our conventions. They have been encouraged and felt free to present their individual problems for discussion, with the result that all have benefited by the conclusions reached.

Some years ago, sensing the value of getting together, we began to hold periodical meetings and thereby became much better acquainted, and gained a rather intimate knowledge of what the members had on their minds. They began to discuss uniformity of various practices that were in vogue in the different counties. Some wanted to standardize on prices, for from the information we received we could only conclude that there were no two basing their charges on the same principle, rather it had the appearance that each company had a Ouija Board upon which they relied. Some complained that they were not making any money, and when others, who were doing a little better than breaking even, told of their method of pricing and what they received, there were a number that thought they were robbers and devoid of conscience.

We also had discussions on the forms that were in use, and it seemed that we at least should be able to improve this department of our business. This was a rather delicate subject. Each company had worked out to its satisfaction and according to the conditions existing peculiar to its particular locality a form that, in its opinion at least, served the purpose. It contained all their pet ideas, some original, some inherited and others borrowed, but all in all it was their form. Yes, they were for uniformity, but why not adopt their form and thereby simplify the problem.

To get around those and other objections required a lot of tact and study. Committees were appointed to make investigations and make recommendations. But we were told that Rome was not built in a single day, and neither were we to be more fortunate in turning the trick in unformity.

Now, originally in California, we had every form of title evidence known to the business. We have had title insurance since the early nineties, but up until some ten or twelve years ago, it was issued only by companies located in the metropolitan centers, and was extended only very occasionally to an outside county. Other communities were issuing abstracts which in turn had to be examined by an attorney who furnished an opinion. In other communities, the certificate of title, a form of evidence one step removed from the abstract, was being quite generally used. It was during the discussions we were having in our state association that some of the smaller companies began to inquire about title insurance. They were not able to qualify on their own but nevertheless they were interested. This simple hint gave some of the more ambitious an idea. Why not take title insurance to those interested? As long as there was interest, perhaps there was an opportunity to do something beneficial to all. Therefore, we had the era of expansion. It was about 1920 that through the efforts and ambitions of some of our energetic title men, title insurance began to spread.

To some, it seemed incredible that title insurance could be sold to the rural communities. Those living in such localities were at first skeptical as to the advisability of taking it on. Many were of the opinion that neither the conditions nor the needs of their clients would justify making a change. However, the more astute had an answer for all objections. All of the good points of title insurance were pointed out and compared with the limitations of the abstract and certificate of title. Then, too, in most cases, it was optional whether the smaller company issued all or part of their evidence under title insurance, thereby enabling a little experiment, which would determine the future policy. Also, it was pointed out that title insurance would do two things. First, it would bring to the company the ability to render a better service and afford a higher protection for its clients' titles. Second, it would enable the company to make more money. The latter had the more force and appeal to the arguments. This

expansion program continued, until in 1925 practically every county in the state was provided with title insurance facilities. It had really grown so rapidly that we could hardly realize that such a transition was possible. Like some other things you have heard of, it literally worked while we slept. Nevertheless, we were still issuing a variety of forms and up to this point, nothing had been accomplished toward uniformity and this was now the all absorbing topic of discussion.

During the development period that I have referred to, we had another problem to which we were giving close attention. I refer to the public, our clients and customers from whom we derive the greatest asset of our business—good will. For some reason our business has always been veiled in mystery insofar as the public is concerned. For the most part it has little conception of the details attendant to the preparation of an evidence of title. Then, too, it has been further mystified by the variety of forms used, the variation in practices and fees charged. It was not at all infrequent that one company would be charging $10.00 for the same service that a company in an adjoining county would charge $50.00. Both, perhaps, were wrong in that the one did not charge enough and the other charged too much. Neither could justify its price either to the client or themselves. Also, there was the practice on the part of the public in shopping for prices. Competition was keen and the price clerk weak with the result that we were rapidly losing control of our business. Due largely to this prevalent practice, the public was of the opinion that any change was only graft and such it imputed to our business in general.

To offset the ideas of our clients, we have tried to conduct a course of education that would bring them to a better understanding of our service. Speakers have appeared at every opportunity to discuss and explain the details necessary incident to our business. Those who have heard understand, but the masses have not heard and still cling to their opinions. We have produced a picture that you will see while here for the purpose of supplementing speech with vision which we feel is doing a lot of good.

The observations and criticisms of the public have been beneficial. Financial institutions and other leading sources of our business confided to us that the public wanted standard forms and a schedule of prices that would be uniform from which it could determine in advance just what they were going to get in the way of protection and what it would cost. Their request was entirely logical which we all fully realized. We recognized that if we were to further the best interest of our business, it was necessary to eliminate insofar as possible the common causes for misunderstandings and disputes.

To the casual observer, it might appear that in making title insurance available to the most remote regions of the state that it should now be comparatively simple to crystallize our ideas immediately into a uniform procedure. However, it must be remembered that the evils of miscellaneous practices into which the companies had degenerated had not been disturbed, and consequently, the biggest job of all was yet to be done. We were in need of a diplomatic corp for the reason that we were face to face with the problem wherein personalities and idiosyncrasies of the business in general had to be coalesced. Nevertheless, the desire to co-operate was plainly evident, provided some instrumentality could be invested through which we could give certain guarantees that the benefits would be equal and no advantage would be gained by any competitor company to the detriment of another. Our hope was to obtain state wide uniformity, in all departments, but in this hope we were to be partially denied.

You have heard from time to time various representatives refer to Northern and Southern California. As a matter of fact, you have heard many references to California from which you may have formed some conclusions.

Now, that you gentlemen are here as our guests, some perhaps for the first time, we want to assist you in getting some favorable impressions of our State. Indeed, it is a tradition that we should never fail to mention to the visitor that California has a wonderful climate. Failing to do so, would be an impeachment of our reputation. Our children are taught in their tender years that this subject must not be overlooked. It is taught in our schools. Only the other day, a dutiful teacher asked the question, "What is the greatest asset of our State?" to which the proverbial Johnnie replied, "Our climate." The teacher said "correct" to which Johnnie again replied, "Correct your grandmother, it's perfect." I ask you, who can gainsay that our children are not well taught. But whoever heard of California being an island? Interesting, indeed, if true. Yet at one time that was, at least, thought to have been the case. Some of our ancient carthographers in forming their ideas and conclusions of the shape and size of this continent, pictured California as such, an illustration of which is appended to the program of this convention in the form of a map taken from one of the first atlases produced in the early part of the seventeenth century and is here reproduced through the courtesy of one of our members, Mr. Glen A. Schaefer. This map is the occasion for some interesting speculations, for on it you will find noted many present day landmarks.

When the waters receded and we found that California was no longer an island, but was firmly grafted onto the mainland, it created many natural phenomena. One of which was the beautiful Golden Gate and the wonderful San Francisco Harbor. Further South, we are not so favored, but nevertheless, we had certain natural endowments, conducive to the adaptation and hence, through our ability to blow and such, we now have all the advantages which nature so abundantly bestowed upon San Francisco. Nevertheless, this phenomenon to which I refer left a gulf between the Northern and Southern part of the state which we, in the title business, have as yet been unable to span. The division of the state occasioned by this gulf was very ably explained to you gentlemen at Richmond, Va., when Mr. Benjamin J. Henley obsérved that the people living in San Francisco and the Bay region always considered Northern California as that portion of California lying North of the Teachapi range of mountains, while those living in Los Angeles and its environs considered that the boundary lines of the State were co-extensive with the city limits of Los Angeles and was, therefore, Southern California.

Anyhow, the practices between the two sections have a fundamental difference in that the practice of the North is for the buyer to pay for the title evidence, while in the South the seller pays. For this reason we were and are as yet unable to get state wide uniformity. This unhappy situation has resulted in the organization of two boards of title underwriters. The North was the first to point the way and demonstrate that co-operation could be had through such an instrumentality. It is to them, and particularly to the able leadership of those located in and around the Bay region, that we of the South give credit for this invention and thereby uniformity and standardization of practices. True, the board was not a child of their own creation. It was adopted from New York and, with some innovations made to suit our needs, is practically the same. The North organized their board in 1928 and we of the South were content for the time to observe its operations, perhaps with some doubts in our minds as to its ultimate success.

We were interested nevertheless, and representatives of our section attended their meetings, studied its principle and reported back that it was their opinion that through such an organization we could find our answer. We felt keenly that the need for action and a change was imperative. We wanted and earnestly desired to reach some common ground whereon we could meet those of the North and unite in one board, but the existing gulf to which I have referred was deemed by all to be too wide, and, hence, we organized the Southern Board.

Coincident with the organization of the Southern Board in 1930, we were able to discard all individual and pet practices that we had heretofore felt vital to our particular companies and impossible to discard. The North had achieved this objective some two years previous and likewise as they had done,

we adopted and standardized uniform policy forms together with a schedule of charges.

For the first time in our history, we were now able to place in the hands of the public such a schedule by which they could determine the cost of the title evidence desired. Also, we were able to advise our clients that they could obtain the same form of policy in any county in the state and to guarantee that the price therefore would be the same as that charged by any other member company of the same board. These things now constituted state wide title insurance and uniformity; the salient features of which may be summarized as follows:

First—Through a co-operative program title insurance was made available to all counties in the state.

Second—Two boards of title underwriters were organized, through which the member companies subscribed to a code of ethics.

Third—Every title insurance company in the state, with one exception, became a member of one board or the other according to jurisdiction.

Fourth—All forms of title evidence were discarded and new standard forms substituted.

Fifth—Uniform schedule of charges worked out and adopted in accordance with the respective practices of each board.

Sixth—We had demonstrated that what at first was thought by many could not be done could be done.

Once again I would call to your attention that there was no magic in our methods, and also contrary to the glamorous title of this paper, we did not go title insurance over night. In fact, it took some seven or eight years and then took form in two steps rather than one.

In retrospect, we appraise our activities and make some observations. First of all, we had to pioneer in some of the things we have done. We had no experience to guide our footsteps in some of the forms we adopted. We felt then and yet feel the need of some actuarial table through which we might, with some degree of intelligence, know what is a proper charge for a given class of risks. Unfortunately, we have no such table and in many details had to stumble blindly in making our decisions.

It has been necessary for us to take some chances and in some instances they have cost us real money, nevertheless, I believe that I voice the opinion of all in saying that we are glad to have made the change, which statement is evidenced by the fact that if any member of the Southern Board in particular is dissatisfied, such dissatisfaction has not to my knowlege ever been voiced. Unquestionably the title business of California, through the generally improved service, has been materially dignified. Independence through a highly developed co-operative program has given way to a relation of interdependence. Security of position and individual business has not been affected except in the sense that price cutting and the payment of commissions have been entirely eliminated and competition placed entirely on the basis of service. It has been demonstrated that competition, based on charges, is both economically and fundamentally unsound. I have already pointed out that the price situation was formerly an evil of our business which has been corrected through the Board and to my best knowledge, as corrected, is being faithfully observed. The Board imposes other regulations of like importance, but the point is that its functions are taken seriously by every member. There is nothing utopian in its principles, for we all realize that changes will be necessary as occasion demands. If the desire to achieve is strong enough, and we are willing to make some sacrifice along the way, then as a rule our desire will ripen into fruition. In achieving State wide title insurance, we had the desire, we wanted it, but for a long time we could not determine how to proceed, and in our dilemma we had a similar experience to a talkie film producer down at Hollywood. It seems that the producer wanted to produce the sound of water pouring out of a barrel onto a board. The sound film technician was consulted. He tried dropping pins on a piece of taut silk, that wasn't it. He tried pouring tacks onto linoleum, that wasn't it. Finally, a quiet spoken chap who chanced to be standing nearby suggested that he try pouring water out of a barrel onto a board, he tried it, and that was it.

After we had tried everything else, we tried co-operating through a common agency, the Board of Underwriters, and that was it. (Applause).

Tuesday Afternoon Session June 28, 1932

Report of Committee on Advertising

WALTER TUTTLE, Chairman
New York Title and Mortgage Co.
New York City
HARVEY HUMPHREY, Vice-Chairman
Security Title and Guarantee Co.
Los Angeles, California

REPORT OF CHAIRMAN TUTTLE

For two years or more there has been a common belief that the title business was at a crossroad and that we have to choose between building a sound well-paying business or loss of prestige, disorganization and an income entirely out of proportion to the value of the service performed.

With the business of tne nation still storm-swept we remain at the same point and have yet to decide what our future is to be.

In studying the situation the Advertising Committee is of the opinion that co-operative advertising offers a sure way to success. Such a plan will require a lot of careful thought by members in every section. This is the time to start the work, but, needless to say, it is not the time to put it into effect.

This new job for advertising is to make your community "title conscious" and to recognize that membership in The American Title Association is an assurance of the highest form of title service. With this accomplished and members presenting a united front, rates may be adjusted without fear of the curbstone abstracter or cut-rate title company.

Here are some of the phases of a campaign that would enable you and the fellow members in your locality to dominate the title situation:

1. A series of newspaper advertisements reciting the result of careless title work, the need for title protection, what The American Title Association stands for and the names of the local members. In each advertisement the ATA symbol should be prominently displayed.

2. A booklet containing interesting real estate information, and, in addition, the story of The American Title Association and the names of local members. This booklet would be prepared for distribution by local real estate brokers to clients and prospects and would educate the buying public to look for the ATA symbol at the time of sale.

3. A prospect list should be prepared of all local prospects for title service. This list should include bankers, building and loan men, life insurance loan correspondents, attorneys and others interested in the sale of real estate or making of mortgages.

4. The California Land Title Association's talking picture, "To have and to hold," should be shown to every man, woman and child that it is possible to reach.

Naturally there are many other possible developments for such a campaign. The expense to each member would be surprisingly small when supported by a number of members. Circumstances would have to determine whether the costs should be shared equally or in proportion to the size of the members' company. One other point to consider is whether two campaigns would have to be prepared, one for abstracters and one for title companies, or whether one could be made to serve for all.

Such a plan will be workable when the reconstruction has definitely set in. At present we invite you to consider the advantages and disadvantages of the suggestions offered and write us your views as to their adaptability in your section.

Aside from future building plans we are confronted with a situation that in many sections has paralyzed real estate and stifled mortgage financing, which in turn makes it all but impossible for the title company or abstracter to function. In the mad scramble to cut costs many have stopped all advertising.

At the Mid-Winter Meeting the Advertising Committee proposed a "depression-proof" advertising program. It will still work as it will under any condition, good or bad. By this method take either two per cent or three per cent of your gross income each month and devote it to constructive advertising. We have observed that many members dissipate their advertising appropriation by using it up in a way that doesn't get their story to the people they really want to reach. The folder, "A Brief Study of Various Types of Title and Abstract Advertising," which is being distributed by the Advertising Committee at the Del Monte Convention, outlines some advertising methods of proven worth.

In making advertising plans today first direct your attack to where business is known to exist. The bulletins issued by Executive Secretary Sheridan have suggested action to develop business resulting from the Reconstruction Finance Corporation's operations. Some members are obtaining business as a result of foreclosures by mortgage lending institutions. Study your local situation and direct your advertising accordingly. It is likewise important to keep your name before your customers and prospective customers. Small advertisements in the local real estate publication and the legal magazine cost little and is an investment that will prove worth while in the years to come. Letters or blotters to the local bankers and others that lend on mortgage will be of equal benefit. But whatever you do, make your advertising dollar work as it never worked before.

REPORT OF VICE-CHAIRMAN HUMPHREY

So completely and comprehensively has Mr. Tuttle covered the subject of advertising, I hesitate to attempt to add anything further. May I say at this point, however, that the lion's share of the work this year has been performed by him, and likewise to him should go the credit for the committee's accomplishments.

The folder he mentions—"A Brief Study of Various Types of Title and Abstract Advertising"—was his idea. It deals with the following subjects: "Mass Appeal by Newspaper Advertising and Bulletin Board," "The Preparation and Distribution of Title Booklets," "The Value of the House Organ," "Newspaper Publicity and How to Obtain It," "How to Set Up a Depression-Proof Advertising Budget," and "Direct Mail —What It Can Accomplish for the Title Man." Each topic covered by a member of the Advertising Committee.

This handbook on advertising is here on the table and we urge all delegates to avail themselves of a copy and to study its contents. It is our hope that it may be a definite contribution to the advertising and publicising of our business.

This handbook, together with the advertising on display represents this committee's contribution on the subject of advertising.

To any of you who have attended past national conventions, much of the material on display will prove familiar. Only eight companies sent in new material to be added this year.

Several items are worthy of your particular attention, however. First, the foreign advertising exhibit loaned to us by the American First Trust Company of Oklahoma City, through the courtesy of William Gill, assistant vice-president. This exhibit is located in the Children's Play Room at the foot of the center stairs in the main corridor to the left. It consists of attractively displayed evidences of title from some seventy-five foreign nations. We urge you to inspect it and at this time wish to publicly thank the American First Trust Company and Mr. Gill for their co-operation. The nature and value of the exhibit is such that the room will only be open at intervals when an attendant can be present.

"The Real Estate and Building Review," of the California Title Insurance Company of Los Angeles, and "The Citizens' Title Tales," of the Citizens' Abstract Company of Milwaukee, are fine examples of effective house organs, and the booklet, "Title Insurance," prepared by Title Insurance Company of Minnesota, is an extremely fine piece of booklet advertising.

Another item worthy of your serious consideration is the title section carried in the current issue of the California Real Estate Magazine. There are thirteen pages of institutional advertising and publicity of the highest type—directed right where it does the most good to the realtor. Each month the California association has a section in this magazine, and it is one of the finest good will builders available. The plan can undoubtedly be developed not only in every state in the country, but also in every community where the realtors have enough of an organization to justify a publication. Invariably you will find such organs eager to co-operate and carry live title items, and such material carefully and cleverly prepared can be tremendous forces in selling title and abstract service.

Open Forum On Advertising and Publicity

Harvey Humphrey, Los Angeles, California, Presiding

MR. HUMPHREY: Following through on this Open Forum, I think Mr. Tuttle's four principal suggestions might well be considered, first, a series of newspaper advertisements reciting the need for title protection, what the American Title Association stands for, and the names of the local members; (2) a booklet containing real estate information, and, in addition, the story of the American Title Association and the names of local members; (3) a prospect list containing the names of bankers, life insurance representatives, building and loan men, and so on, and, finally, motion pictures.

I should like to add to that that I believe at the present time much money is being spent in advertising of a more or less competitive type. I think we are rapidly coming to the point in advertising, as we are in other phases of our business, where it would be wise for the title company, in setting up its advertising appropriation, to devote it to advertising of an institutional and good will character. Let's sell the idea of title insurance rather than the services of any one company.

Let's go out for business we are not getting at the present time and develop it, and then let every company stand on its toes and reach for its proper share of the business. In developing the title insurance business, each company will get its proportionate share of that business.

The peculiar character of our business and the sources from which it comes bring up some interesting angles for discussion. For instance, in California, by actual survey, we have found that eighty-five per cent of our business comes from five sources, the realtor, the banker, the attorney, the building and loan association and the mortgage company. With such information before you it is comparatively easy to direct your advertising where you want it to go. In other words, instead of appealing to the fifteen per cent which comes from the public at large, if you can direct your advertising to the eighty-five per cent and place your message before those particular sources, you will get value received for every dollar spent.

In the southern part of the state, it is interesting to note how the various companies have worked out their advertising campaigns. One of the larger companies believes in extensive newspaper and magazine space, using full pages in many cases. Another of our larger companies devotes practically all of its appropriation to billboards. Three other companies are spending most of their appropriation for direct mail in

the form of house organs and direct mail pieces directed to the attorney, the banker, the realtor and the other sources of business.

We feel that the motion picture Mr. Tuttle speaks of, and which has been prepared in California, has resulted in some fine advertising for the title profession, and I believe it could be adopted in other parts of the country to good advantage.

Some companies have gone into radio advertising. That opens another avenue that is very interesting.

Since the report of this Committee deals also with publicity, I would like to dwell on that for just a moment. In the South (Southern California), in our own field, four of the companies are devoting a large part of their energy and efforts to publicity. There is much of interest which the newspapers and magazines are glad to carry for title companies. There is much of interest in the title business which lends itself in a splendid way for publicity material.

You can go to the record and take your filing figures for instance, you can take your financing, you can take any one of many factors which deal with the movement in real estate and dress them up in proper form, and the newspapers are very glad to carry such things as optimistic publicity material; We have found that effort expended this way in publicity in many cases returns more to us, dollar for dollar, than advertising itself as paid for space. We have found, in paving the way in publications with small paid advertising, we sometimes get as much as three and four to one in free space for every inch we buy.

With those thoughts, I should like to invite the suggestions or questions which any of you may wish to submit at this time. We should like very much to have the thoughts on advertising of you gentlemen from other parts of the country. I think if you will tell us how you advertise in your communities and what your results have been, it will be of interest and benefit to the visitors from other sections.

At this time I will throw the meeting open for questions and discussion.

Mr. Scanlan came to the convention with me, and he had a suggestion which I wish he would talk about now.

EUGENE SCANLAN (Los Angeles, California): In a paper read yesterday afternoon, there was a paragraph which I am going to quote and which, I think, will explain what I wanted to bring out.

He said, "In checking the filings in Los Angeles County, we find that over the period of the last three years, the percentage of instruments filed by the title companies has dropped from fifty-two per cent to below forty per cent. This twelve per cent drop certainly contains some available title business. Also there was certainly some additional business than the forty per cent of the three years. Our competition should be creating that business and in seeking new business out of the sixty per cent of the outside filings rather than in fighting each other to divide the forty per cent."

I have an idea that that same condition exists all over the United States. I don't suppose there is the same competitive angle everywhere else, but undoubtedly in various parts of the country there are deeds and mortgages and trust deeds and various documents of that nature that are filed in connection with which there is no evidence of title ordered. I don't see why a systematic survey or checking of these outside filings can't be made. Using the results of this survey as a basis, I don't see any reason why a very clever and very beneficial educational program could not be devised whereby title companies, instead of trying to take business from each other, would try to educate these people.

They can be shown how, as the result of some defect or cloud on the title, even in these hard times when they think they are saving money, they might easily spend ten or twelve times more than title insurance would cost them before they get through.

I would like to know if any one from any other part of California or any other part of the United States has ever made a study of these so-called "outside" filings, or has ever had an educational program of any kind, and what success was had with such a study or program.

JOHN B. BELL (Eugene, Oregon): We have found that about fifty per cent of the filings are not based upon any evidence of title at all. I prepared one letter and sent a copy to Mr. Sheridan, and he very kindly sent me two other letters to send out. I have sent those to people who had no evidence of title. I had a five per cent response, but up to now most of those were merely inquiries.

CHAIRMAN HUMPHREY: That is the point I was attempting to make in saying that I believe, instead of spending money in fighting each other, in competitive advertising, it would be wise to join in a co-operative campaign, and, by thorough study, try to ascertain how we can reach the large bulk of the title business which is ours if we could just develop it. We should try to educate people to come into our offices and purchase title evidence of some kind rather than exchange a deed merely because the buyer happens to know the seller, for instance, and is willing to take a chance on the title being all right.

Mr. McNeal, you are associated with Mr. Tuttle; doubtless you can bring out some ideas. Did Walter send us any word by you, or have you some suggestions you would like to make?

WILLIAM H. McNEAL (New York City): Mr. Tuttle's report, I believe encompasses all of his ideas, so far as I know, except that I know it to be a fact that Walter is very partial to our particular form of advertising through a house organ. Of course, that has to do with national title insurance and is a house organ devoted to the development of ideas, and also to the development of legal questions which come before us in the handling of our daily business.

That house organ does not undertake propaganda, so to speak, from the standpoint of educating the novice or layman as to the filing or handling of instruments other than to show by illustration in given cases where incorrect handling has resulted in loss or depreciation of security.

The fact that the "National Title Man" has a rather wide distribution over the United States rather detracts from the consistent, or what I might term the resulting evidence of the effect of house organ advertising. In my opinion, however, it stimulates to a considerable degree the interest in title insurance because we have innumerable replies and inquiries on subjects treated in that house organ.

This may not be correct, but if I remember correctly, we received one hundred and fifty letters in regard to a particular question which was treated by one of our solicitors in the "National Title Man," which shows that house organ advertising does pay, that it does educate the people, especially the lawyers, as to the use of title insurance.

I do believe in house organ advertising. I think it can be treated locally as well as nationally. I believe it is as inexpensive a form of advertising as any, and if treated correctly, I think it will gain recognition in the local community.

CHAIRMAN HUMPHREY: I might say, if I may be pardoned the personal reference, that we have a house organ of our company in Los Angeles, a monthly publication to disseminate just one type of information, taking the records of trust deeds and mortgage financing, and issuing each month a record showing how much money was loaned and who the principal lenders were. We started with a mailing list of 350 and in less than a year that mailing list grew to 1,600 names, not through adding names at random, but as the result of actual requests.

Mr. Scanlan also mentioned a fact regarding his house magazine. Mr. Scanlan, what did you say was the increase in the number of orders received by your company for insurance following the publication of the last issue of your "Building Review?"

MR. SCANLAN: That house organ is issued every month, and every month, two or three days after it is mailed, we get a very substantial increase in the number of our orders for about three or four days, which goes to show that people are reminded of us. They figure we are sending them statistics and information that is interesting and valuable to them, and in return they will send us orders.

When the issue came out last month, for three successive days thereafter,

our orders doubled in number over the preceding week. In fact, we had good business the entire week. That happens practically every month, perhaps not quite to that extent, but it is just like a barometer. I think if we were to make a graph of the number of orders around the twelfth or thirteenth of each month, we would find an increase each month at about the time we mail the "Review."

GEORGE HEYNEMAN (San Diego, California): We have a little publication which we get out once a month, which is directed entirely to the real estate people. It is purely a good will builder, rather an exchange of real estate listings. It has a printed cover and is mimeographed inside. The realtors send listings to us of properties, either for sale or exchange, with the price indicated, and so forth.

Before we started the publication of this house organ, it was claimed the realtors would not send in their listings, that they wanted them kept amongst themselves, but as it has developed, it seems that a great many of the realtors appreciate the evident desire to co-operate with them, and a good many sales have resulted from listings in this publication. We have received only a very small amount of business, although, judging from an advertisement of the other title company, we are doing rather well. They said they didn't publish anything of that sort because they felt it was an infringement on the prerogative of the real estate men. However, I think the real estate people in our community feel it is evidence of our desire to co-operate with them, and it has secured a certain amount of good will, to say nothing of a certain number of orders.

SECRETARY SHERIDAN: I should like to have the opinion of the members present as to the value of the Directory which we will issue in the new form. The new form will fit in a large envelope and we thought it could be used as an enclosure in an ordinary business envelope with monthly statements or with letters.

In my old connection at Detroit we used the Directory year after year to good advantage.

We have had some orders. We will start working on the Directory as soon as I return to Chicago, and if you are interested in sending these out to your customers in the way I mentioned, or as the President suggested, having the state associations do something of that character, we would be glad to have you send us your requests.

MR. SCANLAN: As far as the Directory is concerned, we receive inquiries from attorneys and realtors and bankers that average, I would say, two a week. Ours is only one company in a city; when you multiply that by the number of cities in the United States, it is evident that is quite a help. We consult the Directory on an average of at least twice a week. We are just an ordinary company, and I do not see why the other companies would not use it as much or more than we do.

MR. HEYNEMAN: Recently we put in our window something that apparently attracted a good deal of attention. We have noticed hundreds of people stopping to examine this. The heading is: "Believe It or Not," and shows a picture of a building on one side. On the other side is a pile of documents. The fact is brought out that in our county, if each document of the current filings were piled on top of the other, they would make a pile higher than the tallest building in the county. We point out the fact that failure to notice any one of these documents may result in a cloud on the title, and further point out that title insurance protects against any mistakes.

In San Diego County, at least, we constantly encounter ignorance on the part of the public as to what a title is and why it is necessary to protect a title. They don't want to spend any money unnecessarily, and as long as they do not understand that there is any need for protection, the real estate people and the bankers all have to fight to make them realize that necessity.

CHAIRMAN HUMPHREY: In our experience in the South, so far as the use of the Directory number is concerned, in the past our issue has become dog-eared before the new issue was received. We have inquiries from escrow department customers at the counter for the names of companies in other parts of the country, and we find the Directory is absolutely invaluable.

We publish a directory of title companies throughout the state, and we have two or three letters a week asking for copies of that, so I know that directory advertising does have distinct value.

Bankruptcy, Foreclosure of Mortgage, Real Owner a Bankrupt, Procedure, Abandonment of Worthless Property, Closing and Reopening of Bankrupt's Estate, Effect, Sale By Trustee Free of Encumbrances

WALTER C. SCHWAB

Vice-President, Commonwealth Title Co. of Philadelphia, Philadelphia, Pa.

This paper embraces the following subjects:

Procedure in Pennsylvania to foreclose a valid mortgage where the real owner of the mortgaged premises is a bankrupt.

Abandonment of worthless property by the trustee.

Closing and reopening of bankrupt's estates and effect thereof.

Sales by trustees free of encumbrances.

The paper was prepared for and delivered at the 1932 Pennsylvania Convention. The forepart deals with foreclosure procedure in Pennsylvania prior to the decision in the Isaacs vs. Hobbs case and subsequent thereto and the decision itself and related cases.

Suffice to say, is, that in Pennsylvania prior to the Isaacs vs. Hobbs case, a holder of a valid mortgage who had not proved his mortgage debt in the bankruptcy court commenced his foreclosure proceeding in a state court and concluded it therein unless restrained from doing so by a Federal Court (sitting in bankruptcy) order. This practice was in accord with Pennsylvania Supreme Court decisions as well as with decisions of the Pennsylvania Federal Courts. However, now the practice is otherwise. This of course, is of little interest to you as national title men and will be omitted.

This brings me to the next subject, that of abandonment and it being of more interest nationally, I shall begin there.

Prior to the rendering of the decisions by the United States Supreme Court in the recent cases of Isaacs, Trustee, vs. Hobbs Tie and Timber Company, 282 U. S. 734, and Stratton et al vs. New, Trustee, 283 U. S. 318, it was the practice in Pennsylvania, or at least in Philadelphia County, for a bona fide mortgagee, whose mortgage was recorded more than four months before bankruptcy proceedings were instituted against the real owner of the mortgaged premises, and who had not proved the mortgage debt in the bankruptcy proceedings, to proceed with his foreclosure in the State Court without first obtaining consent from the Bankruptcy Court to so proceed. This practice was sanctioned by our Supreme Court in the case of Megargel's Administrator vs. Megargel 105 Pa. 475. In that case, on appeal, the defendant assigned as error the action of the Court in permitting a judgment on a mortgage to be entered against the estate of a bankrupt without affirmative proof that permission to proceed had been obtained from the Bankruptcy Court and without notice to the assignee (trustee) in bankruptcy. The assignment of error was overruled by the Court as possessing no merit, it stating as follows:— "The mortgagee relied entirely on his mortgage. It does not appear that he proved any claim in bankruptcy, and hence the bankrupt

law did not prohibit him from proceeding by scire facias on his mortgage in the State Court." Although this case was decided in 1884, before the present Bankruptcy Act of 1898, nevertheless, no subsequent decisions have been rendered by any of the Federal Courts in Pennsylvania nor by our State Supreme Court which adversely affect the decision in the Megargel case. To prevent the mortgagee from continuing his foreclosure proceeding in the State Court, it formerly was encumbent upon the trustee of the bankrupt's estate, if the facts warranted it, to obtain a restraining order from the District Court in bankruptcy against the mortgagee, from further proceeding with his suit in the State Court, and in the absence of such restraining order he had the right to prosecute his suit to a conclusion therein.

Thus was the general practice in Pennsylvania relating to the foreclosure of mortgages where the real owner was a bankrupt until the case of Isaacs, Trustee, vs. Hobbs Tie and Timber Company, (supra), was decided by the United States Supreme Court. The opinion of the Court was written by Mr. Justice Owen J. Roberts, a Pennsylvanian. Due to the importance of this decision and the widespread interest it has aroused, it might not be amiss to set forth substantially in full both the facts and the decision. The facts of the case are as follows:—

One Henrietta E. Cunningham was adjudged a bankrupt in the Northern District of Texas. The estate embraced real estate situate in the Western District of Arkansas. B. K. Isaacs was elected trustee. The land in Arkansas was encumbered by a mortgage given by Cunningham to Hobbs Tie and Timber Company to secure a note. The trustee was directed to sell the real estate in question by the Bankruptcy Court for the Texas District. Subsequent to the order directing the sale by the trustee, the mortgagee instituted foreclosure proceedings on its mortgage in a State Court of Arkansas. It named the bankrupt and the trustee as defendants, reciting the bankruptcy proceedings in Texas and that it had not filed its secured note as a claim therein. The bankrupt and the trustee appeared specially and petitioned for removal of the cause to the United States District Court. After removal, the trustee filed an answer in which he set up, inter alia, that by virtue of his appointment by the Texas Bankruptcy Court, he had obtained title and possession to the real estate in question; that the land had been scheduled in the Bankruptcy Court as an asset of the bankrupt. He further averred that there was an equity in the real estate above the mortgage debt; that a sale in foreclosure would prejudice the rights of general creditors of the bankrupt. And further, he averred that neither he nor the Bankruptcy Court had consented to the foreclosure of the mortgage; that the Bankruptcy Court had entered an order authorizing him to sell the real estate; that that Court had exclusive jurisdiction to ascertain the facts and administer the property, and finally that the Federal District Court in Arkansas could proceed no further than to ascertain the interests of the defendants, the validity of the mortgage lien and the amount of the debt, but could not sell the property. Notwithstanding the trustee's answer, the Arkansas Federal Court entered a decree of foreclosure and sale. An appeal was taken from this order and the following question was certified:—

"After the Bankruptcy Court has acquired jurisdiction of the estate of the bankrupt, and the referee therein has entered an order requiring sale, by the trustee, of all the property of the bankrupt but before the trustee has taken any steps to sell land (part of such estate) entirely located in another judicial district, can a suit to foreclose a valid mortgage thereon be commenced and an order of sale thereunder be made over the objection of the trustee, by the Court of the latter district?"

Upon the entire record sent up, the United States Supreme Court decided, inter alia, as follows:— "Upon adjudication, title to the bankrupt's property vests in the trustee with actual or constructive possession, and is placed in the custody of the Bankruptcy Court. The title and right to possession of all property owned and possessed by the bankrupt vests in the trustee as of the date of the filing of the petition in bankruptcy, no matter whether situated within or without the district in which the Court sits. * * * It follows that the Bankruptcy Court has exclusive jurisdiction to deal with the property of the bankrupt estate. It may order a sale of real estate lying outside the district. * * * When this jurisdiction has attached, the Court's possession cannot be affected by actions brought in other Courts. * * * This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the Court originally acquiring jurisdiction is competent to hear and determine all questions respecting title, possession and control of the property. * * * Thus, while valid liens existing at the time of the commencement of a bankruptcy proceeding are preserved, it is solely within the power of a court of bankruptcy to ascertain their validity and amount and to decree the method of their liquidation. * * * The exercise of this function necessarily forbids interference with it by foreclosure proceedings in other courts, which, save for the bankruptcy proceeding, would be competent to that end. As mortgaged property ordinarily lies within the district in which the Bankruptcy Court sits, and the mortgagee can consequently be served with its process, the procedure usually followed is for that court to restrain the institution of foreclosure proceedings in any other. Where the land lies outside the limits of the district in which the Bankruptcy Court sits, ancillary proceedings may be instituted in the District Court of the United States for the district in which the land is, and an injunction against foreclosure issued by the court of ancillary jurisdiction. * * * Such injunctions are granted solely for the reason that the court in which foreclosure proceedings are instituted is without jurisdiction, after adjudication of bankruptcy, to deal with the land or liens upon it save by consent of the Bankruptcy Court. The trustee might have instituted ancillary proceedings in the Arkansas Court and there obtained an injunction to restrain the appellee from foreclosing its mortgage. There is no reason, however, why he should not have followed the course here pursued, of pleading the adjudication in Texas in abatement of the foreclosure proceeding. The State Court in which the foreclosure action was begun, was without jurisdiction to pursue it." The Court further held that there was no waiver or estoppel involved in the act of the trustee in going into the Federal Court in Arkansas, which Court also lacked jurisdiction to interfere with the bankruptcy administration, and that it is beyond the power of an officer of the Bankruptcy Court, or even of that court itself, to surrender its control of the administration of the estate.

There can be no quarrel with the decision insofar as it relates to the facts of the case and the question certified. The doubt the case has caused really springs from the dicta that appear in the decision.

The effect of this decision was to overthrow, in Pennsylvania, the existing practice of foreclosure of valid mortgages recorded more than four months prior to the bankruptcy of the real owner, where at the time of the commencement of the proceedings, the real owner was a bankrupt, as well as to create doubt in the minds of the profession as to how they should proceed in cases, where subsequent to issuance of a scire facias on a mortgage more than four months old, but before judgment is obtained or a levari facias has issued, the real owner becomes a bankrupt.

Where the real owner is in bankruptcy at the time a mortgagee desires to commence his foreclosure proceeding, the title to the mortgaged property is vested in the trustee, if there be one, and if for some reason, a trustee has not yet been elected, it is in custodia legis of the Bankruptcy Court. Therefore, the jurisdiction of the Bankruptcy Court has attached and such jurisdiction is exclusive to deal with the administration of the bankrupt's property and that court's possession cannot be affected by actions brought in other courts save by its consent. A State Court, therefore, would be with-

out jurisdiction to entertain proceedings on a mortgage, and if proceedings are commenced therein, any judgment or execution had thereon, would be a nullity for the same reason — lack of jurisdiction in the State Court — and this is so, regardless of the fact that the mortgagee had not proved his debt in the Bankruptcy Court. However, a mortgagee, finding himself in such a position, may nevertheless be able to foreclose his mortgage in a State Court if he can obtain permission from the Bankruptcy Court to so proceed. The ordinary practice in Philadelphia now is for the mortgagee to present a petition to the Bankruptcy Court, i. e., to the referee, provided the cause has been referred, as for most purposes the referee is the court, praying for an order to be made granting permission to the mortgagee to foreclose his mortgage in the State Court. Due to present economic conditions, the facts usually are such that the mortgagee can allege in his petition that the property has no equity over and above the mortgages and other valid liens obtained four months prior to the filing of the petition in bankruptcy, and that the property is burdensome to the bankrupt's estate as an asset. Notice of such petition must be given to the trustee. The referee, after due consideration of the petition, if satisfied as to its merits, will make an appropriate order granting consent to the mortgagee to foreclose his mortgage in the State Court. It sometimes happens that the bankruptcy cause has not yet been referred to a referee, and where this is the case, the practice seems to be, at least in Philadelphia, to present the petition to the Judge of the District Court (sitting in bankruptcy) who, if satisfied with its merits, will grant permission to the mortgagee to prosecute the proceeding to the point of judgment in the State Court, and after obtaining judgment, to present a further petition to the referee, if reference of the cause has been made, asking leave to conclude his proceeding therein, and in the absence of reference, such petition is presented to the Judge of the District Court (sitting in bankruptcy).

Although a search of reported cases has failed to disclose any case arising in the United States District Court for the Eastern District of Pennsylvania, in which the validity of the procedure above outlined has been passed upon, nevertheless, such a procedure as first above outlined has been approved upon the recent case of Re Schulte-United, Inc., decided in the United States Circuit Court of Appeals for the Second Circuit, New York. In that case, the bankrupt was adjudicated such in the Bankruptcy Court for the Southern District of New York, on January 2, 1931, and on February 5, 1931, a trustee was elected.

The bankrupt owned property located in another District which was encumbered by a mortgage. On March 6, 1931, the mortgagee petitioned the Bankruptcy Court for leave to institute foreclosure proceedings in the Supreme Court of New York, and asked for permission to name the trustee in bankruptcy as a party defendant. The Bankruptcy Court gave its consent to the institution of such foreclosure proceedings. An appeal was taken and had reference to the right of the Bankruptcy Court to make such an order, the appellant claiming that the decision in Isaacs vs. Hobbs Tie and Timber Company (supra) forbid the granting of such consent.

The United States Circuit Court of Appeals in its opinion, said:—

"Counsel argues that in view of the recent decision in Isaacs, Trustee, vs. Hobbs Tie and Timber Company (7 S. L. ed. 332), the court cannot permit a foreclosure in the State Supreme Court. Mr. Justice Roberts, writing in that case, expressly held that after the Bankruptcy Court has acquired jurisdiction of the estate, other courts are without jurisdiction save by consent of the Bankruptcy Court. In the Isaacs case, the foreclosure was instituted without application to the Bankruptcy Court in the district having jurisdiction of the bankruptcy proceedings. At bar, the mortgagee proceeded to obtain consent of the Bankruptcy Court, in the Southern District, it having jurisdiction of the above named bankrupt, and upon satisfying the court, it obtained consent to proceed with the foreclosure in the State Supreme Court. This, we think, is within the rule announced in Isaacs etc., vs. Hobbs etc. (supra). See also Stratton et al vs. New (Supreme Court, April 20, 1931)."

In cases where the mortgagee has commenced a scire facias sur mortgage proceeding in a State Court, prior to the date of filing of a petition in bankruptcy by or against the real owner, to foreclose a valid mortgage recorded more than four months before the date of the bankruptcy, the jurisdiction of the State Court has attached and it is not ousted because of subsequent bankruptcy proceedings instituted prior to the issuing of the levari facias. While it is true a writ of scire facias is not technically a seizure nor an execution writ, nevertheless, the title companies of Philadelphia feel that as the proceeding is, in its inception, one in rem, at least the scire facias brings the res under control of the State Court, if it does not actually draw to it the possession. If this is true, the jurisdiction of the State Court attaches which it holds until the proceeding is fully concluded therein. If control is equivalent to possession, then what was said in Isaacs vs. Hobbs, supra,—737, is applicable, namely:

"This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the court originally acquiring jurisdiction is competent to hear and determine all questions respecting title, possession and control of the property." And in Stratton et al vs. New, Trustee, (supra)—326, the opinion also having been written by Mr. Justice Roberts, the Court said: "The Federal Courts have, with practical unanimity, held that where a judgment which constitutes a lien on the debtor's real estate, is recovered more than four months prior to the filing of the petition, in (in bankruptcy), the Bankruptcy Court is without jurisdiction to enjoin the prosecution of the creditor's action, instituted prior to the filing of a petition in bankruptcy, to bring about a judicial sale of the real estate." See particularly the case of Eyster vs. Gaff 91 U. S. 521, cited with approval in that case.

What has been said as to a scire facias sur mortgage proceeding is also applicable to a proceeding to foreclose a mortgage by the bond method, provided the fieri facias (real estate) on the judgment has been issued and delivered to the sheriff for execution prior to the institution of bankruptcy proceedings by or against the real owner. See the case of Coleman vs. Sloan et al 79 Pitts. L. J. 379, decided by the District Court of the United States for the Western District of Pennsylvania, which holds to the same effect. Although this case is badly reported, an examination of the record will show that the execution writs issued prior to the filing of the petition in bankruptcy.

However, where after entering judgment under the bond but before the fieri facias on the judgment has been issued and delivered to the sheriff for execution, a petition in bankruptcy is filed by or against the real owner, the jurisdiction of the Bankruptcy Court attaches to the mortgaged property, and it can be administered by said court as an asset of the bankrupt's estate. Therefore, to continue his proceeding in the State Court, the mortgagee must obtain the consent of the Bankruptcy Court to so proceed, for until a fieri facias is issued and delivered to the sheriff, the officers of the State Court have not, for enforcement purposes, taken such possession of the mortgaged property as cannot be disturbed by the Bankruptcy Court. This is so, even though the proceeding is under a bond accompanying a mortgage more than four months old and, in so far as it relates to the mortgaged property, is a proceeding in rem and the judgment had thereon creates no new lien, but relates back to the lien of the mortgage. However, the actual enforcement of the mortgage lien commences as of the date of the delivery of the fieri facias to the sheriff, which delivery, if subsequent to the date of the filing of the petition in bankruptcy, would be fatal to the proceedings for the purpose of continuing them in the State Court save by first obtaining consent of the Bankruptcy Court. Quoting from the decision in Stratton et al vs. New, Trustee, supra, the court

said:— "Though a lien be not discharged by bankruptcy, its owner may not, without the Bankruptcy Court's permission, institute proceedings in a State Court to enforce it, since his so doing might interfere with the orderly administration of the estate. Thus a mortgagee will be restrained from instituting or proceeding further in a foreclosure action, begun after the date of the petition in bankruptcy. And a creditor holding a valid judgment more than four months old, will be enjoined from enforcing its lien by suit brought after the date of the petition."

The last situation to be considered is where the foreclosure proceeding has been prosecuted to a conclusion in a State Court without knowledge by the mortgagee that the real owner was a bankrupt at the time of commencement of his action. The whole proceeding as it stands is a nullity, and no title passes to the purchaser at the sheriff's sale for the reason that the State Court lacked jurisdiction to entertain the suit, the jurisdiction over the bankrupt's property being exclusively vested in the Bankruptcy Court. There is, however, a possible way of perfecting a proceeding of this nature by having the mortgagee present a petition nunc pro tunc to the Bankruptcy Court, praying for permission to foreclose his mortgage in the State Court with the same force and effect as though such permission had been granted prior to the commencement of the suit. Notice of this petition must be given to the trustee and bankrupt's creditors with the result that the mortgagee runs the chance of having objections made to the granting of the petition, or the Bankruptcy Court itself may not be satisfied with the merits of the petition and refuse to grant it, and if refused, the foreclosure proceeding avails the mortgagee nothing. However, if no serious objections are made to the petition and the court is satisfied as to its merits, it will be granted. To avoid being placed in this position, it is well for the mortgagee to endeavor to ascertain, at least in the district in which the mortgaged property is situated, whether any bankruptcy proceedings have been filed which will affect his contemplated foreclosure proceeding.

ABANDONMENT OF WORTHLESS PROPERTY

The Bankruptcy Act itself is silent respecting burdensome property and the right of the trustee to abandon such property. However, it is well settled by a long line of cases that a trustee in bankruptcy is not bound to accept property which is onerous and unprofitable, and which will burden rather than benefit the estate. The trustee can exercise his judgment and discretion on this point; he may reject, abandon or refuse to take charge and possession of any such property, and so free himself from any duty or responsibility in regard to it. It is not the question of the right of the trustee to abandon worthless property that gives the title man any grave concern, but rather the manner in which the abandonment is manifested. The question as to whether or not the trustee shall elect to take burdensome property, is not one of jurisdiction or right, but of discretion. In re Gogley 107 Fed. 73; and if unwisely exercised, the Bankruptcy Court is open to compel a different course, Dushane vs. Beall 161 U. S. 513-515. The Trustee must be accorded a reasonable time to inform himself and make his election to accept or reject. Hammond vs. Whittridge 27 S. Ct. 396; in re Hasie 206 Fed. 789-792. Where property is encumbered, trustee should act promptly, and if he concludes not to administer property, he should so notify the bankrupt. In re Novak 111 Fed. 161. In re Zehner 193 Fed. 787, it was held, "It is well settled that the trustee is not required to administer property burdened with liens or mortgages, and he may abandon same to the secured creditor. In fact, it is his duty to do so whenever it is certain the general estate will derive no benefit from the sale of such property." See also In re Stewart 193 Fed. 791. The trustee, once having abandoned property, cannot, thereafter, when the property is found to have become valuable, reclaim it. Myers vs. Josephson 124 Fed. 734.

The doctrine of abandonment has no application to property which the bankrupt has concealed and the existence of which the trustee has no knowledge. The United States Supreme Court in the case of First National Bank vs. Lasater 196 U. S. 115 at page 119, said,

> "But that doctrine (abandonment) can have no application when the trustee is ignorant of the existence of the property, and has no opportunity to make an election. It cannot be that a bankrupt, by omitting to schedule and withholding from his trustee all knowledge of certain property, can, after his estate in bankruptcy has been finally closed up, immediately thereafter assert title to the property on the ground that the trustee had never taken any action in respect to it."

MANIFESTING ELECTION

Although the Bankruptcy Act itself prescribes no method for manifesting a trustee's election to accept or reject property which is of a doubtful value, nevertheless, the cases are uniform in holding that the trustee can formally abandon property by filing in the proceedings, a paper in writing, expressing therein his intention not to accept the property. It was held in the case of Briggs vs. Avary 106 S. W. 904, that the trustee had manifested formally not to accept the property when he gave a written waiver of his right, title and interest in the property, containing also permission to the bankrupt to deal with it as owner. To relieve himself from any possible liability for abandoning property, the trustee may obtain an order of court directing him to pursue this course, or having abandoned property, he may obtain an order nunc pro tunc approving his action. Myers vs. Josephson 124 Fed. 734. See Collier on bankruptcy (11th Ed.) at page 1163 (3), and Remington on bankruptcy at page 934, where the question of practice is discussed. This necessarily relates to formal abandonment.

ABANDONMENT BY IMPLICATION OR ESTOPPEL

We now approach the troublesome question of abandonment by implication or estoppel. There is a long line of cases holding both as to property scheduled and property unscheduled, notice of which is later given to the trustee, that abandonment is conclusively presumed, not only from unreasonable delay by the trustee in claiming it, but also from any conduct on his part which is plainly inconsistent with an election to retain it or to administer it. There are, however, cases holding the other way, the results being brought about not only because the facts differed, but in some cases because of a difference in the interpretation of the facts. It is, therefore, difficult to reconcile all the cases. In the case of Sparhawk vs. Yerkes (Pa.) 142 U. S. 1, the court held that a trustee is not permitted to wait indefinitely in order to see whether an item of property, now apparently valueless, may eventually become sufficiently valuable to justify him in taking possession of it for the benefit of the estate. In that case the asset was in controversy and because of that fact, the trustee did nothing, but, to the contrary, permitted the bankrupt after his discharge to expend money and labor in an attempt to salvage the asset. In Dushane vs. Beall (Pa.) 161 U. S. 513, the court said,

> "If, with knowledge of the facts, or being so situated as to be chargeable with such knowledge, an assignee (trustee) by definite declaration or distinct action, or forbearance to act, indicates, in view of the particular circumstances, his choice not to take certain property, or if, in the language of Ware, Judge in Smith vs. Gordon 22 Fed. case No. 13052, he, with such knowledge, 'stands by without asserting his claim for a length of time, and allows third persons in the prosecution of their legal rights to acquire an interest in the property,' then he may be held to have waived the assertion of his claim thereto."

See also Hansan vs. First National Bank 128 S. W. 1147; Mesirvo vs. Innis, Spieden and Company 97 Atl. 160; in re Wiseman vs. Wallace (Pa.) 159 Fed. 236.

The cases hold to the same effect where assets are not scheduled but their existence is later brought to the knowledge of the trustee, who then, by his conduct, disclaims them. Sessions vs. Romadka 145 U. S. 29.

However, in Carter vs. Rives, 9 Fed. (2nd) 62, where trustee in bankruptcy

did not learn until after the lapse of three years that a certain lot was property of the bankrupt, and then delayed for several years before applying for an order to sell, within which time the bankrupt borrowed money, giving a deed of trust on the lot as security, and therewith erected garages on the land and then sold his equity of redemption, it was held there was no abandonment or disclaimer by the trustee, and that the property was properly administrable through the Bankruptcy Court. See also in re Wiseman vs. Wallace (Pa.) 159 Fed. 236. In re Lighthall 221 Fed. 791.

It is the writer's opinion that title companies, in the absence of the filing in the proceedings by the trustee of a formal abandonment of the property in writing, same being either a voluntary one or by an order of court, ought not treat property remaining in the name if the bankrupt as abandoned by the trustee. Even where the estate has been closed and the bankrupt has made a conveyance, and the facts appear to indicate and it is strongly urged that the property was abandoned by the trustee, a title company should not insure such a title, but rather insist upon a reopening of the estate and the re-election of the former trustee. The trustee could then obtain an order from the court, approving nunc pro tunc the abandonment already made, if, in fact, there had been an abandonment. Any other policy might lead to disaster, for in the event of litigation to determine whether the property was, or was not, abandoned, the burden of proof would rest upon the title company to prove abandonment.

The title to property of the bankrupt, which the trustee has abandoned, reverts to him in the same condition and subject to all liens and encumbrances whenever obtained as it was when title passed to the trustee in bankruptcy. Abo Land Company vs. Tenorio 191 Pac. 141; First National Bank vs. Lasater 196 U. S. 115; Kobrin vs. Drazin 97 N. J. Eq. 400; Metz vs. Emery 204 Pac. 734; 3 R. C. L. 229; also Loveland on Bankruptcy (3rd Ed.) par. 151.

Therefore, when such property is subject to a mortgage and the proceedings show that it was formally abandoned by the trustee, the mortgagee in foreclosing, is not concerned with the bankruptcy proceedings, and there is no necessity for him to obtain consent from the Bankruptcy Court to carry on his proceedings in the State Court. If there has been no formal abandonment by the trustee, then the mortgagee must obtain consent from the Bankruptcy Court, and if the estate is closed, it must be reopened and a new trustee elected. Collier (11th Ed.) at page 75, says, "It frequently becomes necessary to reopen estates that there may be a trustee on whom process may be served; thus, where burdensome property has vested in the trustee, and, by inadvertence, he has not been formally excused from taking same, and a mortgagee wishes to foreclose."

CLOSING AND REOPENING ESTATE

Section 2 of the Bankruptcy Act, providing for the creation of courts of bankruptcy and their jurisdiction, empowers such courts, by subdivision 8, "to close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustee, and reopen them whenever it appears they were closed before being fully administered."

Collier (11th Ed.) at page 72, paragraph (b), says, "Under this subdivision, an estate can only be closed when it appears that it has been fully administered. Where the final account of the trustee has been approved, the trustee discharged, and all the funds of the estate distributed, the estate will be "deemed" closed within the meaning of this subdivision. * * * The estate is usually closed by the entry of an order approving the accounts of the trustees and discharging him from his trust. By the terms of the subdivision, the act of closing the estate consists of the approval of the final accounts and the discharge of the trustee. * * * The closing of the estate does not operate to transfer the title of unadministered assets back to the bankrupt."

Therefore, after the estate has been formally closed, the bankrupt having received his discharge, and scheduled but unadministered assets are found to exist and which were not abandoned by the trustee, or where assets are discovered which were not known when the estate was closed, the title to such assets does not revest in the bankrupt, but they are deemed to be in the custody of the Bankruptcy Court. See in re Lighthall 221 Fed. 791; Fowler vs. Jenks 96 N. W. 914; Saylor's Estate 86 Pa., Sup. 15. We must, therefore, in dealing with such assets, consider them as remaining within the jurisdiction of the Bankruptcy Court for administration purposes. It then becomes necessary to have the estate reopened in order that these assets can be administered. The application or petition, asking for a reopening, should be made to the District Court (sitting in bankruptcy), and if there is a proper showing of the jurisdictional facts, namely, the establishing that some assets belonging to the bankrupt at the time of his bankruptcy, now exist, and that they were not administered in the original proceedings, then it is the duty of the court to grant the application and order the case reopened. Re Newton 107 Fed. 430. In a Massachusetts case, Bilafsky vs. Abraham 183 Mass. 401, it was held that the referee to whom the case was originally referred, has jurisdiction to entertain an application to reopen a closed estate, and may make the necessary order. However, the application is usually made to the district judge who, if he approves the application, enters an order reopening the estate and referring the cause to the referee to whom the original cause was referred. This practice is more logical and it is followed in most of the jurisdictions. Neither the statute nor judicial decisions dictate any hard and fast rule as to when a closed estate should or should not be reopened. Therefore, a petition to reopen a closed estate is an appeal to the sound discretion of the Bankruptcy Court, and if review is had of the order made, the only question for consideration is whether there was abuse of discretion in reopening or refusing to reopen the estate. In re Graff 250 Fed. 997; in re Carlucci (Pa.) 269 Fed. 795. The question frequently arises as to who is the proper person to make application for the reopening of a closed estate. It has been held that the application must be made by some party interested in the estate, and who would be benefited by the reopening. In re Meyer 181 Fed. 904; or by creditors of the bankrupt who have proved their claims in the original bankruptcy proceedings, and who would be entitled to share in the unadministered assets. However, a creditor who has failed to prove his claim in the original bankruptcy proceedings within the time prescribed by Section 57 of the Act has not a sufficient interest as to qualify him to apply for a reopening of the estate. In re Meyer, supra; in re Schaffer 104 Fed. 982; in re Paine 127 Fed. 246. But see the case in re Pearson 174 Fed. 160, where the petitioning creditors, whose claims had not been proved because no assets had been scheduled and no creditors at all had proved their claims, were permitted to make application for a reopening, and thereafter to prove their claims. The reasoning in the opinion seems to be quite logical and sound, but the decision is against the weight of authorities on the subject. Under special circumstances, the bankrupt may make application for the reopening. In re Ryburn 145 Fed. 662; in re Graff 255 Fed. 239-241. But the former trustee has no standing to apply for the reopening of the estate. In re Paine 127 Fed. 246. Where the application to reopen is made by some proper person, other than by the bankrupt, notice of the application must be given to the bankrupt in order that he may have the opportunity to raise any valid objection he has to the reopening. In re Meyer 181 Fed. 904; but also see in re Levey (Pa.) 259 Fed. 314.

Upon the estate being reopened, a meeting of the creditors who proved their claims, should be called for the purpose of electing a new trustee. The creditors of the estate then have the same authority and power with respect to the appointment of a trustee as is conferred upon them at the first meeting held after the adjudication. In re Newton 107 Fed. 429; they have an absolute right to elect a new trustee. In re Schwartz 4 Fed. (2nd) 895. See also Section 44 of the Bankruptcy Act, which, among other things, provides, "If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so." The reopening of the estate does not have the effect

of reinstating the old trustee for upon his discharge and the closing of the estate, he ceases to have any further standing in the cause. In re Rochester Sanitarium vs. Baths 222 Fed. 137; in re Minners 253 Fed. 300. However, the appointment of the trustee upon the reopening of a bankrupt estate, without prior action on the part of the creditors, will not be considered invalid in a collateral action. Fowlers vs. Jenks 96 N. W. 914; Ivester vs. Nicholas 157 Ga. 755.

We, as title men, are not infrequently confronted with cases concerning real estate intentionally or unintentionally omitted entirely from the schedule of assets filed by the bankrupt, and to such real estate the theory of abandonment cannot be applied because it was not scheduled. Both as to this class of assets, as well as to assets that may have been scheduled by the bankrupt, but which remain unadministered, we are very often met with the argument by counsel, in cases where the estate has been closed for two years or longer, that Section 11-d of the Bankruptcy Act which provides, "Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed," forbids the making of an application to have the closed estate reopened.

However, such a contention must fail as it has been held that an application to reopen a closed estate is not a "suit" within the meaning of this Section of the Act. Re Paine 127 Fed. 246. Compare Kinder vs. Scharff 231 U. S. 517. The Bankruptcy Act does not place any limitation of time within which a closed estate can be reopened, and the courts, in the absence of laches, have uniformly held that the estate may be reopened at any time unadministered assets are found to exist. In re Lighthall 221 Fed. 791.

Therefore, where mortgaged property constitutes an unadministered asset in a closed estate, the closing of the estate does not operate to transfer the title of the unadministered asset back to the bankrupt, but such assets must be administered in the Bankruptcy Court. Thus a mortgagee desiring to foreclose his mortgage in a State Court, finds it necessary first to have the closed estate reopened and a trustee elected. This having been done, he is then in a position to present his petition to the referee with notice to the trustee, asking for consent to foreclose his mortgage in the State Court. See Collier (11th Ed.) page 75, hereinbefore referred to.

SALES BY TRUSTEE FREE OF ENCUMBRANCES

There is now a growing tendency in Philadelphia to have the trustee in bankruptcy sell the bankrupt's encumbered property free of the encumbrances, and this practice may extend to other counties in the State; therefore, a few words will be said about such sales.

Collier on Bankruptcy (11th Ed.) at page 1171-d, says, "Sales free of encumbrances were authorized by the statute of 1867. The present law has no such provision. This has cast doubt on the power of the court to authorize such a sale. The cases are quite uniform, however, in declaring that such sales can be authorized, and by the referee as well as by the judge. But they should not be ordered where it does not appear that they will be to the advantage of the bankrupt's estate."

To justify a sale by the trustee, free of encumbrances, the facts and record should show the following:—

That the sale will be to the advantage of the bankrupt's estate.

That every creditor whose lien will be discharged by the sale received personal notice of the trustee's application to so sell. The record must disclose affirmatively that such notice was given and general statements to that effect are not sufficient.

That the petition for the sale should allege that the liens about to be discharged, are to be transferred to the proceeds of the sale. However, it is mandatory that the order granting the sale must, in positive words, impose the liens discharged upon the proceeds, thereby substituting the proceeds for the land. In the absence of such positive words in the order, it will not have the effect of discharging liens.

No mention of the question of the appointment of appraisers is made as the lack of appraisal is not so far jurisdictional as to make defective a title sold by a trustee without appraisal.

The sale can be either a public or private one.

A referee's order, authorizing the trustee to sell free of encumbrances, is subject to review by the judge.

Those who may desire to pursue this subject further, see:— Collier on Bankruptcy (11th Ed.) at page 1171-d etc., and the following cases:

Sinewell, administrator vs. Bingwell 27 District Report 1018 (Pa.) and the cases there cited:

In re Styer 98 Fed. Rep. 290 (Pa.).
In re Torchea 185 Fed. 576.
In re Plantations 270 Fed. 273 (Pa.).
McKay vs. Hamill 185 Fed. 11 (Pa.).
In re Hershberger 208 Fed. 94 (Pa.).
In re Prince 131 Fed. 546 (Pa.).
In re Benz 218 Fed. 50 (Pa.).
In re Zeliner 193 Fed. 787.

Compare—Matter of Fite 31 Am. B. R. 308 (Pa.) when the discharge of a first mortgage was discussed.

In conclusion, a word might well be said about the trustee's title to a bankrupt's property. Upon the election of a trustee and his qualifying, title to the bankrupt's property, wherever situated, vests in the trustee as of the date of the filing of the petition in bankruptcy. To appreciate the significance of this situation, take as an example real estate situated in Philadelphia, the owner of which is domiciled in California, and there becomes a bankrupt. The title to the real estate in Philadelphia immediately passes to the trustee elected in California. The trustee under the Bankruptcy Act ought to file notice of the bankruptcy proceedings in every county where the bankrupt owns or has an interest in real estate. However, the Bankruptcy Act does not make it mandatory upon the trustee to file such a notice, and it is usually not done. The Bankruptcy Act, therefore, if it is possible to do, should be amended as to this phase to the end that it would make it mandatory upon the trustee to file such notice, and in the event of his failure to file such notice, that, at least, as to real estate lying outside of the counties embraced by the district court in which the person was adjudged a bankrupt, persons dealing with such real estate of a bankrupt shall not in any wise be affected by the bankruptcy proceeding. Even though favorable to the thought expressed here, it is questionable whether Congress has the power to legislate as to what instruments the various county recorders in the States must accept for record and to provide that such record shall constitute constructive notice. (Applause).

A. G. GREEN (Santa Ana, California): I wish to ask Mr. Schwab about treatment of judgments after discharge in bankruptcy.

MR. SCHWAB: The discharge of a bankrupt has no place in title insurance; it does not affect the title of the bankrupt.

MR. GREEN: If the bankrupt had a judgment against him, and we will say that the claim on the judgment was ended, filed as a claim, and the title to the property remained in the bankrupt after it was abandoned, or in some manner remained in the bankrupt after discharge, how would you treat the judgment?

MR. SCHWAB: You could have no execution on that. We will assume the lien of that judgment ran four months before the petition in bankruptcy was filed. It is a valid judgment and you could not have execution on that judgment in the state court because that property would have to be administered exclusively in the bankruptcy court, as in Isaacs vs. Hobbs, Stratton vs. New, and a great many other cases.

You would first have to file petition in the bankruptcy court and obtain consent to have execution on your valid judgment in the state court served on the trustee, even though the bankrupt is discharged. The effect of the discharge of the bankrupt is merely to relieve him of personal liability for debts scheduled and proved in his schedule.

MR. GREEN: Then you would ignore such a judgment?

MR. SCHWAB: No, I would not ignore such a judgment. A sheriff's sales, as we would call it, for title coming from some judicial proceeding in the state court would pass no title. The only way to protect it would be to go

into the bankruptcy court and ask for consent to execute with the same force and effect as if you had obtained consent prior to the execution.

The fact it is four months old will not permit you to have execution on the bankrupt's property without first obtaining the consent of the bankruptcy court—not the federal, but the bankruptcy court. It is the federal court sitting in bankruptcy. That order is obtained from the referee.

MR. LANDELS: In California, we use the deed of trust almost exclusively. Our statute provides that before a forced sale under a deed of trust, there must be filed with the recorder notice of breach and election to sell; then the party must wait three months and public notice of sale. Some of our companies have taken the view that if the notice is filed prior to adjudication, it is not necessary to obtain the consent of the referee. Most of us think the consent of the referee should be obtained even though notice of sale is filed prior to adjudication. Is that view correct?

MR. SCHWAB: Is the notice filed in the registrar's bureau?

MR. L.: Yes; that is, it is filed in the recorder's office. There is no suit—just the notice.

MR. S.: Then of course you would ignore the real owner and take good title from the grantee in the deed of trust. I would say, undoubtedly you ought to obtain consent from the court.

MR. L.: In every case in which adjudication occurs prior to the sale?

MR. S.: I would say so, because it is certainly a transfer or the divesting of the bankrupt of his title within four months. That is true, is it not?

MR. L.: No, not exactly. The legal title is already in the trustee. The trustee files notice of breach and election to sell. He waits three months and then publishes notice once a week for twenty days and then conducts the sale. Does the purchaser at the sale obtain good title without redemption?

Assume that the notice of breach and election to sell is recorded in the recorder's office, we will say, on January 1st. The owner is adjudicated bankrupt on January 30th. On the first of April, the trustee commences publication of notice of sale and sells some time thereafter.

The difference of opinion turns on the question whether or not it is necessary to obtain the consent of the trustee in those cases in which the notice of breach is filed prior to the adjudication. Most of us take the view that it is, but a few companies take the view that it is not necessary.

MR. S.: I would say that the spirit of the bankruptcy act is to have the assets of the bankrupt administered in an orderly fashion in the bankruptcy court. I would be somewhat fearful of insuring the title unless consent was first obtained or to have the trustee abandon the property, provided it was heavily encumbered and to file the notice of abandonment in the bankruptcy proceedings, thus showing a formally abandonment of the property.

MR. LANDELS: What position do you take as to a mortgage if suit is instituted in the state court prior to adjudication?

MR. SCHWAB: If possession is in the state court, jurisdiction is retained by that court until the proceeding is concluded therein.

MR. L.: There is not a complete analogy between that and our trust deed procedure?

MR. S.: I think not, because yours is not a judicial procedure. It seems to me you practically have your answer in the case of Stratton vs. New. That is the case we read in conjunction with the Isaacs vs. Hobbs.

MR. L.: Since that decision, most of the companies have changed their policy.

MR. S.: That would be my answer, because there would be no bill filed in the nature of a judicial proceeding on a valid lien. It is merely a matter of individual contract rights. From what you said, I would hesitate to insure the title without consent having been obtained first from the referee in bankruptcy.

MR. HANDLOS: I didn't understand the question about levying on a bankrupt's property. Some one asked if, assuming a judgment lien was on the property and the owner was declared bankrupt, execution could be levied on that property. You said that it could. I did not understand that to be the meaning of the bankruptcy law.

MR. SCHWAB: My answer was that you could not have execution in the state court.

MR. H.: My understanding is that execution could not be had in any court.

MR. S.: Why not?

MR. H.: Because you can't levy upon a bankrupt's property. The entire property must be listed in the bankruptcy court and if the property is listed in the schedule, the right to levy under the judgment is lost.

MR. S.: This is judgment held by a stranger on a bankrupt's property.

MR. H.: You can't get execution levied under a judgment; it is either a sale or a demand on the bankruptcy court.

Report of Committee on Membership

C. B. VARDEMAN
Chairman
Kansas City, Missouri

The committee on membership of the American Title Association, regrets to advise that we are somewhat apprehensive concerning this year's accomplishments.

Reports from some of the state secretaries indicate a disposition on the part of members of the various state associations, to be more than usually tardy in the payment of their dues.

It is hoped of course, that this tendency may be overcome during the latter half of the year and that we may be able to finally close the year's work without appreciable loss. If this can be done we are of the opinion that the American Title Association and its membership committee will be justified in indulging in some self-congratulations.

We hesitate however, to make predictions. In view of the situation we would like to urge upon all the state secretaries that after returning from the annual convention in Del Monte, that they dedicate a part of their time during the latter half of the year, to a vigorous campaign among the members of their state association for the retention of all present members.

It seems premature at this time to undertake to make any detailed report and about all that we can say is that we are hopeful that the final report submitted to the association at the next mid-winter meeting will not be discouraging.

Report of Committee on Co-operation

HARRY M. PASCHAL
Chairman
Atlanta, Georgia

Your Committee on Co-operation submits the following report:

Shortly after the appointment of this Committee, it was suggested by President Johns that we could perhaps get the Mortgage Bankers to co-operate with The American Title Association in getting out "Title News," changing the name of this publication to "Title and Mortgage News."

With an open mind on the subject, and with the idea of being definitely advised as to the reaction of the members of this Committee to this suggestion, the Chairman addressed the following letter to all of the members of this Committee:

"This Committee has heretofore worked in gaining co-operation of the mortgage bankers, realtors, and other allied interests. It has been a very important Committee.

President Johns states that he is of the opinion that this Committee could be instrumental in gaining a great deal more co-operation, and that he believes that we could get the mortgage bankers to co-operate with The American Title Association in getting out "Title News," changing the name of this publication to "Title and Mortgage News," or "Mortgage and Title News." If this could be done, both associations could save money. What do you think of Mr. Johns' idea?

I will be pleased to receive any suggestion from you as to matters which, in your opinion, will promote the interests of the Association."

Opposition to this plan immediately developed among the members of the Committee. The following, which is quoted from a letter received from a member of this Committee, is representative of the attitude of the members of this Committee:

"No doubt it would be a money saving idea, but I am rather doubtful as to its success. As you are probably aware, the Mortgage Bankers' Association is now developing a rather elaborate bulletin service, divided into sections covering various phases of its activities. While it is true that there are many companies like ours which, are as much interested in one association as in the other, I am afraid that there is a very considerable number of title men who would consider that the Title Association was being dominated by the Mortgage Association in the event we should effect such consolidation in the magazine. Personally, I find that there is so much current technical reading to keep up with that it is difficult to find time for all of the trade association organs. I am inclined to favor the bulletin plan over the magazine plan.

I am not very familiar with the work of the former committee on co-operation, but it has occurred to me more than once that the Title Association would do well to attempt more co-operation with the Building and Loan Associations. In many sections these associations dominate the city loan field with its tremendous volume of title work. According to my limited observation, they do not co-operate with the Mortgage Bankers, but stick pretty close to their own associations. In several of the abstract states in which I have personal knowledge, the principal resistance of the introduction of title insurance comes from these associations.

Please do not misunderstand my remark concerning the suggested "Mortgage and Title News." I still have an open mind on the subject, but I am not inclined to favor it at present."

The following quotation is from a letter received from another member of this Committee:

"The only objection to the suggestion of the "Title News" consolidation is the question in my mind as to whether we would thereby lose our identity to a greater extent than we would profit thereby. Understand, I am not objecting to the consolidation, but that thought occurred to me. There is no question but that we need Title News, or some publication, that would give the Association members a publication that would be of like benefit to them."

The Chairman of this Committee is frankly of the opinion that it would be unwise to merge our publication with the publication of any other trade association, but realizes that this is a debatable matter, and suggests that the matter be referred to the Executive Committee for final decision.

This Committee would like very much to see some plan evolved by the Executive Committee by which Title News would be continued as a monthly publication for the benefit of the members of this Assocation.

We recommend that a systematic campaign be inaugurated, either through the Committee on Co-operation, or through the office of the Executive Secretary of the Association, whereby the Association will be able to gain the support of the Real Estate Boards, Mortgage Bankers' Associations, and Bar Associations; this, of course, in addition to maintaining close contact with the life insurance companies.

It would seem logical that the members of this Association would have profited to some extent in connection with the great amount of money loaned through the Reconstruction Finance Corporation, but we understand that very few members of the Association have obtained any business from this source.

The writer has personally contacted the local manager, as well as the directors, of the Corporation, and they are unanimous in stating that they would not feel justified in delaying settlement of a loan to an applicant pending re-examination or extension of titles, preparations of new appraisals etc.; in fact the Corporation (in this section, at any rate) seems to be accepting real estate mortgages as collateral "as is." It seems to us that we should contact the proper branch of the Government at Washington, and attempt to have legislation adopted which would require that the titles to mortgages hypothecated with the Corporation as collateral be recertified or extended to the date of assignment.

Report of Judiciary Committee

MARK R. CRAIG
Chairman
Pittsburgh, Pennsylvania

Fortunately since the last Convention there has been no case reported that caused the comment and discussion throughout the country like the Hobbs Tie & Lumber Company, 282 U. S. 734. This case and the proposed amendments to the Bankruptcy Statutes made bankruptcy a live question for magazine articles and Convention discussions—see American Bankruptcy Review, Vol VIII, No. 6.

However, there have been as usual numerous cases of interest to the members. Perhaps the financial situation is responsible for some interesting cases on the rights of mortgagees and lessees, viz:

Randall vs. Jersey Mortgage Investment Company, 158 Atlantic 865.

Kinwood vs. Dordick, 159 Atlantic 84.

These cases refer to Bulger vs. Wildman, 101 Pa. Superior Court 168, and as it was not reported in the Atlantic Reporter, the facts should be briefly set up for a better understanding of the other cases.

Donlan, the owner of an apartment building, gave a mortgage July 1, 1924, which was assigned to John Hancock Mutual Life Insurance Company. Donlan then conveyed the apartment to Moscovitz and Allen, subject to the mortgage. On July 26, 1929, the owners leased an apartment to Bulger and on September 18, 1929, the owners assigned their lease to Pleet and the tenant paid him rent for October. On September 1, 1929, default was made in payment of principal and interest on the mortgage and on October 29, 1929, the insurance company notified the tenant that it had taken possession and demanded the rent. The tenant paid the insurance company rent for November. Pleet, the assignee of the lease, levied a distress on Bulger's goods for the November rent. Bulger sued out a writ of replevin. The court gave a judgment in favor of Bulger, which judgment was affirmed by the Superior Court.

In Randall vs. Jersey Mortgage Investment Company, the second mortgagee after default, notified the tenants, all of whose leases were subsequent to the mortgage, to pay rent to him. The mortgage in this case contained a clause "together with reversions and remainders, rents, issues, and profits thereof." Again there was a distress by the owner, a replevin and an injunction to stop further proceeding on the distraint. The court held that payment of rent to the mortgagee relieved him of any obligation to pay the owner, and said further that if the tenant after such notice paid to the owner the owner must account to the mortgagee.

In Kinwood vs. Dordick, Pa. Supreme Court, a lease was made January 22, 1929, and a mortgage given March 1, 1929. The mortgage was foreclosed and the property sold by the sheriff to the mortgagee August 3, 1931. The former owner then made a formal assignment of the lease to the new owner. On August 5, 1931, the tenant was notified to pay the rents owing up to August 1, 1931, to the "new owner." The new owner distrained for this rent. The court decided that the new owner was entitled to the accrued rents as assignee, but could not distrain, as she had not given notice to pay the rents to her before the sheriff's sale, and that the relation of landlord and tenant did not begin until the delivery of the sheriff's deed.

The members in studying these cases must keep in mind the difference between states in which mortgages are merely liens and states in which a mortgage is a conveyance as well as a lien.

In the case of New York Title and Mortgage Company vs. Tarver, et al, No. 475 October Term 1931, in the Supreme Court of the United States the order of the lower court denying an interlocutory injunction was affirmed.

While real property is classed as a specialty yet so many other subjects are involved that the cases appearing

in the reports of interest to real property specialists are very numerous. Out of these cases a few have been selected which may be profitably read and studied.

CARROLL vs. EDMONDSON,
41 S. W. (2d) 64.

Carroll had a $10,000.00 mortgage on a brick building belonging to Pittman and containing an elevator valued at $1,250, which was part of the realty. Without Carroll's knowledge or consent Pittman sold the elevator to Edmondson who removed it from the building and appropriated it to his own use. Without making Edmondson a party to the suit Carroll foreclosed and bid in the property for $249.80. After the decree but before the sale by the sheriff Carroll filed suit against Pittman and Edmondson to recover the value of the elevator and obtained judgment for $1,250.00. On the trial Edmondson offered testimony to prove that after the removal of the elevator the property of which it had formed part was worth $20,000.00. Because of the rejection of this testimony the Supreme Court, acting on an opinion by the Commission of Appeals, reversed and remanded the case, holding that the measure of damages was not the value of the elevator but the damage, if any, to the mortgagee due to the depreciation of the security by the removal of the elevator, and if the property after such removal was worth as much as or more than the amount of the indebtedness then no damage had been suffered by the mortgagee and he was not entitled to any recovery.

WOOD vs. SPARKS,
42 S. W. (2d) 142.

The owner of property executed a mechanics' lien contract and note thereon for $4,000.00 to Sparks who transferred same to the Davis Lumber Company. This Company executed a transfer of the note and lien to Wood, but delivered to him a forged copy of the note instead of the original. Wood filed the transfer for record the same day. Two months later the Lumber Company executed another transfer of the same note and lien to Hubby and endorsed and delivered to him the true note. On default in payment Wood sued to foreclose making Hubby a party defendant. Hubby set up the facts with respect to the two transfers and prayed for a foreclosure of the lien in his favor. The District Court gave him judgment accordingly and the Waco Court of Civil Appeals confirmed the judgment, basing its decision on the ground that the lien is incidental to the debt and a transfer of the debt carries with it the lien but not vice versa. The court also held that the fact of the transfer to Wood being on record at the time of the transfer to Hubby made no difference because "it was the assignment of the note and not the lien that determined the ownership, of the property, and our registration statutes have no application to the assignment of promissory notes or chose in action." The case is now pending in the Supreme Court, a writ of error having been granted.

HERBERT vs. DENMAN,
44 S. W. (2d) 441.

Denman sold Houghton certain premises, retaining a vendor's lien to secure two notes—a first lien note for $15,000.00 and a second lien note for $2,500.00. He transferred the $15,000.00 note to Investment Securities Company which thereupon took from Houghton and wife a renewal note for that amount and also a deed of trust as additional security. Denman's consent to the taking of this deed of trust was not obtained. Default having been made by Houghton in the payment of this renewal note the property was sold under the deed of trust and purchased by one Bettes who conveyed same to Herbert and wife. Thereafter, default having been made in the payment of the $2,500.00 note, Denman sued to foreclose his lien making Herbert and wife parties and praying that he be permitted to redeem the property from them by paying the amount due on the $15,000.00 note. Herbert and wife answered that the sale under the deed of trust cut off all rights Denman had in the property as holder of the $2,500.00 note, but the Texarkana Court of Civil Appeals held that Denman was not bound by the execution of the subsequent deed of trust in favor of the Investment Securities Company and had a right to redeem, the lien of the deed of trust being junior to the vendor's lien securing the $2,500.00 note. A writ of error has been refused by the Supreme Court.

LOMBARDO vs. CITY OF DALLAS,
47 S. W. (2d) 495.

In 1927 the Texas Legislature enacted a zoning law authorizing municipal authorities to adopt zoning ordinances by following a prescribed procedure. Dallas adopted such an ordinance in accordance with the statutory requirements, dividing the City into districts and prohibiting certain businesses in those districts designated as residential and apartment. Lombardo owned a lot lying within a dwelling district and applied to the building inspector for a permit to construct a filling station thereon. The building inspector refused the permit and Lombardo filed suit against the city authorities for either an injunction to prevent them from interfering with his erection of such a building or a mandamus to compel the issuance of the desired permit. He attacked the validity of both the act of the Legislature and the ordinance as being in conflict with both our State and Federal constitutions. The Dallas Court of Civil Appeals held the act and ordinance valid and constitutional as being within the proper exercise of the police power. The opinion cites Minnesota, Missouri and Georgia cases in support of the statement: "That the subject of zoning is growing perceptibly in judicial favor is evidenced by the fact that courts in a number of states reversing former holdings now espouse the doctrine that these laws, in general scope, are valid, and their enactment authorized, in the proper exercise of the police power." The attitude of the courts towards the restrictions imposed on the use of private property by these zoning laws is a striking example of the manner in which the courts adjust their ideas of constitutionality to the changes in public opinion as to what is desirable or undesirable.

REAL ESTATE LAND TITLE AND TRUST CO. vs. BANKERS TRUST CO.,
158 Atlantic 634 Pa. Superior Court.

A mortgage including "all machinery including engines, boilers, dynamos, elevators, refrigerators, incinerators, steam and electric fixtures and appliances and all fixtures and other property generally now or which may hereafter be placed in or about said premises and appurtenant thereto, or used in connection therewith as an apartment house" does not protect furniture from levy and sale by creditors having judgment against the mortgagor.

KATCHEN vs. SILBERMAN,
158 Atlantic 427 N. J. Ch.

Grantees under deed containing no assumption clause, having made payments on mortgage indebtedness for several years, HELD estopped to assert that they did not assume mortgage.

CASE vs. MORTGAGE GUARANTEE & TITLE CO.,
158 Atlantic 724 R. I.

Title examiner's duty, in absence of special agreement, is to exercise such care and skill as qualified examiner should exercise in circumstances.

One taking a mortgage on land covered by a prior recorded mortgage took estate charged with payment of senior mortgage debt including fire insurance premiums paid by mortgagee, taxes paid by mortgagee and interest at rate specified in the mortgage.

Report of Committee on Mechanics' Liens

EDWARD C. WYCKOFF
Chairman
Newark, New Jersey

Sometime ago a special committee of your members consisting of Benjamin J. Henley of California, George L. Bremner of Cleveland and Edward C. Wyckoff of Newark, were appointed to draft a Uniform Act on Mechanics' Liens, which could be used as the basis of drafting legislation whenever a state association should become interested.

That committee made a partial report at the last convention. Your committee is still of the opinion that it should be discharged from further activity, and that its full duty to our association members will have been performed when it has called to your attention certain facts stated as follows:

The Standard State Mechanics' Lien Act Committee of the Department of Commerce has put out a proposed uniform draft of a Mechanics' Lien Act, a copy of which any member of the Association can receive by writing to Mr. Dan H. Wheeler of the Department of Commerce, Bureau of Standards, Washington, D. C.

The Prentice Hall Company, 70 Fifth Avenue, New York City, are preparing a service upon the Mechanics' Lien Act. This service is being compiled by Mr. Frederick Newton, a Counselor at Law of New York City, and a member of the firm of Wait, Wilson and Newton. The service will be sold, as I understand it, for the sum of $100.00. This will cover all of the states. They also have a service limited to the particular state in which you are interested which will be sold in the neighborhood of $30.00.

These services will be prepared for the separate states in the order of the volume of cases in each state. Of course, the service will first be prepared for the state in which the problems arise most frequently because it is in these states that the most profitable sale of the service can be made, but it is their ultimate purpose to render the service in all of the states. They hope to accomplish this within the year.

Therefore, with these two sources of information our members can get a very good idea when they get ready to settle down and study local legislation.

I may say that the Prentice Hall service will probably point out many weaknesses in the proposed uniform act to which I have referred. As, however, the criticisms of the proposed standard measure will vary widely, according to the practices obtaining in the different states, your committee feels that its direction of you to these two sources of information is preferable to our attempting to analyze and criticize the uniform act. Some of your committee members have been glad to avail themselves of the Prentice Hall service and have found it very helpful.

As it will be kept up to date it will continue to be useful to our members even though their problem is studied some four or five years hence.

Report of Legislative Committee

WM. H. McNEAL
Chairman
New York City

Various State Legislatures have, during sessions of the current year, enacted laws which are of interest to the title profession.

In New York the following new statutes have taken effect:

Chapters 261 to 265, inclusive, reducing the period for adverse possession from twenty (20) to fifteen (15) years.

Chapter 278, providing for the including in one instrument of both bond and mortgage.

Chapter 334, providing that, in an action to foreclose a mortgage, when the state has been named as a party defendant, sale may be had free from the lien of franchise taxes accruing after filing of the lis pendens.

Chapter 459 resolves certain doubts which had arisen as to the effect of a marriage entered into after the making of a will by one of the spouses. Under the new act the will is not automatically revoked unless it indicates an intention to disregard the marital status. If the will makes provision for the other intended spouse AS SUCH it is not necessarily revoked by the marriage.

Chapter 483 permits revocation of real property trusts upon consent in a similar manner to that heretofore afforded with respect to trusts of personality.

Chapters 627, 531, 532 and 533 provide amendments to the Lien Law. Briefly stated, they respectively provide stricter definition of various terms used in the law, require a "trust fund clause" to be inserted in deeds by mortgagors, given within four months after completion of work on the mortgaged premises, in order to protect the grantee against mechanics' liens; provided for amending notices of lien nunc pro tunc.

IN NEW JERSEY:

Chapter 138 permits foreclosure for default in interest only.

Chapter 161 validating certain conveyances to municipalities.

Chapter 162 permits municipalities to take title to properties under tax liens.

Various other important bills are still pending.

VIRGINIA:

An act amending Section 131 of the Tax Code in relation to recording taxes on deeds, deeds of trust, mortgages, leases and land contracts.

An act amending Section 6470 of the Virginia Code relating to the time within which a judgment becomes a lien upon real estate.

An act amending Section 3393 of the Virginia Code in relation to recording of deeds and other instruments, affecting real estate.

SOUTH CAROLINA:

An act regulating judicial sales.

MASSACHUSETTS:

Chapter 2 relative to the right of a mortgagee to pay a tax assessed and add the amount so paid to the mortgage debt.

KENTUCKY:

An act increasing recording taxes.

RHODE ISLAND:

Chapter 1906, authorizing the filing of a bill in equity to determine the validity of title to property sold or acquired at a tax sale; amending Chapter 339 Rhode Island General Laws.

In Louisiana three bills are pending relative to the right to obtain a deficiency judgment; requiring vendors to give a bond for deed and relating to the proof required in petitory actions.

During the year the Supreme Court of Illinois, in an action to oust a foreign title company, held that such company could engage in business in Illinois under the principle of comity, unless the Illinois Legislature had indicated that public policy required the exclusion of such companies and that, in the particular instance involved, the foreign company had complied with the only Illinois Statute applicable.

The United States Supreme Court declined to pass upon an attack on the constitutionality of the 1929 Texas Title Act on the ground that, since the beginning of the action, the question might have become moot as to the plaintiff involved.

MR. McNEAL: Mark R. Craig of Pittsburgh has had considerable correspondence with the Executive Secretary and with the Chairman of the Legislative Committee with reference to the provision of the federal statute relating to income tax liens. In Pennsylvania it seems that a deed of trust can be foreclosed and within a very short time, all liens pertaining to and under the statutes of the state of Pennsylvania can be eliminated.

The federal statute with respect to income tax liens provides that the income tax lien shall remain a lien for one year after foreclosure of the mortgage, even though the federal government is made a party defendant. Mr. Craig, of course, feels very keenly the restriction which this act puts upon foreclosure in the state of Pennsylvania, and had he been here, he would have presented to the convention a resolution or some such measure asking the action of this convention upon the statute, in effect, and some sort of recommendation to Congress for an amendment to the act so as to permit, in states where deeds of trust predominate and where foreclosures are had under deeds of trust, particularly on short notice, that the lien on these federal income tax judgments should be barred to the same extent and in the same manner that the state judgments and liens are barred.

The Secretary asked me to bring the subject before the convention for discussion as to the advisability of this body taking action on the matter, and whether or not such action should be presented to Congress in the form of a petition for amendment of that particular law.

MR. SHERIDAN: The Act of Congress referred to, carries in it a provision as to the government for a one year redemption period. That means, as to the writing of a fee policy or owner's policy, in Pennsylvania full marketability of title cannot now be written. The policy must be written in the mortgagee, after the sheriff's deed, subject to the rights of the United States government under the redemption period given to it.

WALTER C. SCHWAB (Philadelphia, Pennsylvania): I will sponsor a resolution practically as worded by Mr. Mc-

Neal, with the qualification that a copy be sent to Mr. Craig for such action as he sees fit to take. I should like to make the resolution general in effect, with the understanding it is to be referred to Mr. Craig and he, in turn, can take it up with his Congressman.

The act speaks of making the government a party defendant, but before the sale has any effect on the federal lien, they have a right to answer, and I think that time is about two months. In that way, with sixty days from the date of sale, to which is added the period of one year, it brings it to eighteen months before it is possible to get clear title free of the redemption period.

MR. SHERIDAN: As I understand it, your motion would be something like this: that it is the sense of the convention that we support the position taken by Mr. Craig and the Pennsylvania mortgage companies in petitioning Congress to delete from the bill the redemption period following sale.

MR. SCHWAB: In view of the fact Mr. Craig wanted it to come before the convention, that would be my idea.

. . . Mr. Schwab's motion as worded by Secretary Sheridan was seconded and carried unanimously . . .

All of the foregoing reports, on motion duly made, seconded and carried, were adopted and ordered filed.

Extension of Title Insurance—1932 Model

State-Wide Title Insurance

E. B. SOUTHWORTH
Executive Vice-President, Title Insurance Company of Minnesota
Minneapolis, Minnesota

State-wide title insurance is a subject of marked interest both to the abstracters' and examiners' section, in addition to the interest to the companies doing a state-wide business, as the abstracters are usually the local agents and as the examiners are usually the approved attorneys. The problem has not, in a great many cases, met with enthusiasm by any of the parties heretofore mentioned as being interested. The examiners' section because they feel that being attorneys that by the insuring of titles they may lose a certain amount heretofore received for quiet title suits, partition suits and proceedings of this character; the abstracters because if there are two abstracters in the same locality and only one is using title insurance, then the other abstracter is able to create in the minds of the local attorneys a certain feeling of good will; by the title companies because of the risk involved where they are passing policies out not issued in their own office. However, these difficulties have in the past few years been, at least to a certain extent, lessened and the demand for title insurance the country over has increased.

We, in Minnesota, have experimented with two systems, neither one of which are entirely satisfactory. The first system was to arrange with the local abstracters and allow them an agency of title insurance, they to furnish opinions by people who we considered competent to pass upon titles, they to get a percentage of the premium, the balance to be forwarded to us. The second system which we are trying is that of appointing agents who we feel will be able to secure a certain volume of business. These parties are usually not abstracters, but are local attorneys. Neither one of these systems have been productive of a satisfactory amount of revenue.

It has been our experience that when we put one of our own men in the field selling title insurance in the community that we immediately receive a certain volume of business, but that after our man has returned to the home office this business gradually dies down until the next trip at which time there is again a certain amount of business. Whether this is the result of some of the local agents not being aggressive or is the result of general business conditions which have existed since we started this business, I am not in a position to say. I can not but feel, however, that it is to the interest of all three groups to establish some satisfactory system for the furnishing of title insurance in every locality in the United States; the examiners because they are thus enabled to further specialize and keep informed on real estate matters; the abstracters because they can thus supplement their income and further because the holding of an agency from a good title insurance company is a protection to him against competition; the title insurance company because by having a universal coverage, title insurance becomes easier to sell and of greater demand not only in the surrounding territory but also in the locality in which the home company is located. The establishment of agencies also spreads the name of your company throughout the general district in which you operate. It is a feeder for trust and escrow business and if the company maintains a conveyancing department, for its conveyancing also. In other words, it is good advertising. The last point which should be of interest to the title company is that by having national coverage they are able to talk to the large users of title insurance. By the large users I mean life insurance companies, chain stores, and in the present day and age, chain banks, and in making the sale to one, sell the whole territory covered by this large user. The large user, on the other hand, is very prone, if he can not obtain satisfactory title coverage in all places, to say that—"while this is good, I am forced to take the risk in lots of places and why should I further protect myself in Minneapolis than I protect myself in Poedunk."

With these ends in view, I believe it is to the best interest of all of us to satisfactorily establish a system for the furnishing of title insurance in every county in the United States. Of course, a large portion of the United States is now covered by title companies but there are a great many places where this situation does not exist. (Applause).

State-Wide Title Insurance

LEO S. WERNER
Vice-President, Title Guarantee & Trust Company
Toledo, Ohio

Five years ago, in looking about for sources of new business, we were attracted by the possibilities of state-wide title insurance.

Throughout the territory in which we proposed to operate, abstracts of title were used exclusively in those cases where any evidence of title was required. Defects in the abstract of title system greatly aided us in our efforts to introduce state-wide title insurance. We concentrated our first efforts upon the mortgage loan departments of life insurance companies and had little difficulty in securing their business.

Having made a thorough survey of each county in which we proposed to operate as to the probable volume of business that might be expected and an inspection of the condition of the public records, we made a connection with the leading title examiner in each county, who in all cases was an attorney, only after careful inquiry from bankers, realtors and from other reliable sources as to his ability, financial standing and good reputation in his community. We would have preferred to have made connections with title companies having complete plant facilities, but there were only one or two such companies operating in our state-wide field. But one representative was named in each county, except in a few instances two representatives were named in the larger cities and towns. This dual representation has worked out well, although we had some misgivings about it at first.

We have no written contract of any kind with our representatives. They examine all titles for us. The result of their search is certified to us upon our form of title report. This report certifies who has the title, by what means it was acquired and what the liens and encumbrances are upon the property. Any defects are noted with appropriate comment. No abstracts of

title are made for us, except on orders for large policies of title insurance. The representative certifies to the accuracy of his search and his responsibility to us is the same as that of any examiner of titles to his client.

Although many title men believe that no accurate title examination can be made outside of their particular title plant we are convinced that competent men in adjoining smaller counties, without plant facilities, but where the public records have been accurately kept, can make a careful and accurate title search and one that can be safely insured.

We have discovered minor errors on the part of our representatives, none of which have caused us any loss. Our loss experience has been satisfactory. Claims for losses have not been due to mistakes of our representatives but to defects in title off the record. In one case we had to defend a suit in which it was asserted that a deed had been fraudulently altered. We promptly defended the suit, maintained the title in two courts and gained some favorable publicity from it.

We believe our good loss record can be traced to two things. First, we receive an examination from the best qualified title examiner in each county. Second, our representatives close many of the titles we insure. This latter fact, together with the representative's local knowledge of titles and of the people concerned in them have proved to be effective safeguards. Our representatives have no interest in any transaction requiring our policy beyond the examination of title. In no case are they correspondents for mortgage loan companies. We require them to be entirely disinterested. That gives us an unbiased examination. We are convinced that the risk involved in insuring titles in the smaller communities is less than the risk involved in the larger communities.

No two attorneys will view a title in the same light nor will each raise the same objections. Some attorneys are more liberal in passing defects than are other more technical attorneys. We caution our representatives that if they are in doubt about any defect in title, to pass this defect on to us. They have permission to waive all clearly technical old flaws.

At first our main source of business was from life insurance companies. The protection afforded and the avoidance of many delays in closing by the use of title insurance have sold our product to many other concerns and individuals. On the other hand we still encounter people who have the notion that the mere possession of an abstract means that they have a good title. We also have to face the custom here of the seller furnishing and paying for all evidence of title. The buyer gets whatever the seller passes on to him.

Our records clearly show that a connection with us has greatly increased the revenue of the representative. It is important to the title insurance company that the representatives be satisfied that the financial return to him from his connection is a fair one.

Our experience has been that representatives who are attorneys and title examiners are not often good salesmen. They are somewhat reluctant to solicit business or to introduce new methods. The representatives will quickly be sold upon the merits of title insurance and this feeling will produce some business. The real sales efforts must come from the title insurance company. Sales efforts should be concentrated upon life insurance companies, loan agents, bankers and realtors, who set the fashion. Better results will thus be accomplished than by spreading sales efforts, in the form of advertising, over the public in general.

We cannot stress too strongly the value of annual meetings of all title insurance representatives at the office of the title insurance company. We have had such meetings each year and all of them have brought out many valuable suggestions. All phases of the work should be discussed. Local problems of the representatives should be considered and dealth with. There should be a discussion of all unusual title examination problems encountered during the year. The representatives will welcome any help along this line.

After five years of state-wide title insurance activity we believe that this field can be profitably developed. We have made progress, but to date have merely scratched the surface. Progress can be maintained only by continual effort.

State-Wide Title Insurance

R. G. KEMP
General Manager, Intermountain Title Guaranty Company
Salt Lake City, Utah

Our operation in the State of Utah has been extended to a majority of the counties, by means of an underwriting agreement with an abstracter in the county. This agreement is for a period of fifteen years from date. In selecting the abstracter, we make an examination as to his standing in the county and his reputation for accuracy.

Before the policy is written, the abstracter makes a complete examination of the records of his county. Conditions in reference to the examination of titles in Utah differ materially from those in most states. The County Recorder of each county maintains a set of tract books similar to the tract indexes in an abstract plant and hence most abstracters do not maintain a plant. These tract books, however, cover only the instruments filed or recorded in the Recorder's office, and, of course, have no information as to suits or probates unless a Lis Pendens on a decree is filed. The abstracter makes his chain sheet from the tract book and then makes a pencil take-off of the various instruments affecting the title. He then prepares a name run sheet and makes an index run in the County Clerk's office for suits, divorce, probate, insanity and judgments, taking off such matters as affect the property under examination; also examining the County Treasurer's records for taxes, tax sales and special assessments. He also examines the files in the County Clerk's office, as to any corporation appearing in the chain of titles, for articles of incorporation, forfeiture or suspension of charter for failure to pay license or franchise tax, and for the filing of the oath of office of any officer who may have executed any instrument on behalf of the corporation. A careful examination as to the oath of office is necessary as our statutes provide that until the officer files his oath of office in the County Clerk's office, he is not a de jure officer and hence any instrument that is executed by an officer who has failed to file his oath of office, might be voidable.

If an abstract of title is submitted, it is re-checked against the Recorder's records and the County Treasurer's records and then the name run, as outlined above, is made in the County Clerk's office. It is necessary to make the name run in the County Clerk's office from the beginning, for the reason that abstracts, as generally prepared in Utah, cover only the records of the office of the County Recorder; the County Treasurer and a judgment run in the County Clerk's office, no examination having been made as to suits, divorce, probate, insanity or corporations.

Upon completion of the take-off, the abstracter forwards to our Salt Lake office, a name run sheet giving the names of all parties through whom title has passed, the dates upon which they acquired title, and the date upon which the deed was recorded by which they parted with title. The Salt Lake office makes a search of the Federal records, against such names, for bankruptcy, suits, judgments and tax liens, and returns the name run sheet to the abstracter.

The abstracter's take-off and federal search is then submitted, either to an attorney in the county where the abstracter operates, which attorney has previously been approved by our general counsel, or to the Salt Lake office of the Company, for examination, and the policy is written by the local agent after the approval by the attorney.

The abstracter is furnished with an instruction book covering matters generally encountered in the examination of titles, giving detailed instructions as to the examination that must be made in the various county offices; the order in which the encumbrances must be shown in the policy; and also suggested forms to be used in writing up the various encumbrances.

The local agent is appointed a Resident Vice-President of the Company, with power to sign policies or other

evidences of title, and affix the seal of the corporation. The policy forms furnished him bear the printed signature of the Secretary.

We do not require a personal inspection of the property except in the issuance of the A. T. A. form of policy. Before the issuance of this policy we require that all matters—the take-off, name run and inspector's report—be submitted to the Salt Lake office for examination and approval before the policy is issued.

The contract provides that all important or unusual title problems must be submitted to our general counsel, for their examination and approval, before the policy is issued. This includes all actions to quiet title by which the fee title is divested and also all actions wherein service of summons is had by publication. This most frequently occurs where the holder of a tax title brings an action to quiet title against the fee owner and the mortgagee.

The contract further provides that the abstracter assumes all liability for any or all loss on any evidence of title, if the loss is due to errors, omissions, carelessness or neglect in the work of, or the data prepared and collected by, the abstracter, the Company assuming all liability for losses resulting from all defects not determinable from an investigation or search of the public records and a physical examination of the property. The Company is directly responsible to the assured for all losses growing out of the evidence of title. Upon the execution of the contract the abstracter gives a bond to the Company, usually a personal bond signed by persons in his community, in the sum of $10,000.00. If a bond by a surety company is furnished, the amount is $5,000.00. This bond is given to indemnify the Company against loss by reason of errors of the abstracter.

The contract might be termed an 80-20 contract, the abstracter retaining 80 per cent of the fee, out of which he must pay the fee of the examining attorney. If his take-off is submitted to our Salt Lake office for examination, there is no charge made to the abstracter for this examination.

On or before the 15th day of each month the abstracter forwards his report to the Company, covering the policies written during the preceding calendar month, together with his check for 20 per cent of the premiums. This report gives the policy number, the amount of liability, the fee charged and the parties insured. We require that the abstracter pay us our portion of the policy fee whether he has collected the same or not. We do not intend to enter into the credit matters of the abstracter. Our agents have found that this provision enables them to make collection of fees from persons who had previously been slow pay. They inform their clients that the liability of the insurance company begins when they deliver the policy and the insurance company therefore requires that the fee be paid on delivery.

The carbon copy of the policy is retained in the abstracter's office, his monthly report, giving the liability and parties insured, being sufficient for our office records. It may be that we will change this in the near future and ask that copies of the policies be mailed in with the monthly report.

Our contract provides that the Company may examine the records of the abstracter, pertaining to the examination of titles or to the accounting for fees collected.

We have been working with our agents in Utah under this form of contract since August, 1928, and this method of operation has proven satisfactory. All our agents, except one, are attorneys who have practiced law in their respective counties for several years, and in addition to being competent attorneys, they are excellent abstracters. We have found them careful in their examinations and not inclined to take unnecessary risks, referring matters to our general counsel whenever in doubt as to the proper method to pursue.

Needless to say, I'm proud of those agents, for we have been working under this contract with them for four years and so far have not suffered a loss.

I am firmly convinced that to make Title Insurance popular; to give the protection to the property holder that he is entitled to; it must be easily obtained. To do this it must be possible for every abstracter or abstract company to write title insurance for his clients.

Utah is a small state, when you consider the population, having less than 500,000 inhabitants, or hardly enough to make one real large city, yet our property owners and mortgage banks can enjoy the protection of Title Insurance by the state-wide operation of our Company.

In a recent interview with the counsel of one of the leading life insurance companies, he remarked, after I had explained our method of operation, "you have the solution of a problem that has been in my mind for several years. We want Title Insurance on our loans but there isn't enough business to justify the individual abstracters to qualify. The companies in the larger cities must extend their agencies to all counties. Your agency plan has made it possible for us to obtain the protection of Title Insurance without any unnecessary delay."

I believe that we, in the title insurance business, have not been devoting enough energy to making title insurance easily secured or to selling PROTECTION, SECURITY and SERVICE.

State-wide title insurance extends a service to our city clients as well as to the clients of our agents, and makes it possible for every owner or loan agent to easily secure the protection of a title policy. (Applause).

B. F. WYLDE (La Grande, Oregon): I would like to ask Mr. Kemp about how long it takes to complete a policy with all that time lost in between that he speaks of in his paper? If I understood correctly, he first obtains a list of instruments in the form of abstracts, then that goes to the home office for further search, and then back to the originating office. It would seem there must be quite a delay in all this sending back and forth.

MR. KEMP: Probably that is not as long as it might seem at first glance. After the abstracter finishes his take-off, he mails the search to the Salt Lake office and it is out the same day. If the whole matter is submitted to the Salt Lake office, probably three days will elapse from the time the abtracter finishes his take-off until the final report is ready, and the policy can then be written. If there are certain things to be remedied, it is a matter of how long it takes to do those necessary things. As a rule, the policies are issued without any great delay. We usually get them out in about five days.

MR. WYLDE: We do it all at one turn and then report the transactions afterwards, standing behind all the things you speak of on an abstracter's full examination of the record. The final report and the policy are all direct, without any intervening until afterwards, and this method seems to work all right with us.

MR. KEMP: We require the federal search in Utah for the reason that under the federal statutes judgments outlaw in five years, while judgments in the state courts outlaw in eight years.

Fire Insurance Protection Without Paying Premiums

EDWIN H. LINDOW
President, Union Title & Guaranty Company
Detroit, Michigan

In all the history of business there never has been created and maintained a commercial enterprise wherein the accumulation, indexing and perpetuation of data in the form of office records has been so important as it is in the abstract and title business.

To state the value of an abstract and title plant to those assembled here would be recounting that which is ridiculously obvious. The point which we should consider is the method of insuring against the effects upon our respective plants and business should either or both be destroyed or damaged by fire, riot, burglary, pilfering or in any manner or by any means whether an act of God or otherwise.

A title plant can be measured by two sets of values—physical and potential. The physical value is the replacement cost of commercial maps, atlases, binders, paper, file cases and kindred equipment. This value can readily be

ascertained by the company's auditor and purchasing agent, and adequately insured for an annual cost of $1.25 to $1.50 per thousand dollars of valuation.

The potential value is quite another matter, depending upon adaptability of the source of information to readily transcribing and indexing recorded matter, unrecorded data and loss of business through temporary suspension or impairment of operation.

To provide protection against the loss of potential value of their respective plants, the Detroit companies have joined in a written agreement which provides that in case the plant records or property of one is wrecked or ruined in whole or in part by any of the causes mentioned, or in any manner similar to those causes, such company shall have the right to make copies of the other company's records, books and papers.

The time during which this work would be done would be from five o'clock in the afternoon until eight o'clock in the morning, in such a manner as not to interfere with the ordinary business and business day of the other company. The cost of all supplies—heat, light and power—and the proper proportion of the cost of all operating facilities, would be paid by the injured company.

Provision is made for the working of one or two shifts of employes during the hours specified, with a further provision that the other company will furnish a supervisor for each shift for the purpose of aiding in the location of the several sets of records in the plant. The salary of the supervisor will be paid by the injured company.

Further provisions have been made for the use of any and all records of the other company for the purpose of handling the ordinary run of business during the building up and rehabilitating of the plant of the injured company, with a time limit of two years from the date of the contingency within which the work should be completed. In case the period allotted is not—in the exercise of reasonable expedition—sufficient to complete the work, a reaonable extension of the time will be given.

Since, at the present time, all take-off work at the source is done jointly by the Detroit companies, it is further provided that such procedure shall be continued, and the continuation of the plant of the injured company shall be along the lines followed at present, making it necessary to copy only those records which have been destroyed or injured.

Realizing that in the event of destruction of the plant of one of the companies, if the remaining plant were destroyed prior to the time of the copying of its records by the plant first destroyed, the expense to be borne by both companies in reabstracting the records from the original instruments would be a very substantial sum, it has been further agreed that so long as the plants of both companies are in full operation, and until the destruction of one of the plants as before mentioned, each company shall carry insurance upon its plant, books, files and records of a certain minimum amount. In the event of the destruction of one of the plants, it is agreed that both companies will co-operate in securing the best insurance obtainable upon the plant not destroyed. Such insurance shall be continuously carried upon the operating plant until the records of the injured plant have been reproduced within the terms of the agreement. The cost of such insurance will be borne one-half by each company, and, should the plant of the remaining company be destroyed, the amount of insurance collected will be for the joint account and use of both parties.

As the work of rewriting the books and records of the destroyed plant progresses, the insurance may be decreased proportionately by the mutual consent of both parties—the injured company procuring additional insurance at its own expense and increasing the same as the value of its plant enhances as rebuilt.

In the case of the destruction of the other plant in such a manner that both plants will have been destroyed before the records of the first-destroyed plant shall have been rebuilt, then, and in that event, the insurance money received will be placed in escrow for the use of both parties in building up and equipping new plants for each in such manner and form as shall be agreed upon. The intent is that each company shall be entitled to 50 per cent of such recovered insurance in the event that the two plants are rebuilt at that time. However, provision is made to cover the situation in case of the destruction of both plants and one of the companies should not care to rebuild—the company so electing not to rebuild entering into an agreement with the other company that it will not, directly or indirectly, engage in the abstract and title business in the territory specified, within a certain period of years from the date of accepting such insurance money.

In the event that the plant and records of the second company should be destroyed while the first company is recopying the records, the amount of excess insurance payable to the first company will be one-half the insurance collected, less the cost of recopying up to the time that the second company's records were destroyed—the balance of the fund to be placed in escrow and to be used for the rebuilding of both plants in such proportion as the completeness of each plant will bear to the whole.

The agreement is limited as to time, with the thought that it could be continued at the expiration of the term, with an arbitration clause providing for the adjusting of any differences in the construction of the several points of the agreement for the purpose of eliminating any delay after the happening of a contingency. (Applause).

Ownership of Plant Company By Competing Title Companies

HENRY R. ROBINS

President, Commonwealth Title Company of Philadelphia

Philadelphia, Pennsylvania

In order to comprehend the motives which prompted the formation of a corporation for the maintenance and operation of a common title plant for the use and benefit of several of the title companies of Philadelphia, it might be well to review briefly the history of the growth and development of the business in that City.

When the first title insurance company started business in 1876, its operations were confined exclusively to title insurance, but as it was a novel venture, the public were shy and reluctant to avail themselves of the opportunities offered, and as a consequence the company encountered many and arduous difficulties, in order to maintain its existence, and at the same time carry out a program of education.

To avoid the necessity of abandoning the project, it expanded its field of activities to include, first a trust department, and later a banking department. This it was enabled to do by reason of the then recent amendments to the general corporation laws of the State. Looking backward over the intervening fifty years, this action appears to many as having been a step in the wrong direction, not only for the company itself but as an example to others.

After a struggle of about ten years, the public mind seemed to awaken to the advantage of the business, which suddenly began to make rapid strides, resulting in the birth of new companies throughout the City. These all patterned themselves after the first by establishing and maintaining not only a title department, but also a trust department and a banking department.

The succeeding ten or fifteen years saw the business develop with all its side issues and by-products in a way which was never anticipated at its inception; this continued until the first serious set back which occurred as a result of the failure of one of the companies from mismanagement and dishonesty in the operation of its title business.

The State Banking Department immediately took cognizance of the gravity of a situation where the money of

depositors became subjected to an insurance risk, and began to study remedial measures.

Under the Constitution, none of the then existing companies could be deprived of any of its corporate franchises, so efforts were made from time to time to procure legislation, placing restrictions on the manner in which the companies should conduct their future business, and to prohibit the incorporation of any new corporation which would have the power to receive money of depositors and at the same time assume insurance risks.

It might be noted here that the failure of the company mentioned above is the only one which resulted from the operation of a title business, and thereby caused loss to depositors, whereas of the fifteen or more which have been closed during the past year, the cause was the operation of a banking business, and as a consequence, all policyholders lost their protective insurance.

In order to procure remedial legislation, the State Banking Department made every effort to act harmoniously and co-operatively with the title companies, and every step that was taken was after full discussion with representatives of the leading institutions of the City.

About ten years ago, some of those actively interested in the business began to survey the field with the purpose of making more uniform, the operating machinery, the product furnished, and the method of production.

The survey disclosed three general facts which, from an economic viewpoint, might be subjects of criticism:

1st. By reason of the small capital and surplus of a large number of the companies, the security back of their title policies was inadequate.

2nd. As a result of the corporate structure of the companies, depositors' money was subjected to insurance risks, and policyholders' rights were subjected to the vicissitudes of banking.

3rd. The maintenance and operation of- several expensive title plants, involving duplication of cost, and duplication of storage space, expanding with each year's growth, was an economic waste.

It was also shown that the set up of the companies and their method of operating was anything but uniform. At that time, there were four companies, each maintaining and operating its own separate title plant; and scattered over the City were forty or more conducting a title insurance business, as well as trust and banking business. But as these forty or more companies had no plant, they were dependent on one of the four plant companies from which to purchase search information.

About 1924, six of the larger of these companies formed a corporation to compile, maintain and operate a title plant for their common use, all the stock of which remained in their ownership and control.

Shortly after that, two of the other plant companies, The Land Title and Trust Company and the Real Estate Title Insurance and Trust Company, consolidated under the name of The Real Estate-Land Title and Trust Company.

At about the same time The Provident Trust Company, which had never engaged in the title business, purchased all the stock of another of the plant companies, viz., The Commonwealth Title Insurance and Trust Company, and took over into its own entity all the business of the Commonwealth Title Insurance and Trust Company, except title insurance which was segregated and turned over to a new corporation erected for the purpose known as the Commonwealth Title Insurance Company all the stock of which was owned by The Provident Trust Company.

In consequence of all these transactions, the following conditions resulted:—

1. The Real Estate-Land Title and Trust Company maintaining and operating a title plant, and conducting a general trust company and banking business.

2. The Kensington Trust Company maintaining and operation a title plant, and conducting a general trust company and banking business.

3. Six trust companies, each conducting a general trust and banking business, as well as a title insurance business, but the title plant being maintained and titles examined and searched by The Title Company of Philadelphia, which was owned and controlled by them.

4. The Provident Trust Company, conducting a general trust company and banking business, and owning all the stock of the Commonwealth Title Insurance Company which maintained and operated a title plant and conducted a general title insurance business, but no other activities.

5. Thirty or more companies conducting a trust, title and banking business, but without any title plant and dependent on a plant company for search information.

In 1928 and 1929, the six companies owning, maintaining and operating The Title Company of Philadelphia, together with The Commonwealth Title Insurance Company, which was in effect the Title Department of the Provident Trust Company, but set up as a separate corporate entity, agreed to pool their interests, and with two other trust companies, making nine in all, devised the plan which was put into operation, which has been aptly designated by the Executive Secretary as the common ownership and operation of a title and abstract plant by competing title companies.

First, the name of the Commonwealth Title Insurance Company was changed to The Provident Title Company, and a new corporation was created called the Commonwealth Title Company of Philadelphia.

The capital and surplus of the new corporation were fixed at $5,000,000—$2,000,000 capital and $3,000,000 paid in surplus.

The stock, with the exception of directors' qualifying shares, is all owned by the nine companies (now eight, as two have merged) in the proportions agreed upon among themselves; it cannot be sold by any company to an outsider unless first offered to the others and refused by them, and then only to a corporation engaged in like business to the seller, and which meets with the approval of the remaining companies.

The two title plants were valued and transferred to the new corporation for $1,500,000, and stock issued therefor, the balance of the capital and surplus, viz., $3,500,000 was paid for in cash or securities of equal value.

At the outset, certain basic principles were agreed upon.

1. The Commonwealth Title Company of Philadelphia would not compete with any of its constituent owners.

2. The constituent owners might compete with each other.

3. The insurance liability to the public under the contract of insurance would be the obligation of the Commonwealth Title Company of Philadelphia, but any constituent owner might when requested so to do, by writing endorsed on the policy, underwrite any particular insurance.

4. The Commonwealth Title Company of Philadelphia to be conducted at cost, and not to operate for the purpose of profit to itself, but for the purpose of saving expense to its constituents.

5. The relations of the Commonwealth Company to its constituents to be such that all shall be on an equal footing without favor or bias.

With these principles in mind, the following plan of operation was put into effect. All applications for title insurance to be received by the Commonwealth Title Company of Philadelphia but only through the medium of one of its constituents, and none to be received by it directly from the public.

The titles to be examined and searched by the Commonwealth Company, and the preliminary report, denominated in Pennsylvania as a settlement certificate, to be delivered to the company through whom the application was received. That company to conduct the closing of the settlement and recording of the papers. After conclusion of the settlement, all papers to be returned to the Commonwealth Company, and its policy of title insurance prepared and executed and forwarded to the originating company.

As between the Commonwealth Company and its constituents, the liability for any loss arising out of settlement or distribution to be upon the constituent company by whom the settlement was closed. All matters of title insurance proper received by any constituent company to be turned over to the Commonwealth Company, but matters of special insurance not involving ex-

amination of title, such as insurance against mechanics' liens, decedents' debts and the like, to be assumed exclusively by the several constituents.

Searches not involving examination of title, but merely certifying encumbrances of record against any particular property to be issued by the Commonwealth Company and sold to non-plant companies and others when requested.

The constituent companies to collect all fees and charges from the public, and at the end of each month financial adjustment to be made in the following manner:—

The gross cost of operating the Commonwealth Company to be determined by stating, the actual cost of operation, depreciation on real estate, furniture, fixtures, etc., and one-twelfth of a five per cent return on the $5,000,000 capital and surplus.

From the gross cost so ascertained, deduct income received from investments, money received from sale of searches to non-plant companies and others, and from any miscellaneous sources. The difference, being the net cost of operation for the month, to be paid by the constituent members in the proportions that the business contributed by each during the month, bears to the total business contributed by all during the same period. The figures used as the basis of computation of business are the uniform rates agreed upon by all the title companies of Philadelphia. Every three months, distribution to be made to the constituent companies of the five per cent return on the capital and surplus, such distribution being in the form of a dividend on the stock owned by each.

It will be seen that up to this point, no provision is made for the payment of losses by the Commonwealth Company. In order to provide for this contingency, each constituent company deposits with the Commonwealth Company monthly one-tenth of all premiums received. The deposits are set aside by the Commonwealth Company as a trust fund, and separate accounts kept so that each company is credited with its contributions. The fund is used only for the payment of losses, and no constituent company is entitled to withdraw any part except in the event of final liquidation, when the fund, or so much as remains after payment of all losses, is to be returned to the constituent companies in the same proportions as it was contributed.

Although it might be conjectured that any plan such as the above would be an invitation to bickering and discord, yet I am happy to say that during the full period of three years in which it has been in effect, there has not been a serious dispute either between the Commonwealth Company and any of its constituents, or between any of the constituents themselves. On the contrary, it seems to have developed a feeling of co-operation and harmony among all those interested, to a greater extent than was ever anticipated.

(Applause).

JAMES R. FORD (Los Angeles): Does the constituent company make the settlement?

MR. SCHWAB: Yes.

MR. FORD: Do you do that before you record the papers, including the transaction?

MR. SCHWAB: We issue a preliminary certificate which shows the status of the title. Then an hour is set for the closing. At that time all moneys are put up, all statements that are necessary to clear objections to the title are presented, and the matter is closed then and there. The applicant then receives what is known as a "marked-up settlement certificate". That, in turn, is sent to us. We then record the papers and bring that settlement certificate down from the date of its issuance to the date of settlement.

MR. FORD: You do take settlement before you record the papers.

MR. SCHWAB: They send the papers back to us with this marked-up settlement certificate. If anything has intervened in the meantime, that can be brought down before the policy is issued, which will show the recording of the instruments and fix the liability. That is sent back to the member company and they get in touch with the people and get anything of the sort corrected or cleared. That very seldom happens, however.

MR. SCANLAN: Is the policy issued on the letterhead of the Commonwealth?

MR. SCHWAB: Yes; it is our policy.

MR. SCANLAN: How do the various constituent companies retain their identity and get business under their own name if the policy is issued under your name?

MR. SCHWAB: Our certificate has "Commonwealth" endorsed on it and then blocked off, "Settlement to be made through the Provident Trust Company, 1201 Chestnut," for instance. That is the settlement certificate, the preliminary report. The policy reads the same way, except, "Settlement made through the Provident Title Company," or whatever it is. It might be the Continental, the Equitable, and so forth.

MR. SCHWAB: All orders are received at the respective offices of our member companies. They send the orders to us and we send them back to those companies after issuing the certificate. They deliver the order to the applicant, so contact is not broken between the member company and its customer. When applicants come to us, we tell them they must go to the member company and take it up with them. We won't let them break the contact and let them deal with us direct. We have had no criticism on that score whatever. In fact, it has really been just the opposite. The company having no deposit liability, the policy is a very reputable policy in Philadelphia today.

WALTER M. DALY (Portland, Oregon): I didn't understand how you take care of the charges as between the constituent company and the issuing company.

MR. SCHWAB: I am happy to say that in Philadelphia we have uniform rates. There are only three plant companies in the city now. To get our information from the records we have an abstract bureau. They formulate the rules and rates and various other rules and regulations that are necessary for harmonious functioning. We have no trouble with cutting of rates. Therefore, all matters that come to us are priced by us. We bill our member companies their proportionate share of that expense, the examination fee, etc.

If there is any difference of opinion between what we have quoted and what they think it ought to be, that is adjusted on the next month's bill, but they must pay us the amount of the bill rendered to them. There is very little question raised as to any difference between the amount we bill and credits asked for. They cannot quote a rate without our approval. We control fourteen title companies by merger and consolidation. The rate must come from us first. We adhere strictly to that rate, and if any company collects a lesser or smaller fee, we know nothing about it, because they must pay us what we bill them and it is money out of their pocket, not ours.

MR. DALY: Do you work upon a standard fee basis? Suppose you have a premium of $100, which the constituent company would charge for a policy. If that is a flat rate, how do they pay the issuing company? Is it a certain percentage of $100 or based according to the value of the search?

MR. SCHWAB: Our charges are divided. We have an examination fee and then a premium. The title on one property carries a thirty-five dollar examination fee. That is all the Commonwealth gets; just the examination fee. The member companies retain all of the premium, with the exception of ten per cent, which they pay into our reserve fund to take care of losses.

We operate only on the examination fee, and if there is any difference between what we can collect by way of examination charges and the cost of operation, then that is borne by the member companies in proportion to the business contributed to the parent company.

MR. FORD: May I ask who pays the charges, the purchaser or the seller?

MR. SCHWAB: Do you mean as between the grantor and the grantee?

MR. FORD: Yes.

MR. SCHWAB: The grantee; however, I am inclined to believe the grantor ought to pay; he is selling something.

G. F. PEEK (Portland, Oregon): I want to ask if the thirty-five dollar examination fee applies to all properties?

MR. SCHWAB: All properties for titles. It does not apply to a property; it applies to one title. If a property is made up of various titles and they are not contiguous, it would be thirty-five dollars for each separate, distinct title, regardless of the value of it.

In Philadelphia, if a property is selling for $100,000, that entire $100,000 must be paid for in premium. In other words, it would not be possible to get $10,000 worth of insurance. The entire consideration must be insured.

MR. PEEK: How is the value of the property determined?

MR. SCHWAB: The settlement is made on the basis of whatever the consideration is. We don't attempt to determine the actual value of a piece of property. We take as the value whatever the amount is that is being paid for it.

MR. NICHOLS: Suppose an owner applies for insurance and there is no settlement. Can a man apply for straight owner insurance if he owns the property and wants to have his title examined?

MR. SCHWAB: In other words, if the deed is already of record. For that class of insurance, we charge only twenty-five dollars examination fee instead of thirty-five dollars.

MR. NICHOLS: Suppose there is no transfer at the time the policy is issued to enable you to arrive at some value. Suppose a person who has owned a piece of property for ten years wants to take out insurance; how much must he take out?

MR. SCHWAB: He can take any amount he wants to. The liability of the title policy is a contract of indemnity, and when the loss is sustained, the value of the title itself is adjusted on the basis of the value of the property.

MR. NICHOLS: The companies in New Jersey require an appraisal.

(ADJOURNMENT)

On the evening of June 28th, the entire delegation witnessed the sound moving picture, "To Have and to Hold," produced and owned by the California Land Title Association. It is a tremendously interesting picture, well portrayed, and is excellent publicity for the title industry of the country.

Report of Special Committee on Amendments to the Constitution

SENATOR N. W. THOMPSON
Acting Chairman

Your committee respectfully recommends adoption of the following amendments to the present constitution:

Amendment No. 1.

Amend paragraph (1) of Section 1 of Article II to read as follows:

"(1) Any person who is a member in good standing of a State or Regional Title Association. In order that its members may be eligible, any Regional Association must comprise two or more contiguous states and none of its members in territory which is included in a state association now existing or hereafter formed, shall be eligible to membership in this association by reason of membership in such Regional Association."

Amendment No. 2.

That the words "State Title Association" or "State Association," wherever occurring in the present constitution be stricken out and in each case in lieu thereof there be inserted the words "state or regional title association." (A)

Amendment No. 3.

That the words "State Council" wherever occurring in the present constitution be stricken out and in each case in lieu thereof there be inserted the word "Council". (B)

Amendment No. 4.

That the words "State Councilor" wherever occurring in the present constitution be stricken out and in each case in lieu thereof there be inserted the word "Councilor". (C)

Amendment No. 5.

That the words "or region" be inserted after the word "state" in line 2, line 22 and line 28 of Section 5, Article V and in line 4 of Section 9, Article VI of the present constitution as printed in May, 1930 issue of the Title News. (D)

Respectfully submitted,
N. W. THOMPSON
LAURIE SMITH
EDWIN H. LINDOW
STUART O'MELVENY
BENJ. J. HENLEY

Foot notes give reference to sections affected by proposed amendments No. 2, No. 3, No. 4, and No. 5.

"A" applies to Sec. 1, Par. (1), Par. (2); Sec. 2, Sec. 3 (2), Sec. 4, Article II; Sec. 1, Sec. 2 (2), Sec. 3 (2), Article IV; Sec. 5, Article V; Sec. 6, Sec. 8 (2), Sec. 11, Article VI; Sec. 1, Article IX.

"B" applies to Sec. 5 (5), Article V; Sec. 11 (2), Article VI.

"C" applies to Sec. 5 (3), Article V.

"D" applies as indicated.

Moved, supported and carried.

The Chair appointed the Nominating Committees for the Abstracters, Title Insurance and Title Examiners Sections, the following gentlemen being named as Chairmen of the respective committees:

Abstracters Section — Roy Johnson Newkirk, Okla.

Title Insurance Section — Porter Bruck, Los Angeles.

Title Examiners Section — N. W. Thompson, Los Angeles.

Report of Chairman of the Executive Committee

STUART O'MELVENY
Chairman

The Executive Committee met, of course, at the Mid-Winter meeting in Chicago last February and transacted the regular routine business that required action at that meeting. We selected and elected Mr. James Sheridan as Executive Secretary. I believe in that, our choice was fortunate and has proven to be fortunate since that gentleman assumed office, which he did on the first of March.

We have been able to secure a reduction in the rental of his office in Chicago, which helps somewhat in the financing of the Association.

Mr. Sheridan has been given instructions by the Executive Committee to keep the expenses of the Association to the minimum. That is unfortunate in many ways as it reduces the number of editions of "Title News" which it is possible to issue, but I think Mr. Sheridan has made up very effectively for this loss in the character of the bulletins which he has been issuing and which he has circularized among the members of the Association.

Of course, a large part of the time of the Executive Committee has been taken up in studying the finances of the Association, the question of dues and the obtaining of money for the Sustaining Fund. The finances of the Association, as you know, were in rather a precarious position. We may possibly have sufficient money for the rest of the year, according to the best estimates, but we hope you will all prove generous in your contributions to the Sustaining Fund in the future, because next year we will have to have money in order to operate.

At the present time we are operating, I believe, as closely to the line as it is possible to do and we are keeping the Association intact. Many of the things we should like to do, and which we know would be helpful, are not being done because of lack of funds. We can only hope you will all contribute early in the fall, when you are requested to make contributions to the Sustaining Fund.

We also hope that all of you who are connected with State Associations will do all that lies within your power to see that the dues of those Associations are paid and paid promptly.

Those, I think, are the major subjects that the Executive Committee have had to study and consider. We have, of course, transacted a good many routine matters with which I do not think you need to be bothered or in which you would be particularly interested.

MR. McNEAL: I have a telegram from Alfred Smith at Sarasota, Florida, raising the question of procedure with reference to the distribution of revenue or documentary stamps that are now required on instruments in connection with certain transactions. The telegram reads:

"Suggest Association request federal documentary stamps be available in each county. We are advised they will be distributed only at the office of the collector of each district, which will cause inconvenience and delay in closing title transactions. Best wishes for successful meeting."

If this telegram speaks the truth, I think Mr. Smith is in order in requesting action of the convention in regard to this situation. I think you will recognize that unless we can get stamps conveniently, it will be a great handicap in closing real estate transactions.

Therefore, if it is in order, I will offer a motion that this convention pass a resolution asking the Department of Internal Revenue, if that be the proper Department, that revenue stamps for the legalization of documentary papers be made available through the post office department of each city, or at least, in each county seat town in the United States.

. . . The motion was seconded and was carried unanimously. . . .

Reports of Nominating Committees

GENERAL NOMINATING COMMITTEE

WALTER M. DALY
Chairman
Portland, Oregon

For President:
Stuart O'Melveny of Los Angeles

For Vice-President:
Arthur C. Marriott of Chicago

For Treasurer:
J. M. Whitsitt of Nashville, Tenn.

For Members of the Executive Committee:
William H. McNeal of New York City
Benj. J. Henley of San Francisco
Edwin H. Lindow of Detroit

Moved, seconded and carried that the report be accepted and that the Secretary be instructed to cast unanimous ballot in favor of the election of the above to the respective positions named. (Applause).

TITLE EXAMINERS SECTION

N. W. THOMPSON
Chairman
Los Angeles, Calif.

For Chairman:
E. B. Southworth

For Vice-Chairman:
Raymond Edwards

For Secretary:
Albert Bell

For Members of the Executive Committee:
McCune Gill
James E. Rhodes II
M. M. Oshe
Walter C. Schwab
Harry M. Paschal

ABSTRACTERS SECTION

ROY S. JOHNSON
Chairman
Newkirk, Oklahoma

For Chairman:
S. E. Gilliland

For Vice-Chairman:
Russell Davis

For Secretary:
Pearl K. Jeffery

For Members of the Executive Committee:
John E. Morrison
William Gill
Ray Trucks
Frank A. Lenicheck
Edgar Jenkins

TITLE INSURANCE SECTION

PORTER BRUCK
Chairman
Los Angeles, Calif.

For Chairman:
H. Laurie Smith

For Vice-Chairman:
Fred Hall

For Secretary:
Porter Bruck

For Members of the Executive Committee:
Charles H. Buck
Lionel Adams
William H. Masters
C. Barton Brewster
William B. Webb

As to each of the sections it was moved, seconded and carried that the report be accepted and that the secretary be instructed to cast unanimous ballot in favor of the election of the above to the respective positions named.

Report of Committee on Resolutions

HARRY M. PASCHAL
Chairman

The Committee on Resolutions brought in motions on the following:

A resolution expressing our deep bereavement over the departure from our midst of Oliver Perry Clark, Secretary-Treasurer of the Title Insurance and Trust Company, Los Angeles, California;

A resolution expressing our deep thanks to the California Land Title Association and the title companies of the State of California for their efforts to entertain the delegates and ladies;

A resolution of appreciation to the California Land Title Association and its president, Mr. Porter Bruck, for having been given an opportunity to witness the sound picture "To Have and to Hold";

A resolution expressing our deep regret over the passing of Mr. Henry W. Dimond, President of the City Title Insurance Company of San Francisco;

A resolution of similar purport over the departure from our midst of Mr. John H. Simonson, President of Simonson-Harrell Abstract Company, of Merced, California.

On Motions, duly seconded, all of the foregoing resolutions were unanimously adopted.

On motion, seconded and carried, the Convention adjourned, to meet again in the City of Chicago, July 8th, 1933.

Claims of the Past 12 Months—Causes and Means of Prevention

WM. H. McNEAL
Vice-President, New York Title & Mortgage Company
New York City

The builders of programs for Title Association Conventions of the past two or three years must have recognized a need for information on this most vital subject, and I suspect that as the business of title insurance grows and matures there is developing an uneasiness that can only be allayed by the exchange of experiences and ideas, which is the normal function of Association Conventions.

Claims of the past twelve months have no more significance than claims of any other period, except in volume, as their origin and cause are the principal things to consider. Their origin is laid in inexperience, and the cause to a large extent may be attributed to the deflation of real estate values and the consequences flowing therefrom, and this is so whether a given company is doing a local, a regional, or a national business.

When we consider that the business of title insurance originated within the memory of the most of us gathered here and that the greater volume of title insurance written in the United States outside of four cities has been written within the past ten years, we can charge the greater part of our troubles to ignorance, or, to phrase it more kindly, to the lack of knowledge of the subject. Do any of you remember the tire trouble we used to have when automobiles were "new contraptions designed by the devil?" Tires cost as much or more then as they do now but they were inferior because of the lack of technical skill in making tires, and when they guaranteed a tire for 5,000 miles, we thought it marvelous. Who then expected to drive a car 5,000 miles anyway?—such a thing was almost unthinkable. Who dreamed ten years ago of driving title insurance to the four corners of the United States in the lapsed time of a decade. How long did it take life insurance to develop to where one could die knowing that the widow and children would receive a check for the face of the policy without litigation? One had to die in what was then considered to be the orthodox way else there was no money due—there was an exception under Schedule "B". After life and almost all other forms of insurance were developed to the 'nth degree, title insurance came on the scene and found itself bound by the principles of insurance as then defined without background, experience or knowledge in its preparation or effect.

Title insurance, as you all know, originated in Philadelphia about 1875, and little was known of it except in Philadelphia, Pittsburgh, Chicago and New York until about 1920, although there were a few companies writing a limited volume prior thereto.

There is an old adage that says, "A little knowledge is a dangerous thing". Titlemen acquire by virtue of their broad relations with business a little knowledge on many subjects. We, who are now in the title insurance business, had a little knowledge of insurance and attempted to apply that knowledge of insurance to the title business. We, as abstracters, examiners, searchers, and business getters, had not been accustomed to assume responsibility on our work beyond what the records showed. We did not know what it means to guarantee a fee simple title, a valid mortgage, against liens, taxes, occupancy, encroachments, overlappings, restrictive covenants, contiguity, forgery, conditional bills of sale, chattel trusts covering equipment, easements, and the many other items that fall within the coverage of a title insurance policy when the laws and customs of insurance are strictly applied. We did not, nor could we, anticipate the technical requirements of title insurance for we possessed no such knowledge. One-fourth of all the workers in the United States are engaged in occupations that were not known thirty years ago, and title insurance, local, regional, and national, supplies its full quota of that great army of novices. No one has yet built a perfect machine nor painted a lifelike portrait without first wasting much material or canvas in gaining knowledge. We, as title insurance people, are now scrapping our first, second and third machine and painting out our former canvases, and our losses to a very great degree represent our costs of experimentation or lack of foresight. There was no scientific principle from which to work. We could not prove our calculations as in mathematics; we must first educate ourselves and those whose work we use in the preparation of titles for insurance, and then chance the human element which honestly errs, is often weak, sometimes corrupt.

Consider in connection with title insurance the man in Maine who draws his own deeds, and without aid of counsel writes his own will in accordance with his own ideas of the rights of his wife and children. He thinks and devises in accord with his attitude toward family traditions, his loves, his prejudices—yet withal honesty of purpose. Consider the work of a man in California who considers himself a diviner or a genius in passing doubtful questions in titles on the theory that they will not arise to harm the guarantor; and with contempt, the man in Texas who wilfully with intent to defraud falsifies his designation of homestead, knowing that the laws of that state will protect him in his crime. Consider the attorney, and I regret to say there are those who will falsify his opinion or certificate of title in order that a friend may borrow money or that he, the attorney, may get a commission out of a loan transaction. Consider the title sniper, the quack lawyer, the extortioner who will deliberately plan attacks on titles in the hope of getting hush money. My company long ago adopted the slogan, "Millions for defense but not one cent for tribute," and we have strictly adhered to the principle. As a result, we now have some 200 suits in defense of title pending. Our experience is that about 98 per cent of such cases result in sustained titles with no loss except attorneys' fees and quite often the attorneys who passed such titles defend them free of charge to vindicate their certificate. There are many cases, however, that do not fall within this litigated class. They are due largely to a breakdown of the human element in the business and are promptly compromised or paid in full. Local counsel is employed exclusively in defense of litigated titles, and salaried attorneys who do nothing but gather and analyze facts and apply the law give them aid and assistance.

A paper to be read before a Convention audience should deal with its subject in an impersonal way, and I apologize to my hearers and to my readers for confining these remarks so closely to my own experiences. But let it be said here that I know nothing of your specific problems, and can only assume that they are analogous to ours. I am here to give; and as I hold out my open hand in giving, I put myself in a position to receive of your knowledge and experience.

If, then, I am understood, let me get down to cases and illustrations.

An unusual case in its make-up and conclusion was an Alabama case involving a $2,000 policy. The A-B-C Mortgage Company was the correspondent of a life insurance company. The A-B-C Mortgage Company approved a loan for one Maynard. Before paying out the funds, however, the loan was submitted to the life insurance company for approval. Upon approval, the title was examined by local counsel and a mortgage appeared of record to one J. L. Knox and Company. A check was sent to the Knox Company in payment of its mortgage and that company caused a release to be noted on the record. The A-B-C Company failed to follow through to the point of demanding and receiving the cancelled mortgage and note, which in fact had been assigned to a third party long prior thereto. The attorney relied entirely upon the marginal release of the Knox Company as shown of record. The depression came and our insured started foreclosure. It took title at sheriff's sale, went into possession, made improvements, paid taxes, furnished the tenant, and in all spent more than $800 on the property before an assignee of the Knox Company mortgage started foreclosure under the Knox Mortgage. That is when we came into the pic-

ture. We fought the case through to the Supreme Court of Alabama and lost. Without going into detail, here was a plain case of breakdown of the human element. The locus of the title was a rural county in Alabama, the A-B-C Company was in Birmingham, the insured in New York. If title insurance is to be the chosen evidence of title, such lapses will recur until education eliminates the cause. (The case is reported in 135 Southern Reporter, page 434.)

Another case illustrating the breakdown of the human element came up from one of the South Atlantic States. The title was perfect except with respect to about $7,000 taxes. The attorney is an eminent title examiner, honest and capable, yet gullible, as it appeared. The loan correspondent induced him to sign a clear certificate upon the promise that the taxes would be paid when a check was received from the insurance company which had approved the loan, subject to our title evidence. In short, the taxes were not paid and in due course we were involved. That attorney now is a postgraduate in certifying titles clear *after* the taxes are paid instead of before. His schooling was costly for he was financially responsible and after much prodding paid the taxes. This curdled the milk of human kindness as far as he is concerned, and there will be no repetition of the offense.

Many claims arise through repudiation of acknowledgments. It is not possible to have all papers signed and acknowledged in a title office or closing room, and if it were, it would be impossible for the acknowledging officer to know the exact status of his testamentars. And to go one step further, there is no way to prevent repudiation of testamentations in an attempt to defeat a contract. At this time there seems to be a disease among the female signatories to deeds and mortgages which has caused them to repudiate their acknowledgments. Loss from this cause may be prevented by a personal acquaintance with the wives of all conveyancers, or by requiring the production of marriage licenses of signatories and identification of each plus proof that the husband has not fooled, coerced, or scared the wife into signing and acknowledging. Otherwise there is no way of preventing obedient wives from joining their husbands in legitimate transactions and later repudiating their acknowledgments in an effort to defeat justice.

I referred casually to the Texas Homestead evasion as a cause of loss. This form of loss I charge to an archaic provision of the Texas Constitution which was conceived in righteousness when men were men but has persisted in the face of abuses to become a vicious provision in the hands of the unscrupulous. It provides, in short, that a man cannot borrow on his homestead except to pay for it, improve it, or renew existing liens.

It leaves the door open for men to stultify themselves, and without redress to those they would defraud. "A" owns a farm where he and his wife have lived and raised a family to high school age. He buys a house in town where he resides during the winter, but moves back to the farm in the spring, where he employes his family in the cotton field. During the school season the farm residence is abandoned. He makes application for a loan designating by sworn statement his town property as his constitutional homestead. The loan company inspector notes the abandoned premises, sees the family housed in town and relying upon the sworn statement as to homestead designation approves the loan.

Or, to work the racket in another way, "B" who owns but one piece of property, city or farm, deeds to "C" taking a short term purchase money lien back. "C" then applies for a loan to pay and extend the purchase money lien. In due course "B" assigns his lien to the loan company in consideration of payment to him. In each of these cases which are typical, "A", "B" and "C" respectively keep the interest paid up on their loans and wait until the statute has run against their criminal acts of getting money under false pretenses, then sue to cancel the deeds of trust and for a return of the interest paid, both alleging in substance that the transactions were fraudulent and void. "A" acknowledged that his homestead declaration was false and "B" alleged in his bill to cancel that the deed to "C" and "C's" deed of trust were simulated transactions, conceived and effectuated at the instance of and in connivance with the local agent of the loan company. Both proved by loyal neighbors the homestead status and the courts, under the aforesaid constitutional provision, could do nothing but cancel the deeds of trust and give judgment for interest paid.

If there is a remedy for this class of title losses, and there are and have been many of them, as is evidenced by Texas court decisions, it lies in a law which will define a homestead declaration and make it a muniment of title. Title insurance companies and lending institutions in Texas need such a law which would make for safer titles and investments, and I recommend that the Texas Title Association give thought to such a law.

The real estate tax problem is one which should receive early earnest attention. Thirty-seven per cent of our claims and 13 per cent of our actual loss under title policies is due to erroneous tax information supplied us by abstracters, attorneys and title companies. With the responsibility for this condition they cannot be charged. It is chargeable directly to our political system of electing tax officers by popular vote to assess, record and collect taxes, without requiring sufficient bond to safeguard the public or of not enforcing compliance when the law so provides. Especially do tax recorders and tax collectors owe a duty to the public. If someone present will give a concrete case of where a tax recorder or collector was compelled to account to a private citizen for an omission or commission in the discharge of his duties, I will be glad, yes happy, to have the recording secretary interpolate it here.

What can be done when a tax official is not responsible to the individual for the correctness of his work? He can and does take checks in payment of taxes; certifies to innocent third persons that the taxes are paid, and if the checks come back marked "no funds", he can and does recharge the land and thumbs his nose at the one who has, because of his certificate, parted with value. He can also make errors in computing taxes due and suffers no qualms when confronted with such errors. *He* should worry when no responsibility is attached to public office. The title fraternity are the real sufferers in this case for they cannot wait for checks to clear or for errors to be discovered and rectified. They must certify irrevocably now, and the only remedy for losses growing out of this deplorable state of affairs is the united action of the titlemen, the realtors and the mortgage bankers of the various states in framing and putting through remedial legislation which will not only require public servants to do their jobs accurately but make them responsible financially for their mistakes. I recommend that each state title association assume the leadership in such a movement and make it their bounden duty to effect reforms in their tax recording and reporting systems.

Another great actual and potential cause of loss to title companies is inaccuracy in or total lack of surveys for use in examining title to land. Local title companies have the advantage over national companies in that they can to a high degree know the skill of surveyors used in making surveys, but they are not always meticulous in refusing all but the best. Surveyors must advance with the requirements of the times or they must give up their tripods, if any, and tape. There are as many poor surveyors today as there were poor abstracters before the American Title Association assumed responsibility for them, but the number of good surveyors is minor in comparison. National companies are taking steps to select surveyors and require their use as they have selected attorneys and require their use. We have formulated printed instructions which must be followed in the make-up and certificate of survey. Coordinated in the survey service will follow an inspection service which will supply the national company with the now missing link of inspection before liability. Our local brethren might profit in this by joining in a plan to first require efficient surveyors and then require a report on inspection and occupancy which can be supplied by the surveyors while on the ground at practically no additional cost.

Many losses are caused by failure to get facts about the transaction in ad-

vance of starting work. Many local companies have no application form or having one don't require it. Telephone orders are the most productive of fraud. The human element, as has been seen, plays an important part in title losses. It is the belief of many that a title company should find the trouble, if any, and an order is given on the caveat emptor theory—let the title company beware! Many a loss can be saved and many a customer can be retained if a little time is taken in considering the history and occupancy of a given property. It is much better to forewarn him of difficulty than to present it to him in a cold blooded report; and, because it affords opportunity to learn first hand something of marital status, mental status, and the ownership of property.

We had a case where the ownership was in the wife but the husband did all the business and because of improper coordination between the legal department and the business department of the mortgage company the money was paid to the husband. The wife claimed she had been impersonated and proved it. Had the check been made payable to the wife the loss would have been saved by the bank's refusal to cash the check if not endorsed by the wife, or its liability if cashed on a forged signature. Application clerks should be trained diagnosticians of human nature and situations, and their developments or suspicions fully marked by warning flags.

Inspections, which have been touched upon, are becoming more and more important as losses for the existence or non-existence of physical facts occur. An inspection should cover:

The identity of the property from street number or location given in the application.

The character of the improvements for identification purposes.

The probable date of last improvements or repairs.

Permanent equipment incident to character of improvements and use of the premises, such as furnaces, electric stoves, electric refrigerators, sprinkler systems, elevators, etc.

Fire escapes, if required by ordinance.

Party walls.

Stairways or entrances from adjoining buildings and other easements.

Community roofs.

Violations of Zoning Ordinances.

Names of occupants.

Rights of occupancy and tenure.

If tenant occupant, to whom do they pay rent.

Where does the landlord live.

Get identifying characteristics of landlord, if possible.

All of which is desirable and when checked against the application by the application clerk may avoid a forgery or false impersonation. Inspections may go farther, as was indicated by a report received from one of our agents. A will was involved and we asked for information as to afterborn children. The agent reported that he had visited the premises and that, "Mrs. M said she did not think she would ever have another child."

A forgery case from N. C. which we lost would have been prevented by an inspection and inquiry regarding ownership and occupancy.

There are other ways in which title companies lose money and money lost is money lost whether it be before or after the fact of insurance. It is common knowledge that the complete charge for title work and insurance on items up to $3,000 is below the cost of production according to 99 per cent of all rate schedules in the United States. I dare say title companies without exception, and especially local companies quoting gross rates, lose money on orders of $2,500 and under. This is excused on the theory that these small items can't carry the load. They do carry the load of excessive taxation, realtors' commissions and mortgage company fees; then, why should title companies furnish and guarantee the evidence of title at a loss or even for actual cost? The usual explanation is, "We make it up on the larger items." That is the same reasoning Congress applied to its efforts to balance the budget—soak the rich!—and is untenable in business. I believe that title fees should be reasonable from the lowest to the high brackets, yet not without some measure of profit to the title company on all items. I am firmly of the opinion also that a mistake is being made in confusing title insurance premiums with title search and service charges. Many companies took unto themselves the responsibilities of title insurance but continue to quote their certificate charge. In all other forms of insurance a premium is charged for the liability assumed and the funds derived therefrom are held chargeable to loss payments. With title insurance, practically the whole fee collected as premium is consumed in preparing the title for insurance, leaving a small profit in normal times between income and outgo, which in troublous times will not meet losses. Knowledge on the various phases of title insurance is not yet crystallized and it should be the province of this Association to lead legislative thought in defining the business and applying thereto just rules and regulations for the advancement rather than to smother the healthy growth of the business.

We are developing a new enterprise. Not five per cent of the people in the United States are title insurance minded as yet. Except, for example, large institutions which deal with titles in volume, no approach has been made to the vast mother lode of business which lies before us untouched. To sell the public and gain access to this business, we, as title companies, must render extraordinary service. No new product is sold without advertising, and no advertising is effectual unless quality goods are delivered. By giving this extraordinary service, we are lessening the resistance and preparing the ground for a bounteous crop free from tares in the form of legislative restrictions. Unless we can give the public a product worthy of the name of title insurance, we should certainly not for selfish reasons prevent others from giving that protection, for title insurance as a business is the sufferer.

And now I come to the interesting part of this paper. I am going to tell you something many have been wanting to know—the loss experience of the New York Title and Mortgage Company. As you all know, we inaugurated National Title Insurance on the approved attorney basis; that is, we selected attorneys throughout the United States to examine and report on titles for insurance. Title insurance was practically unknown in the United States prior to 1920, except in the large centers, and I will say to you now that our losses have not come from the large cities but from the rural sections where title *service* is really of as much importance to large operators as is the protection which it affords. We have had all of the obstacles to overcome that are incident to any pioneer work. Through the years we, with other companies who followed us into the national field, have educated a vast army of title experts, many of whom are now agents with their own corps of experts. From time to time we have been importuned by this Association and by individuals, to divulge something of our losses. We have consistently refused to make public any figures because we lacked experience in mortality.

From your experience as titlemen you will agree that in normal times or when real estate is active mortgages are paid off, extended or increased, and the possibility of profit facilitates transfers in fee transactions, taxes are promptly paid, disputes are amicably and quickly adjusted and business moves forward; but you likewise will agree that in times of depression mortgages are foreclosed, taxes run delinquent, mortgagors file dilatory pleas, neighbors fight over boundary lines, liens of various kinds are filed, fraud is often resorted to, and it is easy enough for adverse claimants, whether justified or not, to find attorneys who will bring any kind of suit or interpose any kind of defense in order to accomplish a purpose warranted or unwarranted. Thus, through post war years of avid real estate activity claims under national title policies were practically unknown. I remember well when the first one arrived in my office. I hailed it with delight as a great advertising beacon. My present longing for those good old days teaches two important lessons. The first, that we as title people must keep our feet on the ground and remember always that we are the guardians of hundreds of millions of dollars of investments, of millions of homes and landed fortunes having their foundations in real estate titles; and, secondly, that the strength of our sinew in times like these will determine our

future growth—for these are testing times which will contrast in bold relief the difference between the insured title and one which is not.

The first signs of a falling real estate market appeared in 1926, but the momentum was great and carried the country into 1928 without much uneasiness. Nineteen thirty-one should show title insurance at its worst from a loss experience, and I have analyzed that year's losses for you as an example of loss ratio.

You will keep in mind that until 1929 mortgage insurance was approximately 90 per cent of our business, and when the tide turned our volume was up to 30,000 policies per year. A mortgage policy covers for the term of the loan which in country-wide operation runs from five to 15 years. In a few instances insurance companies were putting out a 35 year loan in competition with Land Banks.

In 1931 we wrote insurance from 42 states and received claims from 29 states. These claims were not all on 1931 business, obviously, but involved policies dated from 1919 to 1931. We started 1931 with 474 claims of all kinds and descriptions arising out of our national operation. During that year 550 new claims were filed; thus, we handled 1,024 claims during the year which means that 1,024 burdensome matters were taken off the shoulders of insurance companies, banks, surety companies, mortgage companies, etc., showing where the real value of title insurance lies. We closed 575 of the 1,024 cases during 1931 at a loss cost of $82,017.70, or an average of $142.64 per case, leaving 449 cases pending which was 25 less than we began the year with.

An analysis of those 449 cases discloses the basis of the claims as follows:

Shortage of area	23
Outstanding interest	10
Prior mortgage lien	34
Mineral rights	3
Easement	4
Usury	4*
Timber deeds	4
Insanity	6
Failure of Consideration	3
Defective title	62
Wrong construction of will	6
Taxes: Drainage, Paving, Sewer, State, County, School, City	165
Defective acknowledgments	7
Forgery	13
Legatee's interest	3
Encroachments	7
Judgments	13
Defective assignments	1
Disability of mortgagor	1
Homestead (Texas)	7
Mechanics' liens	41
Adverse possession	1
Invalid instruments	25
Survey	2
Dower	1
Conditional bills of sale	1
Restrictive Covenants	1
Open estates	1
	449

* Usury is of itself not recognized as a liability under a title policy.

With a volume of approximately 250,000 policies outstanding; in the midst of the greatest depression ever known; with more titles being foreclosed and tested than at any time in our history; with but 14 years experience in national title insurance work; with $82,000 loss on 575 titles over a period of one year; can it longer be said that National Title Insurance is a hazardous business? It is reasonable to anticipate, based on experience, that with a substantial upturn of the real estate market 65 to 75 per cent of the claims now made against titles will disappear.

Title insurance can and does perform a magnificent service to the public at large. Through its spread, titles will fast become liquid and marketable. Methods of conveyancing in the various states will become unified. Laws regulating transfers will be more uniformly interpreted and with further re nement of procedure and practices, and another decade of education along title insurance lines, claims will not only continue to decrease but titles will have been purged of defects and the business of buying, selling and mortgaging real estate will have received an impetus such as could never be known under old systems. (Applause).

CHARLTON HALL (Seattle, Washington): There were two items covered by Mr. McNeal's paper upon which I should like to comment. One was the matter of taxes and his recommendation that we try and have the laws amended to make the tax collectors responsible for their own acts.

Along that line, our Secretary, Jim Sheridan, sent out a questionnaire not long ago. We have a good many cases where people pay their taxes with "N. S. F." checks. They are noted on the books as being paid; we examine the tax rolls and the taxes are shown paid. We certify them as being paid. If the check comes back "N. S. F.," we have an arrangement with the county treasurer whereby he will expunge from the record the notation of the tax being paid, marking that the check was "N. S. F." and that the tax payment was cancelled on a certain date.

Bear in mind that in the meantime we have searched those taxes. For a while we paid them. We thought there was no way out of paying them. We don't do it any more unless the tax is less than twenty-five dollars. If it is more than twenty-five dollars, we bring suit and the tax payment is declared valid on the ground that the person who bought that property or who loaned money on it had a right to rely on the record, and the record showed that the tax was actually paid. The loss, therefore, falls on the county.

We brought many of those suits and won every one of them. Until a short time ago, when we got a new prosecuting attorney and a deputy who did not know just what our procedure was, if we would show that deputy the facts, he would recommend to the board of county commissioners that they pass a resolution declaring the tax paid. We are having a little trouble with the present deputy. We are going to sue again and teach him what the law is. In that way we are not suffering losses because of these "N. S. F." checks by tax payers.

The other matter was that of paying off mortgages and not demanding the note. Under the laws of Washington, the note is the evidence of the debt. It is the important document rather than the mortgage, which is only evidence of the security for the debt.

For some time past we have had a rule that if our preliminary report shows a mortgage which is to be paid before we insure the new mortgage, in addition to seeing that the record of the mortgage is satisfied, the cancelled note must be submitted to us. Of course, if we pay that old mortgage in escrow, we get the cancelled note, but if the loan is closed out of the escrow by the customer, he must submit to us the cancelled note before we will pass the release as being valid.

Claims of the Past 12 Months—Causes and Means of Prevention

E. B. SOUTHWORTH
Vice-President, Title Insurance Company of Minnesota, Minneapolis, Minn.

Following Mr. McNeal on a program is rather a difficult position to occupy. I don't know that there is anything left to say, except that the point that has saved us to a greater or less extent is the actual inspection of the property by a man trained in that work. We make the inspection on both owners' and mortgagees' policies, and we have found that this inspection enables us to avoid forgery losses. We have found cases of insanity by the inspection which, of course, would not appear on the record. We have found discrepancies such as, for instance, a property appraised for the mortgage loan that was not the property that was being mortgaged.

In addition to these things, we have found that it is a big selling point in selling owners' policies if the man knows we are going out to make the inspection.

We have encountered surveys that were not accurate. We will never issue a mortgage policy on a survey without a supplemental check of measurements made by our own men. We have one subdivision in Minneapolis which is eleven feet off. That subdivision has been completely built within the last fifteen years. Our statute of limitation is fifteen years. Every house in that subdivision is eleven feet off. As a result of that, they are now trying to obtain deeds to straighten out the lot

lines. They have raised a fund of about $7,000 to purchase the vacant property, in order that the residences lying upon that property may be placed in their proper ownership.

There is another point which Mr. McNeal and Mr. Hall both mentioned. In Minnesota we have some cases which hold that the mortgagor is entitled to pay the money to the original mortgagee unless he is served with notice of a change of ownership of mortgage, and that upon such payment, the debt is extinguished. If the question has not been raised in your state, and you should be confronted with such a proposition, I suggest that it would be advisable to obtain the Minnesota cases in preparing your brief which is to be submitted in the suit upon the mortgage, and I would not feel that a mere filing of the suit was grounds to settle unless your Supreme Court has already passed upon that question. (Applause).

Claims of the Past 12 Months—Causes and Means of Prevention

N. W. THOMPSON
Title Insurance & Trust Company
Los Angeles, California

The subject has been so completely covered, there is very little to add. We have all had various and sundry attempts at forgery. We have all encountered forged notes at some time or other.

This instance occurred not long ago in the northern part of the State. There were five notes due by deed of trust. The notes were compared with the originals; they were brought in, reconveyance was made and payment of those deeds of trust made. Thereafter new encumbrance was placed upon the property and insured by a certain company. A few weeks later the agent of a bank that had been closed came in with the five original notes.

The peculiar feature was, the notes were not forged. The president and secretary of the company which originally executed the deed of trust and notes made exact copies of the notes, affixing the corporate seal and the proper signatures, and the original notes were with the papers presented to the trustee with request for reconveyance. As a result, of course, there were some claims and suits that have to be settled. This was a peculiar angle we had never encountered before.

In regard to Mr. Hall's comments on taxes, I might say that in our county, where a great number of tax payments are made by check, they are not marked as paid until the check has been sent through the clearing house. That is the result of experience in years past when these "N. S. F." checks were entirely too common. The practice of title companies in that locality is not to accept the check of the customer in payment, but require cash and pay the taxes with their own check. That minimizes greatly the trouble arising in certifying taxes as paid that afterwards have to be erased.

We have also had, perhaps not claims, but questions arising during the past year because of liquidations, bankruptcies, receiverships, and so forth, and undoubtedly there will be still more in the next few years. Those problems do not in themselves directly, perhaps, mean claims, but there are so many things arising and we are entering such untried fields, that it seems we must use exceeding care in dealing with these questions.

It is surprising to some of us, to find that in these matters which are vitally important there is so little in the way of decisions to be found. Apparently the depression has brought about a condition never before encountered, at least, to such an extent, and we have found that some of the laws referring to business practices of the past twenty or thirty years were on the basis of a different set-up than that of the present. Therefore, it is difficult to apply them to present situations. One can make his own deductions but they are subject, of course, to the final jurisdiction of the court to determine whether he guessed right.

MR. NICHOLS: I have told several people about the method we have of certifying taxes in New Jersey. I think it might be interesting to know that we have an official tax search that we receive from the official treasurer, and if he omits any unpaid taxes, the town can no longer hold the property for taxes. He is a bonded officer, and if he overlooks something, he has to pay it, or the bonding company has to pay. Since we get this official tax search from the town, we do not have to worry about the taxes. Either the tax search officer or the bonding company is responsible.

A Budget For An Abstract Company

FRANK LENICHECK
Vice-President, Citizens Abstract & Title Company
Milwaukee, Wisconsin

On the subject of a budget for an Abstract Company or for an Abstract Department of a Title or Trust Corporation, I would like, first of all, to make a few qualifying remarks. I am mindful of the fact that I must confine my remarks to such overhead expenses as are common to all of us and shall follow the items by number and name, augmented with some detail, as presented in the Corporation Income Tax Return of our Federal Government, which is familiar to most of us. There are several methods of computing expenses on a percentage basis, all equally sound, and I shall base my percentages on their relation to Gross Sales and Other Income total, for I am of the belief that a budget should be set up in relation to Gross Income rather than Gross Expenditures. There is one factor in the computation of the percentages which reflects itself throughout, namely, the inclusion of a Thirty Per Cent Trade Discount in the Gross Sales and Other Income total, which is used as a Base in computing the various expense percentages. This Trade Discount is deducted later as such under the item "Other Deductions." However, the inclusion of this accrued expense item in the Base Figure is the correct accounting method because most Abstract Companies have such an expense item either in the form of a Trade Discount or Cash Allowance and it is a direct charge to the profits of the business. In the instances where this Commission, Trade Discount or Cash Allowance is forfeited, it is a source of added profit.

I do not believe it is necessary to go deeply into the question of the reasons for a budget. We all know and recognize its purpose, necessity and benefit. It is to a business what a rudder is to a ship. As an Abstract Company our organization has progressed and had no "in the red years," and the past six years have seen a High of twenty-four per cent above normal and a Low of twenty-nine per cent below normal (1932 not included) on prices such as six dollars for a Search or Certificate, one dollar for a Deed, one dollar for a Mortgage, one-half dollar for an Assignment or Release of a Mortgage, Judgment and Tax Sale, and one dollar and one-half per page, (8½ x 14) (double spaced) for Court Proceedings, all subject to the aforementioned thirty per cent Trade Discount. It is just a matter of establishing a ratio or percentage for expenses, and keeping them in check.

GROSS INCOME

The Gross Sales and Other Income Total is made up in the main of four items: (Item 1) Billings for various forms of abstract of title service, namely, Gross Sales of 99½ per cent from which is deducted Sales Returned and Allowances of ½ of 1 per cent arising from price reductions and adjustments—99 per cent. (Item 10-a) Bad Debts Recovered from accounts actually written off in previous years. —¼ of 1 per cent. (Item 10-b) Expense Recovered, which includes recovery of costs and fees advanced and the recovery of losses paid through errors—¼ of 1 per cent. (Item 10-c) Interest Received amounts to so very little in dollars and cents that it can be disregarded for all practical purposes.

DEDUCTIONS

The Operating Expenses or Deductions have been practically constant, relatively speaking, except in a few instances herein noted. (Item 12) Compensation of Officers for full and part

time—6 per cent. (Item 13) Rent for Business Property—3½ per cent. This is an expense item which has gradually increased in recent years from 2 per cent to the present percentage because of a lease and our inability to readjust ourselves to the changed conditions as rapidly as the change has come upon us. (Item 14) Repairs are a minor expense that can be disregarded. (Item 15) Interest Paid is an account carried in our ledger but never used. (Item 16) Taxes Paid including Personal Property Tax of ½ of 1 per cent, Wisconsin Income Tax, Wisconsin Surtaxes and United States Income and Profits Tax but not including any Real Estate or Other Taxes—4 per cent. (Item 18) Bad Debts representing accounts receivable actually written off during the year, 1½ per cent. Many corporations will experience a reckoning year as far as this expense item is concerned which may exceed ten per cent. (Item 20) Depreciation (resulting from wear and tear) on a ten-year schedule for furniture and fixtures and a five-year schedule for machines (typewriters)—1¼ per cent. (Item 22) Other Deductions of 73¼ per cent not included in the above are the following: (a) Salaries, Wages and Bonuses of employees have not been readjusted to the changed conditions which we have encountered in the past three years, and are up from 29 per cent to 35 per cent. No reductions in salaries have been made or lay-offs enforced although vacancies created voluntarily have not been replaced and the Annual Bonus Plan has been abandoned. (b) Loss on Furniture and Fixtures Sold and Obsolete is a charge which occasionally occurs but can be disregarded. (c) Trade Discount accrued and paid—29½ per cent. A 30 per cent Trade Discount is paid to Attorneys, Bankers, Building and Loan Associations, Builders, Mortgage Bankers and Real Estate Brokers on their billings. (d) Advertising and Publicity in magazines, newspapers, year books and publication of a quarterly House Organ with postage and mailing service fees included—1 per cent. (e) Insurance Paid including Employer's Liability Insurance and Fire Insurance on Abstract Records and Personal Property, but not Real Estate—2 per cent. (f) Miscellaneous Expenses—2½ per cent which includes such items as printing of subdivision abstracts and other printing, American Title Association Convention and Wisconsin Title Association Convention expenses, judgment suit costs, legal fees, directorate fees, loss through errors, gifts, free parking costs, towel service and organization memberships. During the subdivision boom years this percentage was exceeded considerably and reached 4 per cent due to the fact that a separate account was not set up to take care of the abnormal printing costs. (g) Office Expense—⅜ of 1 per cent including such costs as call for and delivery messenger service, postage, transportation costs, corporate stationery, envelopes and bookkeeping forms. (h) Lights—⅛ of 1 per cent. (i) Telephone (local and long distance) and Telegraph—½ of 1 per cent. (j) Supplies—2¼ per cent including such items as pencils, rubber bands, clips, erasers, lithographed abstract forms, paper, note books, fasteners, printed office forms, envelopes, carbon paper, typewriter ribbons, pen holders, pens, ink, ink eradicators, tape, folders, blotters, type cleaner, paper cups, index cards and sheets.

Net income from a budget such as this results in a ten per cent profit on Gross Business. However, a study and an analysis of the various expenditures of each account can develop a greater profit through ways of saving, such as placing all purchases on a "bid basis" and economizing on all expenditures through centralization and substitution. Many of the accounts listed under "Deductions" can be decreased from a fraction of one per cent to more than one per cent. The "Salaries, Wages and Bonus Account" can be decreased by several per cent through the "popular efficiency methods" of salary cuts of ten to twenty-five per cent and lay-offs. This year we are experiencing considerable saving in consolidation of departments and consolidation of personnel within these departments. True enough, decreased business makes this possible to a certain extent, but to an equal extent these consolidations are permanent. As the desire or necessity may be, in either instance, an Abstract Company can proceed throughout the years on a profit basis by instituting a periodical analysis and check of the accounts of the Operating or Profit and Loss Statement for any month or fiscal period with the budget, correct them as desired, and establish a new percentage for the account or accounts.

A Budget For An Abstract Company

W. C. WEITZEL

President, Weitzel Abstract Company, Albion, Neb.

You are all familiar with the word and doubtless by this time have begun to feel the effects of balancing the budget in our nation's account, hence it brings to your own door its necessity.

To run your abstract office without making plans for your future expense is heading your ship straight for the rocks and it is only a question of how long before you are out of the game and some one else has your place.

We have seen it in our own association and had it not been for the men who are men and their untiring work our association today would be only history. this is our Association, yours and mine, not Their Association, and it behooves us to do our part to keep it going just as much as your own business in order to make it successful.

Do you ever sit down alone, take a pencil and put down the cold black figures showing what it is going to cost you the next year and the next and the next?

Here are some figures that may be of use to you which I have had the liberty to prepare from actual fact and from a successful office and are taken and averaged over a ten-year period where the gross income was from $4,500.00 to $7,000.00 per year, the owner figuring in a salary of $1,500.00:

60%	Salaries.
7%	Rent.
5%	Supplies and Incidentals.
1%	Taxes.
2%	Depreciation.
1%	Advertising.
5%	Dues and Expenses, State and National Title Association.
2%	Special Reserve for losses.
2%	Reserve for bad accounts.
15%	Profit and loss.

These figures vary year by year but over a ten-year period the percentage is as shown.

A notable thing is that the item of Special reserve for losses was only charged $116.00 in ten years which left a balance in the fund in round figures of $1,000.

My suggestion to you is that you lay your plans, not for a year or five years but for not less than 20 years.

How long do you suppose the Title Insurance Companies would exist without a budget?

How much of a success would have been made by such men as C. B. Rouse, John Wanamaker, and others if they had run their business without knowing what the probable cost would be in the future years of their business.

You may not be one of those men when it comes to the big figures but our profession is just as big in a way, figuring in percentage in the little corner where we are located; as it is up to us to furnish the record of titles that is the foundation of the financial structure of this great country.

Then why not us, follow the example of these great institutions and men and run our office so that it will be successful and thereby be a credit to ourselves and an easier and safer path to travel for those that follow after us.

I know a plant that the owner has never figured less than 20 years ahead and that is longer than he will be active by a number of years, yet he goes on and on and he has up to this time one of the best plants that is in his State, he has the vision and is the successor of a man who had the vision, like the man who though he never expected to pass that way again yet he built the bridge for the youth that would follow.

You must have a budget and stick close to it to make a success.

Report of Chairman Abstracters Section

ARTHUR C. MARRIOTT
Chairman
Wheaton, Illinois

The activities of our Section since our last Convention have necessarily been limited, because of a lack of funds to carry out our plans. We have appreciated the fact that during these times of stress our members could not make the contributions which they so generously gave in the past and, therefore, we have been compelled to postpone much which might have been done until conditions return to normal and until our income justifies the expenditures.

The conditions which now confront us have taught us the correctness of those ideas suggested to us by former officers of this section when business was good, to which ideas we possibly did not give the consideration we should have. Among those ideas which have been proven sound, we might suggest the following: that all of our profits in a good year should not have been paid out in dividends, but that a part of those pofits should have been held back in our surplus account to be used now when earnings have diminished; that ample reserves for losses should have been set aside each year, so that if and when those claims for losses were presented (as they are certain to be) such claims could be paid out of that reserve rather than out of already diminished earnings; that proper reserves for bad debts should have been set up, so that now when our good customers are going bankrupt owing us money we may charge those uncollectible accounts against our reserve for bad debts; that proper cost methods and a budget of anticipated expenditures should have been kept, so that economies necessary at this time may intelligently be made. We have heard these suggestions made, but I am afraid we did not in those carefree days give them much consideration. Fortunate, indeed, now is the abstracter who did follow out those suggestions.

The officers of your Section early this year realized that the greatest danger confronting our membership today was price-cutting. With little thought of how the cost of plant maintenance has increased some of our members either because of pressure brought to bear upon them or actuated by the desire for more income have thoughtlessly thrown overboard the results of several years work in their States and have cut prices.

In our business a customer does not order an abstract because we are having bargain rates—he only orders it because at that particular time he has need for one. There is only a certain amount of abstract work in a community and cutting prices will not increase that amount. Within twenty-four hours after prices are cut, our competitors will cut their prices also, either meeting our new price or lowering it again. The volume of business has not been increased but you and your competitor are right where you started only with even less income than before. The price cutter has lowered his income which already had been too low at a time when his cost of operations has increased due to the large number of judgments, foreclosure suits, claims for mechanics' liens, tax sales, and tax forfeitures, and other distress matters which must be taken off and posted on his books and from which little or no revenue at the present time can be expected.

With increasing costs what an absurdity to reduce prices. Your officers have combated this idea with as much force and energy as was possible. Let us stand firm on the proposition that present prices shall at least remain as they are and that the adoption of lower prices would be in effect committing business suicide.

Increasingly, is it becoming apparent that we must make a greater use of our office facilities so that our regular revenue from abstract earnings may be supplemented by earnings from other sources. For years past, our Conventions have heard suggestions along this line. Probably many of them cannot be used in your locality, but it is earnestly recommended that you study your old copies of the Proceedings and perhaps an idea will be presented or your own ingenuity and thought will suggest to you some method whereby your idle office force and idle plant can be profitably used.

Times are dull and business is bad. Time which formerly we spent earning money by making abstracts is spent how? Are we wasting a large part of our time waiting for orders to come to the office? Time which might be spent rewriting books which need rewriting; time which might be spent in making those improvements in our plants which we have always intended to make as soon as we had time; time that we might visit our neighbor in an adjoining county inspecting his plant for suggestions as to improvements we might make in our own plant; time that we might spend talking over with him not the depression or our hard luck stories, but new and better methods of abstracting or of new ways of making money out of our plants. In fact, discuss your business problems, generally, but do not waste his time and yours in conversation on the depression. If you already know that your plant is better than your neighbors and that there is nothing there for you to learn, visit the plant of that abstracter in your state association for whom you have the highest regard. If, during these times you do improve your plant, even if you are operating at a loss, your business is gaining somewhat.

However, if you consider your plant so perfect as to be impossible of improvement, look around your office. Could that be improved by painting or decorating; could you in your spare time, which is so plentiful, paint or decorate it yourself. Would not now be a good time to go though the junk and litter which has been accumulating through the years and either file it in its proper place or discard it; if you do, not only will you, yourself, react to a clean, fresh, orderly office but so will your office force and your customers as well.

If we shall consider our plant and our office as perfect, let us use that spare idle time in cleaning out the old desk. You have always intended to do it some day, and if you do, you will find many things which you will now wonder why you were preserving so carefully.

If these things are done, we may come out of this depression with much less money than we would like, but with our plants and the physical condition of our offices much improved and in the meanwhile we will be keeping up our own morale, overcoming the hysteria and cowardice known as price-cutting.

We have continued to sponsor, encourage, and advocate the holding of regional meetings. These meetings have clearly demonstrated their worth, in the past, and are even more valuable and beneficial than ever now. States which have held them in the past year report increased attendance, better interest and more valuable results than ever before. The best method of counteracting the temptations to cut prices is by holding of these meetings. The officers of the state associations should consider themselves responsible for the holding of these meetings in their several states and the officers of your section and our Executive Secretary will furnish all the assistance in their power.

The facilities of the office of the Executive Secretary are at your command. Our Secretary stands ready to aid you if called upon to do so. He and the officers of your section will welcome and appreciate your suggestions as to how they may be of service to you and to our entire membership. Conditions are such now that you need the association more than ever and the association, in turn, needs your help and your ideas.

Report of Chairman Title Examiners Section

McCUNE GILL
Chairman
St. Louis, Missouri

The activities of this section since the last Convention have been represented by the issuance of five American Title Association Studies, as follows:

"A Suggested Method of Avoiding Reversions," by McCune Gill.

"Exercise of Power by Successor Administrator," by Frank J. Cordes, Jr.

"State and Federal Taxation of Abstract and Title Companies," by Henry C. Burnham.

"Suggestions on the Sale and Foreclosure of Real Estate in Receivership Proceedings," by Earl F. Nelson and Harry A. Hamilton.

The reaction of the members to these studies has been very favorable and it is hoped that the section may continue to provide a department of legal research for the investigation of subjects important to the law members of the Association.

Report of Chairman Title Insurance Section

BENJ. J. HENLEY
Chairman
San Francisco, Calif.

Mr. Chas. C. White, Title Officer of the Land Title Abstract & Trust Company, of Cleveland, has further obligated the Association to him by the additional work he has done as Chairman of the Uniform Policy Committee. The report of this committee, which you will later receive, will disclose that it has given the subject of a uniform owner's policy further consideration since its last report, and is suggesting some modifications of the form which was presented for your consideration last year.

Comments which have come to me from various sources during recent months indicate that while sentiment for a uniform policy has not increased, there is a decided opinion that policy forms in use should be subjected to searching scrutiny. The recent tendency has been to liberalize them so that they will clearly provide the coverage which the title company intends to give, and which the insured expects to receive. This tendency has gone so far that some policy forms are open to a possible construction which gives to the insured protection that is not expected, and protection that it is not intended to provide.

I will cite one example of what I have in mind. The American Title Association Standard Loan policy insures "Against loss or damage . . . which the insured shall sustain by reason of any defect in the execution of (the) mortgage or deed of trust." The company with which I am identified is confronted with three claims for loss, involving policies containing similar language, in each of which deeds of trust for approximately $4,500.00 were insured. It recently developed that the signature of the purported borrower was forged to all three deeds of trust. Furthermore, it was disclosed that the deeds of trust, which were prepared and executed in the office of the insured and delivered to us completely executed, did not describe the property upon the security of which the loans were made, but covered vacant lots which were worth not more than five hundred dollars apiece. We were in no wise responsible for the erroneous identity of the property, nor for the descriptions which were used in the preparation of the deeds of trust.

We are now in a position to deliver clear title to all of the lots to our insured to whom the deeds of trust were given as security for the indebtedness, but the insured declines to take title to the property, and has taken the position that because of this language which provides that the policies insure against loss by reason of defects in the execution of the deeds of trust, we have not, by making title good, met our liability under the policies. The deed of trust in each case is approximately $4,500. The value of the property insured in each case is less than $500.00. It is contended that our policy protects the insured against all loss resulting from the "defect in the execution," namely, the forgery of the signature of the deeds of trust, and that that loss is $4,500.00, less any salvage from the value of the property.

We, of course, do not concede that the policy construed with the deed of trust which was insured in these cases is open to this construction. However, it does seem to me that if the instrument insured contained an express agreement on the part of the borrower to pay the indebtedness secured by it, and that agreement were invalid because of the forgery of the signature of the purported borrower, the position which has been taken by our insured in these cases might be sustained. At the same time, it seems obvious, if the policy can be so construed, that before recovery can be had upon it over the actual value of the property, it will be necessary for the insured to prove that the purported maker of the deed of trust could have paid any deficiency which might have resulted from a foreclosure of the deed of trust if that instrument were valid. Nevertheless, the language of our policy form should be so clear and unambiguous as to permit of only one construction. If there is a reasonable basis for the contention which is urged in the cases referred to above, it is clear that the policy form requires modification.

I called your attention to the fact that the American Title Association Standard Loan policy form is open to the objection, if it is an objection, here referred to. I would suggest, therefore, that during the coming year this provision of that form be carefully considered by the Uniform Policy Committee.

Instead of being held in New York in conformity with prior practice, the luncheon conference with representatives of life insurance companies as our guests, was this year held at Chicago during the mid-winter conference. As was to be expected, it was not possible for many of the Eastern companies, to whom invitations were extended, to send representatives to Chicago. At the same time, eight of the leading companies were represented, and we are much indebted to those companies and their representatives for making the trip to Chicago for that meeting. The characteristic good will of this very substantial group of our clients toward the title insurance business was again evidenced, and the cordial, friendly relations which have been cultivated in the past were further cemented.

It is hardly within my province to report upon the good work of Jim Sheridan since his appointment at Chicago as Executive Secretary. However, such a substantial part of his activities bears so directly upon the functions of the Title Insurance Section, that I cannot refrain from rendering him the commendation which that work merits.

From the time of its organization he has aggressively followed up on questions of title procedure involved in loans of the Reconstruction Finance Corporation. The result of his work in this connection has been regularly reported to you in his bulletins.

His bulletins have also brought to you various suggestions for increasing business, for the reduction of expenses, and have contained much other valuable and useful information. In order that this most important part of the service of the Association can be of maximum value, it must be a composite of the experiences of all of the members of the Association. Mr. Sheridan has urged each member to provide him, from time to time, with information which can be incorporated in his bulletins. His request is not prompted by a desire to reduce his labors, but by his ambition to render real service to our members. I am taking this opportunity to urge you to comply with his request. You can realize on your investment in the Association in a much larger way if you will contribute to it your ideas and suggestions, in order that you may be assured of receiving those of your associates in the business.

I cannot too strongly emphasize the necessity of your co-operation with the Secretary in providing material for these bulletins. Jim's resourcefulness and versatility will always provide us with information of value, but experience is the best teacher. The most valuable hints that we can get will come from the experiences of each other, and they can be made available to him and to us only by our communicating them to him for dissemination to each other.

In closing this report, I desire to emphasize the transcendent importance in these strenuous times of co-operation between competitors. Conditions such as those which now exist invite illogical and suicidal competition. Evidence of this tendency is visible in many lines of business, and the business horizon is strewn with the wreckage of its operation.

Since the organization of the American Association of Title Men in 1907, the title business has made great strides in its development. The structure which has been created is one of which we have just reason to be proud. In his Bulletin of March 15th, Jim Sheridan sounded a note of warning against the demoralization of the business by destructive competition which should not be read and forgotten. It should be constantly kept in mind. The importance of maintaining rate schedules and observing a high standard for the conduct of business is now greater than at any time in the past.

In recent years we have come to be recognized as a valuable and indispensable factor in carrying on transactions relating to real estate, and have established for ourselves a high reputation for intelligent, effective and expeditious service and fair dealing with our clients and our competitors. In spite of the difficulties which now confront us, probably in no lesser or no greater degree than most other lines of business, let us ever keep before us the high ideals for which our Association stands, in order that we may not lose the ground which we have gained in the last few years.

Report of Committee on Uniform Owner's Policy of Title Insurance

CHARLES C. WHITE
Chairman
Cleveland, Ohio

There is herewith submitted for your consideration the committee's second attempt to devise a Uniform Owner's Policy. This year's policy was devised by McCune Gill and speaks for itself. This report will consist of an analysis and comparison of the two policies with the writer's personal reactions to the same. Unfortunately I can speak for only two members of the committee, as the other three members of the committee have sent me no definite opinions as to the proposed policy.

To save printing expense and postage, this year's proposed policy has been printed on one sheet. In actual use Schedule A would not appear on the first page, but would be Page 2, leaving Schedule B and the Conditions and Stipulations to appear on Page 3.

As is stated in the note appearing at the head of the printed copy, this proposed Uniform Owner's Policy is an adaptation of the A. T. A. form of Mortgage Policy, and has been made by eliminating from the A. T. A. form (1) All provisions pertaining solely to a mortgage policy (2) Specific insurance against Mechanics' Liens.

It might be well to point out wherein the two proposed policies of last year and of this year are alike and wherein they differ.

PAGE 1

This year's policy runs only to the "Insured" and does not contain the words "heirs or devisees." Those who feel that words of succession should be included, may type in the appropriate words after the name of the Insured, "heirs or devisees" where the Insured is an individual, "successors" where the Insured is a corporation.

This year's policy insures against loss or damage which the Insured shall sustain *"by reason of title to the land described in said Schedule A being vested at the date hereof otherwise than as therein stated."* This phrase does not appear in last year's policy.

Aside from these two matters there is no substantial difference between the first pages of the two policies. The phrasing is somewhat different, but there is no difference in effect.

SCHEDULE A

Schedule A in this year's policy consists of Items 1 and 3 of the A. T. A. form, Item 2 being omitted as applicable only to a mortgage policy. Item 1 is a "vesting note" made necessary by the "vesting clause" above quoted from Page 1 of this year's policy.

Schedule A of last year's policy was devised with the idea that the proposed policy could be used not only as an owner's policy, but also as a mortgagee's or lessee's policy. The theory of this year's policy is that it is to be used only as an owner's policy.

SCHEDULE B

Schedule B of this year's policy is the same as Schedule B of last year's policy, except that Item 4 with reference to bankruptcy has been omitted. As is said in last year's report Schedule B is not intended to be uniform throughout the country. What is to go into this schedule is largely determined by local law and local custom. Schedule B is the part of a so-called uniform policy that gives it flexibility.

CONDITIONS AND STIPULATIONS

Paragraph 1, of both policies contains the provisions giving the company the right to defend and specifying the notice that is necessary to charge the company with liability. This paragraph in this year's policy was made by eliminating from the A. T. A. form the phrase *"or defenses, restraining orders, or injunctions interposed against a foreclosure, or sale of said land in satisfaction of said indebtedness"* and the phrase *"or defense interposed,"* the omitted phrases being applicable to a mortgage policy only. While Paragraph 1 in the two policies cover substantially the same ground, this year's policy is more definite in that it provides specifically for 10 days' notice after service and also more specifically provides for notice of claims not eventuating in court actions. The last sentence in Paragraph 1 of this year's policy has no counterpart in last year's policy.

Paragraph 2, providing that the company may settle claims or pay policy in full, is the same in both policies.

Paragraph 3 (the "Subrogation" paragraph), gives substantially the same rights and privileges to the insuring company. The last sentence in last year's Paragraph 3 has no counterpart in this year's policy. At least one member of the committee thinks that this sentence is highly important.

Paragraph 4, providing a period of limitation as to actions against the insuring company is identical in both policies.

Paragraph 5, of this year's policy takes in the same territory as Paragraphs 5, 6 and 7 of last year's policy. Said Paragraph 5 was made by eliminating from Paragraph 8 of the A. T. A. form, the parenthesized phrase *"excepting any statutory lien for labor or material insured against by this policy,"* and by adding thereto at the end of sentence 2 the phrase, *"and not made known to the company."* In comparing this year's Paragraph 5 with last year's Paragraphs 5, 6 and 7, it will be noted that last year's policy provided that the company *"will in no case be liable for the fees of counsel or attorneys employed by the Insured."* This year's policy provides that the company will be liable for all costs imposed upon the Insured, *"in litigation carried on by the Insured with the written authorization of the company but not otherwise."* Last year's policy in Paragraph 7 provided that *"the company will not be liable for loss or damage by reason of fraud by or notice of fraud to the Insured."* This year's policy has no specific provision with reference to fraud.

Paragraph 8, of last year's policy was inserted because last year's policy was devised as an assignable policy. This paragraph is not necessary in a non-assignable policy.

Since last year's policy was devised with the idea that it should be assignable, the fourth page thereof was an assignment sheet. Since this year's policy is non-assignable, the assignment sheet has, of course, been omitted.

CONCLUSIONS AND RECOMMENDATIONS

As was said above, I can speak definitely for only two members of the committee. McCune Gill is the author of this year's policy, and he, as a matter of course, strongly recommends its adoption, although, aside from the assignability feature and the fact that he saw no reason for Item 2, Schedule A, he had no great objection to last year's form. I think I speak for him when I say that he would rather have last year's form adopted than to have nothing at all done, although he much prefers this year's form. One of his reasons is that this year's form so nearly conforms with the A. T. A. mortgage policy, and the A. T. A. form has been found generally acceptable.

"If I were a dictator" and had to choose between the two forms, I would choose last year's form. Possibly the

chief reason is that last year's form was largely my own production, but there are other reasons.

(1) Notwithstanding Senator Thompson's strenuous objections, I still believe it is possible to have one form for owners, mortgagees, and lessees. Aside from occasional use of the A. T. A. form, my own company, and the other Cleveland companies, have always used one form for owners, mortgagees, and lessees. The same is true in Pennsylvania. In New York the same practice has been current, the only difference being that the New York companies use a different first page for owners, mortgagees, or lessees.

(2) While it may theoretically be true that an owner's policy should not be assignable, yet the practice of assignment has been prevalent in many localities, for instance Chicago, New York, and Pennsylvania, and the argument against assignability is not to me persuasive.

(3) I have never been sold on the "vesting clause" as it appears on Page 1 of this year's policy and the "vesting note" at Item 1 of Schedule A. I prefer Schedule A as it appears in last year's policy.

Again "If I were a dictator" and were instructed to devise a policy out of a combination of last year's form and this year's form, I should adopt (1) The first page of last year's policy (2) Schedule A of last year's policy (3) Schedule B of this year's policy (4) The Conditions and Stipulations of this year's policy, with the addition of Paragraph 8 of last year's policy (5) The assignment sheet of last year's policy.

Without making any definite recommendations, this report concludes with the suggestion that this convention may dispose of this report in one of the following ways:

(1) Drop the whole matter. It sometimes seems to the writer that there is so little interest in a Uniform Owner's Policy, that the effort to devise one is largely futile.

(2) Adopt one or the other of the policies that have been submitted by this committee.

(3) Adopt a Conditions and Stipulations sheet only and let each company use whatever form it sees fit as to the other provisions of the policy. If this were done, the writer would be quite satisfied with this year's Conditions and Stipulations with the addition of Paragraph 8 of last year's policy for such companies as desire an assignable policy.

(4) Refer the whole matter to a new committee with or without instructions as the convention may see fit. I would have no objection to serving on such a committee, but I will not again assume the responsibility of devising a model policy. All the ideas I could possibly have on the subject have been submitted in the reports of the last two years.

The American Title Association's Second Proposed Uniform Owner's Title Insurance Policy

Note: This form of Uniform Owner's Policy is proposed by McCune Gill, a member of the Uniform Policy Committee. It was made by eliminating from the A. T. A. mortgage policy (1) All provisions which apply only to a mortgage policy; (2) Specific insurance against mechanics' liens.

TITLE INSURANCE POLICY

Policy No. Amount $

American Title Insurance Company

a corporation, of Spokane, Ohio, herein called the Company, for a valuable consideration, paid for this Policy of Title Insurance,

Does Hereby Insure

herein called the Insured, against loss or damage not exceeding dollars, which the Insured shall sustain by reason of title to the land described in said Schedule A being vested at the date hereof otherwise than as therein stated, or by reason of any defect in, or lien or encumbrance on said title at the date hereof, other than defects, liens, encumbrances and other matters set forth in Schedule B, subject, however, to the conditions and stipulations hereto annexed, which conditions and stipulations together with said Schedules A and B are hereby made a part of this Policy.

IN WITNESS WHEREOF, American Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this day of 193

American Title Insurance Company

By President

By Secretary

SCHEDULE A

1. The title to said land is at the date hereof vested in
2. The land referred to in this Policy is described as follows:

SCHEDULE B

Showing estates or defects in title, liens, charges and encumbrances thereon, and other matters against which the Company does not, by this Policy, insure.

1. Rights or claims of parties in possession not shown of record, and any facts which a correct survey and inspection of the premises would show.
2. Mechanics' and material men's liens of which no notice has been filed of record.
3. Action by any governmental agency for the purpose of regulating the use or occupancy of the land described in Schedule A, or any building or structures thereon.
4. Taxes and assessments (This item must necessarily be different in different jurisdictions. No attempt has been made to devise a model item. In actual practice this will probably be a typed, rather than a printed, item).

CONDITIONS AND STIPULATIONS

1. The Company at its own cost shall defend the Insured in all litigation consisting of actions or proceedings commenced against the Insured, which litigation is founded upon a defect, lien or encumbrance insured against by this Policy and may pursue such litigation to final determination in the court of last resort. In case any such action or proceeding shall be begun, or in case knowledge shall come to the Insured of any claim of title or interest adverse to the title as insured, or which might cause loss or damage for which the Company shall or may be liable by virtue of this Policy, the Insured shall at once notify the Company thereof in writing. If such notice shall not be given to the Company within ten days of the receipt of process or pleadings or if the Insured shall not, in writing, promptly notify the Company of any defect, lien or encumbrance insured against which shall come to the knowledge of the Insured, in respect to which loss or damage is apprehended, then all liability of the Company in regard to the subject matter of such action, proceeding or matter shall cease and terminate, provided, however, that failure to notify shall in no case prejudice the claim of any Insured unless the Company shall be actually prejudiced by such failure. In all cases where this Policy permits or requires the Company to prosecute or defend any action or proceeding, the Insured shall secure to it the right to so prosecute or defend such action or proceeding, and all appeals therein, and permit it to use, at its option, the name of the Insured for such purpose. The word "knowledge" in this paragraph means actual knowledge and does not refer to constructive knowledge or notice which may be imputed to the Insured by reason of any public record or otherwise.

2. The Company reserves the option to pay, settle, or compromise for or in the name of the Insured, any claim insured against or to pay this Policy in full, and payment or tender of payment of the full amount of this Policy shall terminate all liability of the Company hereunder.

3. Whenever the Company shall have settled a claim under this Policy, all right of subrogation shall vest in the Company unaffected by any act of the insured. The Insured, if requested by the Company, shall transfer to the Company all rights, securities, and remedies against any person or property necessary in order to perfect such right of subrogation.

4. A statement in writing of any loss or damage for which it is claimed the Company is liable under this Policy shall be furnished to the Company within sixty days after such loss or damage shall have been determined and no right of action shall accrue to the Insured under this Policy until thirty days after such statement shall have been furnished and no recovery shall be had by the Insured under this Policy unless action shall be commenced thereon within one year after expiration of said thirty-day period. Failure to furnish such statement of loss or damage, or to commence such action within the time hereinbefore specified, shall be a conclusive bar against maintenance by the Insured of any action under this Policy.

5. The Company will pay, in addition to any loss insured against by this Policy, all costs imposed upon the Insured in litigation carried on by the Company for the Insured, and in litigation carried on by the Insured with the written authorization of the Company but not otherwise. The Company will not be liable for loss or damage by reason of defects, claims or encumbrances created subsequent to the date hereof or for defects, claims or encumbrances created or suffered by the Insured claiming such loss or damage, or existing at the date of this Policy and known to the Insured claiming such loss or damage at the date such Insured claimant acquired an insurable interest and not made known to the Company. The liability of the Company under this policy shall in no case exceed in all the actual loss of the Insured and costs which the Company is obligated hereunder to pay. All payments under this Policy shall reduce the amount of the insurance pro tanto and no payment can be demanded without producing this Policy for endorsement of such payment.

MR. HENLEY: This committee's first important work was the formation of the American Title Association Standard Loan form of policy. That work was completed about two years ago, the policy was presented to you for your consideration, and you adopted it as the first Standard Form of title evidence sponsored by the American Title Association.

It was then thought desirable to consider the formation of a Uniform Owner's Policy. For the last two years successively Uniform Policy Committees have worked on that program. At the Tulsa convention last year there was presented to the convention by the Committee, under the sponsorship of Stuart O'Melveny, who had headed the Committee for two or more years, a proposed Uniform Owner's Policy. The report of the Committee was considered, but no action was taken except to continue the Committee and recommend further consideration of the subject.

There has been distributed to you with the program the report of the current Committee, with some modifications of the policy which was presented last year.

I am inclined to the belief that that subject is one which cannot be disposed of now. I do feel rather strongly that some serious consideration should be given to the American Title Association Standard Loan Policy. There is one provision in the coverage of that policy to which I have previously referred.

I suggest, therefore, that it might be well to create a new Committee on Uniform Policy to further consider the American Title Assocation Standard Loan Policy form and also give such further consideration as may seem desirable to a Uniform Owner's Policy. I would like to ask Mr. Laurie Smith, who has just been elected Chairman of this Section, to give us his view of the matter.

H. LAURIE SMITH (Richmond, Virginia): I feel that we should continue the activities of the Committee to devise a Uniform Owner's Policy as well as to consider modification of the Uniform Mortgage Policy. It does seem that we have a very difficult problem in ever arriving at a Uniform Owner's Policy, but we can look back a few years to the time when it seemed equally impossible to arrive at a Uniform Mortgage Policy.

We have demonstrated that we could devise a Uniform Mortgage form for the American Title Association. We are going to have constantly recurring matters which may point out weaknesses or imperfections in that form, and the policy form, like the policy forms of life, fire, accident, and so on, policies will be, in my opinion, subject to continuous modification.

I should be very happy if this convention should determine to continue the Committee for the consideration of any changes which may be necessary in the mortgage policy, and also to continue the effort to arrive at a Uniform Owner's Policy. I feel somewhat as Mr. White and Mr. Gill do, that it seems almost a hopeless battle at this time, because of the varying conditions and customs in the different states, but it is not more difficult than some other tasks that the American Title Association has attempted and accomplished successfully. It is going to take time, but I think if we keep hammering year after year, we will eventually arrive at the goal of a Uniform Owner's Policy.

One of the difficulties about profiting from the loss experience of other companies has been that there is no uniformity of base premium rates for insurance alone which permits the assembling of the necessary information as to reserves and percentage of losses. There is no uniformity of coverage. That is where our Owner's Policy will be of tremendous value.

For those reasons, Mr. Chairman, I would urge upon this convention that the Committee on Uniform Policy Forms be continued.

MR. SMITH: I move that the Committee on Uniform Policy be continued or, in the event the personnel of the existing committee decline to serve, that a new uniform policy committee be appointed by the Chairman of this section with a view toward the adoption of a Uniform Owner's Policy and reconsideration of the Uniform Mortgage Policy.

. . . The motion was seconded.

SECRETARY SHERIDAN: I visited with Mr. White on Decoration Day and I have a letter from him which was received a few moments ago. I feel I must inform you he will not under any circumstances accept the Chairmanship of the Committee again. He will serve on the Committee but he absolutely will not accept the Chairmanship.

MR. McNEAL: I believe this body needs no further argument in favor of the motion, in view of its sponsorship by Mr. Laurie Smith. It may seem to some of you that I should not be one to advocate the continuance of the Uniform Policy Committee, inasmuch as my Company has been one that has not participated in the full value and benefit of the Uniform Policy as designed and put into execution by this Association.

However, I would have you consider this feature as a predicate to my remarks, which is that one of the great difficulties about title insurance for the last ten or fifteen years has been its sale. I believe you will agree with me, when you refer again to that paper I presented, that sales of title insurance in the last decade have been the greatest problem. The greatest number of forward steps have been taken in the sale of title insurance during that period, but that job is not yet completed. As I said in my paper, there is a large amount of education to be done relative to the sale of title insurance. There are a great many ideas to be concentrated into the one thought of title insurance as a protection and as a service. I believe I would emphasize service to even a greater extent than protection, for the reason that there are a great many divergent ideas as to what a title insurance policy should contain, and for the reason that we have the sales problem yet before us.

I believe that it is not timely to be too rigid as to the form of title insurance policy, but I also believe it is timely to be continually alert to the formation of a form of policy which will give the greatest protection to the purchaser at the least expense to the title insurance company. I do not mean that from a selfish standpoint, but by way of giving such service and such a policy as will induce the sale of title insurance throughout the country, fee as well as mortgage policies.

It will be agreed, I think, by all who have been in the sales game that title insurance companies as yet have to bow to the demands of would-be title users in order to get them to use title insurance. After the sales resistance has been eliminated, then I would be the first to join in the practice of the issuance of a uniform policy for this one reason only, to-wit, for the purpose of settling through the courts the various questions which will arise in the future under title insurance policies.

Other forms of insurance have been in use a sufficient number of years to settle questions which arise under those particular forms of policy. Title insurance has not yet reached the point where we have encountered all of the questions which will arise under title insurance policies, and unless we do have a uniform policy, we are going to have a divergence of opinion from the courts of the various states on the identical questions which arise time after time in our business. Therefore, I would say that the most important reason for having a uniform policy is the settlement of legal questions with reference to title insurance.

As a further argument for the continuance of the Committee on Uniform Forms of policy, I would say that we have not yet reached anything near the Utopia of title insurance procedure and practice. I have in mind some suggestions to make with reference to changes in the form of policy. Title insurance is the only form of insurance today, and especially fee title insurance, which does not have termination. When most of us in most of the states insure a fee title, that title is in existence forever for the protection of its owner, and even though we insure a title today and that title is transferred innumerable times in the future, our title policy remains a protection to the man who bought it against invasion upon him under his warranty clause and warranty deed.

It seems to me that in view of the fact title insurance policies do not have terminal facilities, we are building up a liability which we cannot estimate. We couldn't liquidate our business if we wanted to. A large number of the states

require a deposit in the state treasury as a perpetual protection against the liability which is created. There is no way that I can see for any company to liquidate and receive a refund of that deposit.

Years may go on and claims may cease, and a company may not have a claim for years. In the meantime, however, an organization may be kept together to anticipate any claim which might arise under a title insurance policy written forty or fifty years previously.

My thought is that title insurance premiums are so low in comparison to the risk involved and the service performed that title insurance is worth the money, even for a term of years. I have formulated this provision for a fee title policy. This is just a rough draft, but it will give you the idea:

"FEE POLICY PROVISION: The terms of this policy shall terminate and become void at the expiration of ten years from this date unless on or before such expiration date a reissue hereof shall be granted to the insured herein or to a subsequent owner covering the identical property herein described. Should there be a reissue to a subsequent owner as to a part only of said property within such period, this policy may be reissued within the period so as to preserve to the insured all rights therein as to any portion of the property remaining."

Speaking on this particular provision —at the expiration of ten years, we will say that John Doe has not reissued his title insurance policy. He took out the policy at $3.50 per thousand, and if he had a $15,000 policy, that would be $52.50. He has had protection for his title for ten years for $52.50. It seems to me, if he wants protection for another ten years under that same form of policy, he should certainly be willing to pay fifty per cent, at least, of the $52.50 for the continuation of that protection for that length of time. If he doesn't want to pay $26.25 for another ten years' protection, then his policy should lapse, and the title insurance company can charge off that liability from its total liabilities.

In that way, if any company wants to liquidate voluntarily or involuntarily, at the expiration of the term of years, the liability will cease and this deposit can be drawn down. It also gives the opportunity for reinsurance. At the present time there is no possibility of reinsurance because in order to reinsure, the insured must pay the full premium rate. When he does that, he has lost all of his profit and has dug deep into his operating expense to pay for reinsurance in order to draw down his deposit.

This is my suggestion for a provision in the mortgage policy:

"PROVISION IN MORTGAGE POLICY: The terms of this policy lapse—

(a) Upon the payment of the debt described herein under Schedule "A".

(b) Upon the renewal or formal extension of such debt for a term exceeding one year beyond the maturity date of such mortgage.

(c) Upon acquisition of property described in such mortgage by the insured or assigns, whether by process of foreclosure or by deed in cancellation of debt."

I think the Uniform Policy Committee of the Association should take these suggested changes into consideration, changes proposed as the result of the experience of one dealing in title insurance all over the United States and one whose company is required under various and sundry circumstances to put up these deposits which will never be refunded to it unless title insurance policies contain a provision for definite termination.

Mr. Smith's motion that the Uniform Policy Committee be continued or a new Committee be appointed by the Chairman of the Section in the event the members of the present Committee decline to serve, upon being put to vote, was carried unanimously.

Open Forum Discussion

RALPH SPOTTS

Attorney, Title Insurance & Trust Co., Los Angeles, California, Presiding

Last fall I had the privilege of being called upon to investigate a number of title questions arising in connection with the closing of a national bank, which bank had a trust department. I thought perhaps we might this morning direct a few questions to the subject matter of "Closed National Banks," and particularly, national banks with trust powers. The first question is:

"Where a receiver is appointed for an insolvent national bank which is handling escrows, what is the status of such escrows as to moneys and documents deposited therein?"

Every national bank I know of which has been closed has handled escrows.

The following general rules have been announced by the receiver for a local insolvent national bank:

If at the time the bank was closed the escrow was complete—that is to say, the documents had been filed for record —the parties entitled to the moneys deposited in escrow must file a claim against the bank.

If the escrow was not completed, the person who has deposited money in such escrow must file a claim therefor. Ordinarily the receiver will deliver all documents to the persons depositing them upon a joint order and a release of the receiver by all parties to the escrow.

Because of the inability to trace funds paid into escrow it is difficult to treat such funds as a special deposit. In special cases a party depositing such funds may make a preferred claim in which case the matter is referred to the Comptroller of the Currency for special consideration and he may approve it.

We have closed several orders for title policies pending with our company at the time of the closing of a local national bank. In one case the deed to file had been forwarded to us by the bank prior to the appointment of a receiver subject to later recording instructions. The buyer had deposited in the escrow with the bank the purchase price. We agreed to close the order upon instructions from the receiver approved in writing by the buyer and seller reciting that the amount to be paid to the seller was evidenced by a cashier's check drawn upon a bank other than the closed bank, and in favor of the seller, and that such check would be delivered to the seller upon receipt of advice from us that the deed had been filed for record. Arrangments were made for a similar cashier's check to cover the title charges of our company.

QUESTION NUMBER TWO

"A receiver is appointed by the Comptroller of the Currency for a national bank, which bank holds title to real property subject to a mortgage in default. As to the insolvent national bank, who should be named defendants in the foreclosure action and what consent, if any, to sue is required?"

This is one point that a great many attorneys in Los Angeles fail to consider, that the receiver of a national bank is not appointed by any court, either state or federal, but is appointed by the Comptroller of the Currency.

Both the bank as an insolvent national banking association and the receiver should be named defendants in the foreclosure action and consent to sue such bank and receiver is not required.

The title to the property is in the bank. The receiver has possession of such property. His appointment is made by the Comptroller of the Currency and not by any federal or state court. The property is not in custodis leges or within the control of the court even though as to other property the receiver may have applied to a court of competent jurisdiction for commission to sell other real property or any personal property constituting assets of the insolvent bank.

QUESTION NUMBER THREE

The most interesting problems in connection with a closed national bank arise in connection with its trust department.

When a receiver has been appointed for an insolvent national bank exercising trust powers, can either the bank or the receiver execute the trusts theretofore held by such bank?

This is a short question with a shorter answer and a long explanation. The answer is "no." There is no federal decision on the point. The reason is obvious.

By an act of Congress of December 23, 1913, the Federal Reserve Board was

authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of state or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this chapter.

National banks exercising any or all of the powers enumerated in this subsection (k) shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this subsection. Such books and records shall be open to inspection by the State authorities to the same extent as the books and records of corporations organized under State law which exercise fiduciary powers, but nothing in this chapter shall be construed as authorizing the State authorities to examine the books, records, and assets of the national bank which are not held in trust under authority of this subsection.

No national bank shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the bank awaiting investment shall be carried in a separate account and shall not be used by the bank in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Federal Reserve Board.

In the event of the failure of such bank the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

Whenever the laws of a State require corporations acting in a fiduciary capacity, to deposit securities with the State authorities for the protection of private or court trusts, national banks so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts as provided by State law.

National banks in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement.

National banks shall have power to execute such bond when so required by the laws of the State.

In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice-president, cashier, or trust officer of such national bank may take the necessary oath or execute the necessary affidavit.

It shall be unlawful for any national banking association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than $5,000, or imprisoned not more than five years, or may be both fined and imprisoned, in the discretion of the court.

In passing upon applications for permission to exercise the powers enumerated in this subsection, the Federal Reserve Board may take into consideration the amount of capital and surplus of the applying bank, whether or not such capital and surplus is sufficient under the circumstances of the case, the needs of the community to be served, and any other facts and circumstances that seem to it proper, and may grant or refuse the application accordingly: PROVIDED, That no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by State law of State banks, trust companies, and corporations exercising such powers. (Dec. 23, 1913, c. 6, Sec. 11, 38 Stat. 264; Sept. 26, 1918, c. 177, Sec. 2, 40 Stat. 968.)

The first national bank with trust powers to be closed by the Comptroller of the Currency was the Exchange National Bank in Seattle, Washington. The receiver for that bank was appointed in January, 1929. The next national bank with trust powers to be so closed was the United States National Bank of Los Angeles for which a receiver was appointed August 18, 1931. Later in 1931 a large national bank with trust powers in Philadelphia was likewise closed. When the Comptroller of the Currency becomes satisfied of the insolvency of a national banking association he may, after due examination of its affairs, appoint a receiver WHO SHALL PROCEED TO CLOSE UP SUCH ASSOCIATION AND ENFORCE THE PERSONAL LIABILITY OF THE SHAREHOLDERS.

A section of the National Bank Act frequently referred to by the courts is Paragraph 133 of Title 12, U. S. C. A., reading as follows:

"Continuing business after default. After a default on the part of an association to pay any of its circulating notes has been ascertained by the comptroller, and notice thereof has been given by him to the association, it shall not be lawful for the association suffering the same to pay out any of its notes, discount any notes or bills, or otherwise prosecute the business of banking, except to receive and safely keep money belonging to it, and to deliver special deposits. (R. S. Sec. 5228; Feb. 18, 1875, c. 80, Sec. 1, 18 Stat. 320.)"

The insolvency and suspension of a bank and the appointment of a receiver to wind up its affairs do not work a dissolution of the corporation but it ceases to be a going concern. No new liabilities can be created which would be a charge upon the shareholders and no new debt can be created. As stated by Chief Justice Waite of the United States Supreme Court, the business of the bank must stop when insolvency is declared. When a national bank becomes insolvent and is taken over by the Comptroller of the Currency and placed in the hands of a receiver all its assets pass to the control of such receiver.

The bank alone then does not have power to execute, after a receiver is appointed, any trusts held by it.

The receiver, on the other hand, is the mere ministerial agent and instrument of the Comptroller of the Currency for winding up the affairs of a bank, with only limited powers, specified by the statute creating his office.

The statute (Title 12, U. S. C. A., paragraph 192) provides in part as follows:

"Default in payment of circulating notes. On becoming satisfied, as specified in sections 131 and 132, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings."

It was concluded, therefore, that as to all court and private trusts in which or under which the closed national bank had been named as trustee that neither the bank nor the receiver had any power or authority to execute or administer said trusts after the date upon which the receiver was appointed, insofar as the title to real property might directly or indirectly be affected thereby.

To concede such power or authority in either the bank or the receiver would be to concede the right of the bank or receiver to continue the business of the bank, but, the powers of the bank are in effect suspended and it is the statutory duty of the receiver to close up such

bank. Any attempted continuance of the trust business either by the bank or the receiver would be contrary to the letter and the spirit of the federal statutes relating to an insolvent national bank for which a receiver had been appointed.

Coming now to the question of the deed of trust that was referred to a moment ago: The local title companies in Los Angeles discussed this question for a considerable time and finally came to the conclusion as to what we would pass with respect to deeds of trust in which an insolvent bank had been named as trustee.

First, as to reconveyances: We felt that if the debt were, in fact, paid, we might not adhere to the strict letter of the law as just read to you, but might make a slight deviation, believing it to be reasonably safe to do so. Notwithstanding the fact that the closed bank has not the power to execute a trust, yet for the purposes of reconveyances, we were willing to pass reconveyances when they had been executed by the bank's own officers and approved by the receiver, providing we had an opportunity to investigate the situation and determine to our own satisfaction that the debt had, in fact, been paid.

The receiver and his attorneys, however, took the position that in making reconveyances there was much more liability assumed than they had first thought, so they refused to consent to the receiver permitting the bank to execute these reconveyances in any case except one wherein the bank itself was also a beneficiary as well as the trustee under the particular deed of trust.

Not wishing to place a greater burden upon those who held deeds of trust in which the bank had been named trustee, we worked out the plan of permitting the deed of trust to be amended, in which the bank joined. There, again, is an exception to the general proposition outlined in all that I have just stated to you. The bank, with the approval of the receiver, joined in an amendment with the owner of the property, the maker of the trust deed, and the present holder of the note, whereby a provision was inserted in the deed of trust providing for the substitution of the trustee by appointment on the part of the beneficiary.

The note and deed of trust were surrended to the receiver with the request that the bank join in the execution of such amendment. After the amendment was executed by all parties, a substitution was made in the trusteeship and the substituted trustee made a reconveyance of the deed of trust.

In all other cases where there was a default under the deed of trust at the time the bank was closed, or where it was not certain whether the deed of trust would be reconveyed or a sale made under it, we required a substitution of trustees by court action under the code sections which we have in this state relating to that matter.

In brief, the procedure is this: The beneficiary files an action in the Superior Court which, after all, is the mother of all trusts in this state, setting forth the deed of trust, the parties to it, the insolvency of the national bank, the appointment of the receiver, the inability of the bank and receiver to execute the trust, the resignation of the bank—and I might say, the bank in those cases is always willing to resign, subject to the approval of the receiver—the vacancy in the office of trustee under the deed of trust, and the nomination of a person or corporation as the successor trustee, and the prayer that the court make an order directing the manner and time of giving notice of the application.

The entire proceeding takes about a week; and then the substituted trustee must execute the trust as if he had been originally appointed trustee under the particular deed of trust.

CHAIRMAN HENLEY: I have one question that is somewhat kindred to that subject, having to do with insolvency but not insolvency of a national bank. There are two or three phases of this question, and I might ask them separately. The first is: Is a sale under a deed of trust, following the California procedure, where notice of breach and all of the proceedings are had subsequent to the filing of a petition in bankruptcy, regardless of whether an adjudication has been made or not, a void sale?

MR. SPOTTS: Do you mean, without the permission of the bankruptcy court?

CHAIRMAN HENLEY: Yes.

No, I don't think it is void. It is probably voidable. Our practice, however, if we have any information as to the pendency of bankruptcy proceedings, is to require the beneficiary to file a petition for permission to sell under the deed of trust, and thus obviate the question.

Our practice is always to require a search of title as soon as possible after the declaration of default is filed, and therefore ascertain the pendency of any pending bankruptcy proceedings at that time.

CHAIRMAN HENLEY: What is your practice when you find such a sale has already been consummated under those conditions? Suppose you find in the title a sale under a deed of trust which was made, all of the proceedings having been had subsequent to the filing of the petition in bankruptcy.

MR. SPOTTS: If the declaration of default were filed before the proceedings in bankruptcy were started, we take a deep breath, and if the amount involved is not too great, we go ahead. If, on the other hand, the bankruptcy proceedings were initiated before the proceedings under the deed of trust, as has happened in one or two cases, we have tried to work out a sale of equity through the bankruptcy proceedings and eventually get the title in the purchaser at the trust deed sale.

CHAIRMAN HENLEY: Your answer, then, assumes that the filing of the notice of breach is a constructive taking of possession of property by the trustee?

MR. SPOTTS: We used to think so, unqualifiedly, but consulting counsel have advised us that may not be a wholly tenable position, so now we are taking the position that the filing of the notice of breach is not equivalent to taking possession of the property.

CHAIRMAN HENLEY: Do you think the publication of notice of sale is any more equivalent to taking possession than notice of breach?

MR. SPOTTS: Personally, I do not think so.

CHAIRMAN HENLEY: You think the two steps in the procedure are on exactly the same basis?

MR. SPOTTS: That is my personal opinion.

MR. KEMP: Is the filing of notice of default regarded as the beginning of foreclosure proceedings?

MR. SPOTTS: Mr. Henley's question was whether or not the filing of the notice of breach constituted the taking of possession of the property so as to be prior to the proceedings subsequently initiated in bankruptcy.

MR. KEMP: Would that be regarded as one step in the foreclosure proceedings?

MR. SPOTTS: Yes, the first step and a necessary step in the foreclosure proceedings.

A national bank, at the time a receiver is appointed by reason of its insolvency, owns real property, which is subject to tax liens of the United States properly recorded. May such liens be ignored in the issuance of a policy of title insurance?

Section 570 of Title 12, U. S. C. A. provides:

"Insolvent banks as exempt from tax. Whenever and after any bank has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall so appear to him, is authorized to remit so much of said tax against insolvent State and savings banks as shall be found to affect the claims of their depositors. (Mar. 1, 1879. c. 125, Sec. 22, 20 Stat. 351; Mar. 3, 1883, c. 121, Sec. 1, 22 Stat. 488.)"

If therefore, the payment of such tax will diminish the assets necessary for the full payment of all depositors, the Comptroller of the Currency and the Commissioner of Internal Revenue should so find. To clear the record it would seem necessary that a release of such lien be recorded but should recite the facts in each particular case.

By whom that release shall be signed, we have not had time to work out, but those cases have come up locally with us, and some of you may encounter them also.

In the matter of revenue stamps under the law which has just gone into effect, you are all aware, of course, that revenue stamps must be placed upon trustee's deeds after sale. We have had cases where the bidder at the sale assigned his bid to a third party. We feel that in such cases it is not sufficient merely to assign the bid, but by reason of the fact that the bidder, by so bidding, probably acquires an equitable interest in the property, he must in connection with the assignment of his bid grant and convey all right, title and interest in the property as so bought by him.

If that were done, it seems the stamps must be affixed upon the assignment of the bid as well as upon the trustee's deed. That is of particular importance to attorneys for bond holders committees in connection with reorganization plans under deeds of trust securing bond issues.

T. W. PENDERGRASS (Hollister): Is it necessary to attach stamps to deeds held in escrow prior to the act but not recorded until afterward?

MR. SPOTTS: There is a provision that deeds deposited in escrow prior to a certain date, which as I recall, is April 1st of this year, do not require the stamps, but after that date they do.

MR. McNEAL: I have a question which has troubled me considerably because it is a live issue in our office. I will describe a hypothetical case, and I should like very much to have some one here give me his opinion about it.

XYZ Mortgage Company made a loan to one Jane Bacon, we will say. The husband of Jane Bacon signed the mortgage, and the mortgage was assigned by the XYZ Mortgage Company to a life insurance company under a guarantee. The mortgage became delinquent, foreclosure was started, and Jane Bacon alleged forgery. XYZ Company, under the guarantee, took the mortgage from the life insurance company and paid for it, thereby becoming the owner of the mortgage.

Our title insurance policy ran to the insurance company or assigns, the owners and holders of the debt. Then the XYZ Company, of course, became the owner and holder of the debt after it bought the mortgage from the insurance company by assignment.

The alleged forgery was defended but was lost. Jane Bacon proved that she had not signed the mortgage. Claim was made upon us for payment of the debt under our title policy. Our investigation revealed this important fact, that Jane Bacon and her husband presumably had executed a prior mortgage five years before, which mortgage was paid by this present mortgage I speak of, and the funds of the current mortgage paid the former mortgage. Jane Bacon proved that the last mortgage was a forgery, and in succession she proved that two other mortgages ahead of that were forgeries.

The question arises whether we are liable under the terms of the title policy. We had insured the insurance company, the XYZ Company having become the owner of the debt by assignment and applying the funds under our insured mortgage for the payment of the forged mortgage which was not insured. Are we liable for that?

MR. SMITH: In that case, didn't the XYZ Company do something with the proceeds of the mortgage which was paid which you insured?

CHAIRMAN HENLEY: I haven't the answer to the question, but I have the question. We had an identical case, except in our case we insured a deed of trust which was afterwards proved to be a forgery; a portion of the proceeds of the loan which we handled through escrow was used by us to pay a prior mortgage on the same property, which was also a forgery, and that deed of trust was insured by the Title Insurance and Trust Company.

We have asked the Title Insurance and Trust Company, as the insurer under the first deed of trust, to reimburse us in the amount we had paid in paying off the forged deed of trust which they insured, and they have declined to do it. We may be able to give you the answer next year, when the Supreme Court may have had an opportunity to decide the question.

MR. LANDELS: I can't answer it, either, but may I ask another question? The XYZ Company became the insured by purchasing the mortgage. At the time they purchased the mortgage and became insured, they knew of the forgery, did they not?

MR. McNEAL: No; the forgery was alleged but had not been proved.

MR. LANDELS: They knew of the claim of forgery. Let's assume they knew of the forgery. Does our exception as to facts known by the insured apply in a situation of that sort in which, at the time the policy was written, the first insured did not know of the forgery, but at the time the policy was assigned, the party who became the insured knew of the defect? Is that exception applicable to a situation of that sort?

MR. McNEAL: I think not in this case because the XYZ Company repurchased the mortgage under a repurchase contract. In other words, the XYZ Company had a contract with the insurance company that in case of default or in case one of its loans went to foreclosure, it had an obligation to repurchase, and it repurchased under that obligation and became the owner of the debt by reason of the contractual obligation with the insurance company. They were really the bona fide owner of the indebtedness, although they had notice of the claim of forgery.

CHAIRMAN HENLEY: Mr. McNeal, we would be delighted to hear your answer to your own question.

MR. McNEAL: Since Mr. Henley raised the question of perhaps having some experience through the courts, I may say that we may have the same experience. We have declined to pay the claim.

There were two theories. There was one matter I didn't bring out. The principal theory is that they paid to themselves the money in liquidation of a void debt. In other words, there was no consideration for the mortgage, because their debt was invalid by reason of the forgery, and then the creation of the new debt which they used to pay the old debt was an application of funds for their own benefit and did not create an obligation on us to put up good money for bad money. The former mortgage was not insured, and that would have been a total loss had the forgery been discovered at that time.

The other reason was this, that although Jane Bacon was the record owner of the property, her husband transacted all of her business, and the XYZ Company made distribution of the residue of the funds to the husband, and had they recognized Jane Bacon, the real owner of the property, the forgery would have been discovered at that time. That is the secondary reason we are disclaiming liability under this claim, but I think we are going to be sued on it, and I wondered what the concensus of opinion of this body would be in such a case.

Selection of 1933 Convention City

Invitations to hold our 1933 convention were received. Among these was an invitation from Messrs. Remington and Remington, Attorneys, Rochester, N. Y., and members of the American Title Association. We also received an invitation given to us by Mr. Arthur C. Marriott, substituting for Mr. J. M. Dall. Mr. Marriott delivered to us, on behalf of the Illinois Title Association and the Chicago Title & Trust Company, a cordial invitation to hold our 1933 convention in Chicago, during the week of July 8th. He pointed out that it would not only thus be possible to attend a convention of the American Title Association but also to see The Exposition of the Century of Progress, the greatest World's Fair ever produced. This invitation was accepted with thanks, and Chicago officially chosen as the 1933 convention city.

The delegates and their ladies were delightfully entertained throughout the convention by the hosts, the ladies and gentlemen of the California Land Title Association, in one of the most beautiful spots in all Creation. Nothing was left undone to provide for our comfort and enjoyment. The high spot took place at the banquet, which was strictly informal and we were entertained by Spanish and Mexican singers and dancing, after which the annual dance of the American Title Association was held.